

tax sale) arose in distinct contexts. *Hutson v. Tri-County Props., LLC*, 240 S.W.3d 484, 2007 Tex. App. LEXIS 8933 (Tex. App. Fort Worth Nov. 8, 2007, no pet.).

Although owner testified that he had resided on the property, that he only had a few furnishings because he had given them away, and that he bathed outside with a hose because there was no shower or bathtub on the property, the record was devoid of any reasonable proof that the owner actually lived on the property or intended to live on the property, and the owner's actions were not consistent with homestead use; thus, the property was not his homestead, under Tex. Tax Code Ann. § 11.13(j), the property did not qualify for an exemption under Tex. Const. art. XVI, § 51 or Tex. Prop. Code Ann. § 41.002(a), and the property was not exempt from sale under Tex. Const. art. XVI, § 50 or Tex. Prop. Code Ann. § 41.001, and the trial court properly awarded the judgment creditors the excess funds derived from the tax foreclosure sale as the proceeds were not exempt from garnishment. *Lares v. Garza*, No. 04-03-00546-CV, 2004 Tex. App. LEXIS 2561 (Tex. App. San Antonio Mar. 24, 2004).

In a suit by a former property owner claiming a homestead right of redemption on his property that had undergone tax foreclosure, former owner was entitled to the two-year right of redemption because he was a person who qualified for the homestead tax exemption pursuant to Tex. Tax Code Ann. § 11.13(j)(1)(d) even though he did not file the formal application seeking the exemption. *Nichols v. Lincoln Trust Co.*, 8 S.W.3d 346, 1999 Tex. App. LEXIS 8467 (Tex. App. Amarillo Nov. 10, 1999, no pet.).

Where a wife was over age 65 but the husband, who owned the residence used as the marital residence as his separate property, was under age 65, the appeals court held that the residence was not subject to homestead exemption based upon the wife's age being over age 65 even though the home was used as the marital residence where she resided. *Ripley v. Stephens*, 686 S.W.2d 757, 1985 Tex. App. LEXIS 6448 (Tex. App. Austin Feb. 27, 1985, writ ref'd n.r.e.).

TAX LAW

Federal Income Tax Computation

Deductions for Business Expenses

Residential Property Used for Business (IRC sec. 280A). — In the context of Tex. Tax Code Ann. § 11.13, business use of a designated space is incompatible with residential use of the same space; therefore, a taxpayer was not entitled to a 100 percent homestead exemption under § 11.13 because he used portions of his residence for his law office. The conclusion that the taxpayer's use of the space for his law office was incompatible with residential use was supported by his federal income tax reporting under 26 U.S.C.S. § 280A; moreover, tax exemptions were construed narrowly since taxes had to be equal and uniform, and the definition of homestead contained in Tex. Prop. Code Ann. § 41.002(a) did not apply. *Harris County Appraisal Dist. v. Nunu*, No. 14-08-00528-CV, 2009 Tex. App. LEXIS 6775 (Tex. App. Houston 14th Dist. Aug. 27, 2009).

Court of Appeals of Texas, Fourteenth District, Houston, declines to apply the property code definition of a homestead to an ad valorem tax exemption. That exercise of one's calling or business in one's "urban home" does not nullify the exemption of that home from seizure for creditors' claims and does not mean that a taxpayer using part of his home for business purposes should be treated differently from a taxpayer who conducts his business in a building separate from his home or that he should be treated the same as a taxpayer who uses his entire home exclusively for purposes consistent with residential use. *Harris County Appraisal Dist. v. Nunu*, No. 14-08-00528-CV, 2009 Tex. App. LEXIS 6775 (Tex. App. Houston 14th Dist. Aug. 27, 2009).

STATE & LOCAL TAXES

Real Property Tax

General Overview. — Trial court properly granted summary judgment for tax appraisers where the 10 percent annual cap on valuation increase of residential homesteads applied to the residence homestead as a single unit, i.e., the land together with improvements. A "residence homestead" was a unit, and was not be treated by its separate components of land and improvements.

Bader v. Dallas Cent. Appraisal Dist., 139 S.W.3d 778, 2004 Tex. App. LEXIS 6592 (Tex. App. Dallas July 22, 2004, no pet.).

ASSESSMENT & VALUATION

Valuation. — Because the character of a residence homestead as defined in Tex. Tax Code Ann. § 11.13(j)(1)(A) does not require full ownership vested in a single individual, the residence homestead appraised value cap under Tex. Tax Code Ann. § 23.23(a) could not be prorated based on a taxpayer's partial ownership of his homestead. *Martinez v. Dallas Cent. Appraisal Dist.*, 339 S.W.3d 184, 2011 Tex. App. LEXIS 2031 (Tex. App. Dallas Mar. 22, 2011, no pet.).

COLLECTION

Tax Deeds & Tax Sales. — Evidence was insufficient to show that a property was not a homestead, within the meaning of Tex. Tax Code Ann. § 34.21 and Tex. Tax Code Ann. § 11.13, even though the purchaser testified that the original owners were not present on the property at the time of sale and that the home was uninhabitable, because the purchaser did not establish that this had been true for a period of over two years prior to the sale. Accordingly, the original owners had two years to seek redemption of their homestead property. *Gonzalez v. Razi*, 338 S.W.3d 167, 2011 Tex. App. LEXIS 2141 (Tex. App. Houston 1st Dist. Mar. 24, 2011, no pet.).

In holding a redemption of property from a tax sale untimely, a trial court did not err in relying on the definition of "residence homestead" in Tex. Tax Code Ann. § 11.13(j)(1) rather than the property code's definition of "homestead" because the protection given to a "homestead" (the prevention of a forced sale to pay general debts) and the protection given to a "residence homestead" (allowing for redemption after a constitution-sanctioned tax sale) arose in distinct contexts. *Hutson v. Tri-County Props., LLC*, 240 S.W.3d 484, 2007 Tex. App. LEXIS 8933 (Tex. App. Fort Worth Nov. 8, 2007, no pet.).

EXEMPTIONS. — School tax homestead exemptions under Tex. Const. art. VIII, § 1-b and Tex. Tax Code Ann. §§ 11.13(b) were subject to proration based on a taxpayer's partial ownership in accordance with Tex. Tax Code Ann. § 11.41(a), which restricts the amount of exemptions to which a property owner is entitled to the percentage of ownership interest in the property. *Martinez v. Dallas Cent. Appraisal Dist.*, 339 S.W.3d 184, 2011 Tex. App. LEXIS 2031 (Tex. App. Dallas Mar. 22, 2011, no pet.).

In the context of Tex. Tax Code Ann. § 11.13, business use of a designated space is incompatible with residential use of the same space; therefore, a taxpayer was not entitled to a 100 percent homestead exemption under § 11.13 because he used portions of his residence for his law office. The conclusion that the taxpayer's use of the space for his law office was incompatible with residential use was supported by his federal income tax reporting under 26 U.S.C.S. § 280A; moreover, tax exemptions were construed narrowly since taxes had to be equal and uniform, and the definition of homestead contained in Tex. Prop. Code Ann. § 41.002(a) did not apply. *Harris County Appraisal Dist. v. Nunu*, No. 14-08-00528-CV, 2009 Tex. App. LEXIS 6775 (Tex. App. Houston 14th Dist. Aug. 27, 2009).

Court of Appeals of Texas, Fourteenth District, Houston, declines to apply the property code definition of a homestead to an ad valorem tax exemption. That exercise of one's calling or business in one's "urban home" does not nullify the exemption of that home from seizure for creditors' claims and does not mean that a taxpayer using part of his home for business purposes should be treated differently from a taxpayer who conducts his business in a building separate from his home or that he should be treated the same as a taxpayer who uses his entire home exclusively for purposes consistent with residential use. *Harris County Appraisal Dist. v. Nunu*, No. 14-08-00528-CV, 2009 Tex. App. LEXIS 6775 (Tex. App. Houston 14th Dist. Aug. 27, 2009).

In a dispute over money judgments, a trial court did not err by finding that a parcel of a debtor's property was his homestead because two judgment creditors did not meet their burden of showing that the debtor discontinued his use of the property with the intent to permanently do so; the debtor's wife testified that the utilities were still connected to the property, the property was still maintained, and furniture was still located there. The debtor

and his wife had not sold or rented the property, and they had not claimed any other property as their homestead; moreover, the fact that a tax exemption on the property had been allowed to lapse was not dispositive in the abandonment analysis. *Union Square Fed. Credit Union v. Clay*, No. 2-07-167-CV, No. 2-07-168-CV, 2009 Tex. App. LEXIS 2839 (Tex. App. Fort Worth Apr. 23, 2009).

Summary judgment was properly granted to purchasers in a dispute regarding a homestead exemption under Tex. Const. art. XVI, §§ 50, 51 and Tex. Prop. Code Ann. §§ 41.001, 41.002 because an entire four-plex was subject to the exemption where a judgment debtor had lived in one unit and rented the rest of them out; the debtor's residence and usage of the property was suffi-

cient to obviate the issue of intent and render the entire property his homestead. Further, the layout of the property did not limit the debtor's usage of such, and the fact that the debtor accepted a 25 percent homestead tax exemption under Tex. Tax Code Ann. § 11.13(k) did not mean that he declared only 25 percent of the property to be his constitutional homestead. *Sifuentes v. Arriola*, No. 03-05-00414-CV, 2009 Tex. App. LEXIS 2849 (Tex. App. Austin Apr. 22, 2009).

Proportional homestead tax exemption under Tex. Tax Code Ann. § 11.13(k) has no impact on a property's homestead status. *Sifuentes v. Arriola*, No. 03-05-00414-CV, 2009 Tex. App. LEXIS 2849 (Tex. App. Austin Apr. 22, 2009).

ATTORNEY GENERAL OPINIONS

Analysis

Funding computations.
Adoption of Exemption.
Division of Property.
Exemption for One Specified Class.
Homestead Acreage.
Homestead Exemption.
Homestead-Tax Exemption.
Procedures.
Residence Homestead Tax.
Sole Surviving Family Member.

Funding computations.

The computation of state funding for school districts receiving additional state aid for tax reduction must not include local option homestead exemption repeals or reductions that Tex. Tax Code Ann. § 11.13(n-1) prohibits. 2017 Tex. Op. Att'y Gen. KP-0144.

Homestead Exemption Increase. Municipalities desiring to increase the homestead exemption (above the legislatively defined exemption amount) must do so by raising the tax exemption percentage, up to twenty percent, as authorized in the Constitution (Art. VIII, subsection 1-b(e)). 2018 Tex. Op. Att'y Gen. KP-0215.

Chief Appraiser Duty. If a taxing unit adopts an unlawful exemption, the appraiser maintains both a legal and ethical duty to determine that the exemption is inapplicable to the extent it violates the law. 2018 Tex. Op. Att'y Gen. KP-0215.

Adoption of Exemption.

There is no provision for the adoption of homestead exemptions under Tex. Tax Code Ann. § 11.13(n) by public election in a taxing unit. Said exemptions are adopted by action of the taxing unit's governing body. 1994 Tex. Op. Att'y Gen. DM-0312.

Division of Property.

If a portion of the residence homestead property is converted to business use, that portion of the property is no longer exempt. The homestead exemption continues to apply to the portion of the property used for residential purposes. 1939 Tex. Op. Att'y Gen. O-501.

Exemption for One Specified Class.

Pursuant to article VIII, section 1-b(b) of the Texas Constitution and section 11.13(d) of the Tax Code, the governing body of a taxing unit may offer the so-called "optional" residence homestead exemption to one of the specified classes of persons, i.e. either persons who are 65 years of age or older or persons who are disabled, without offering the residence homestead exemption to both. 1987 Tex. Op. Att'y Gen. JM-829.

Homestead Acreage.

A chief appraiser is not given the discretion to establish a minimum or maximum amount of acreage as the amount of land

receiving designation as a residence homestead for ad valorem tax purposes. 1983 Tex. Op. Att'y Gen. JM-40.

Homestead Exemption.

Tex. Tax Code Ann. § 11.13(n-1) prohibits a school district, municipality, or county from repealing or reducing the local option homestead exemption from the amount that was adopted for the 2014 tax year through the 2019 tax year. 2016 Tex. Op. Att'y Gen. KP-0072.

Section 11.13(j) of the Tax Code defines "residence homestead" for purposes of the payment of property taxes to include "a structure . . . together with the land, not to exceed 20 acres," regardless of whether any part of the property is located in a platted subdivision. If the chief appraiser finds that contiguous lots totaling less than twenty acres are being used as a residence homestead, the taxpayer is entitled to an exemption on the entire property. Whether any particular group of contiguous lots would qualify as a "residence homestead" is a question of fact. 2009 Tex. Op. Att'y Gen. GA-0752, 2009 Tex. AG LEXIS 72.

A city may not grant a homestead exemption, approved by referendum in accordance with Texas Tax Code section 11.13(d) and (e), that would compromise its outstanding bond obligations. 1991 Tex. Op. Att'y Gen. DM-0031.

Homestead-Tax Exemption.

The owner's rental of a part of the residence to another disqualifies that part of the residence from the homestead-tax exemption under Section 11.13(k) of the Tax Code. Tex. Op. Att'y Gen. JC-0JC-0415 (2001).

Procedures.

If a federal or state judge, the spouse of a federal or state judge, or a peace officer is otherwise entitled to claim a homestead exemption under Tex. Tax Code Ann. § 11.13, he or she may comply with the requirements of Tex. Tax Code Ann. § 11.43(n) by producing a personal identification certificate issued by the Department of Public Safety and showing his or her residence address; the Legislature has prohibited chief appraisers from accepting alternative forms of identification from homestead exemption applicants. 2012 Tex. Op. Att'y Gen. GA-0974.

Residence Homestead Tax.

Neither the residence owned by the corporation nor the corporate stock owned by persons who live in cooperative housing is entitled to the residence homestead tax exemption provided by section 11.13 of the Tax Code and article VIII, section 1-b, of the Texas Constitution or to the protection afforded homesteads exempt from forced sale for debt. 1986 Tex. Op. Att'y Gen. JM-612.

Sole Surviving Family Member.

The unmarried adult daughter and her mother, while living together, constituted a family, with the daughter as its head. The death of the mother does not dissolve the homestead rights of the daughter. The fact that the daughter is the sole survivor of the family has no relevance. 1941 Tex. Op. Att'y Gen. O-3823.

Sec. 11.131. Residence Homestead of 100 Percent or Totally Disabled Veteran.

(a) In this section:

(1) "Disabled veteran" has the meaning assigned by Section 11.22.

(2) "Residence homestead" has the meaning assigned by Section 11.13.

(3) "Surviving spouse" means the individual who was married to a disabled veteran at the time of the veteran's death.

(b) A disabled veteran who receives from the United States Department of Veterans Affairs or its successor 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or of individual unemployability is entitled to an exemption from taxation of the total appraised value of the veteran's residence homestead.

(c) The surviving spouse of a disabled veteran who qualified for an exemption under Subsection (b) when the disabled veteran died, or of a disabled veteran who would have qualified for an exemption under that subsection if that subsection had been in effect on the date the disabled veteran died, is entitled to an exemption from taxation of the total appraised value of the same property to which the disabled veteran's exemption applied, or to which the disabled veteran's exemption would have applied if the exemption had been authorized on the date the disabled veteran died, if:

(1) the surviving spouse has not remarried since the death of the disabled veteran; and

(2) the property:

(A) was the residence homestead of the surviving spouse when the disabled veteran died; and

(B) remains the residence homestead of the surviving spouse.

(d) If a surviving spouse who qualifies for an exemption under Subsection (c) subsequently qualifies a different property as the surviving spouse's residence homestead, the surviving spouse is entitled to an exemption from taxation of the subsequently qualified homestead in an amount equal to the dollar amount of the exemption from taxation of the former homestead under Subsection (c) in the last year in which the surviving spouse received an exemption under that subsection for that homestead if the surviving spouse has not remarried since the death of the disabled veteran. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the former residence homestead was located a written certificate providing the information necessary to determine the amount of the exemption to which the surviving spouse is entitled on the subsequently qualified homestead.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1405 (H.B. 3613), § 1(a), effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1222 (S.B. 516), §§ 1, 2, effective January 1, 2012; am. Acts 2015, 84th Leg., ch. 702 (H.B. 992), § 1, effective January 1, 2016.

ATTORNEY GENERAL OPINIONS

Veterans' Benefits.

Effective January 1, 2012, Tex. Tax Code Ann. § 11.131(c) provides a residence homestead tax exemption to the surviving spouse of a fully disabled veteran who at the time of death qualified for an exemption under Tex. Tax Code Ann. § 11.131(b); the fact that the disabled veteran died in 2011, prior to the effective date of Tex. Tax Code Ann. § 11.131(c), does not deprive

the surviving spouse of the exemption for the 2012 tax year. 2012 Tex. Op. Att'y Gen. GA-0918.

The homestead tax exemption in Tex. Tax Code Ann. § 11.131(b) for a fully disabled veteran who died in 2011 continues for the remainder of the 2011 tax year. 2012 Tex. Op. Att'y Gen. GA-0918.

Sec. 11.132. Donated Residence Homestead of Partially Disabled Veteran.

(a) In this section:

(1) "Charitable organization" means an organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code.

(2) "Disability rating" and "disabled veteran" have the meanings assigned by Section 11.22.

(3) "Residence homestead" has the meaning assigned by Section 11.13.

(4) "Surviving spouse" has the meaning assigned by Section 11.131.

(b) A disabled veteran who has a disability rating of less than 100 percent is entitled to an exemption from taxation of a percentage of the appraised value of the disabled veteran's residence homestead equal to the disabled veteran's disability rating if the residence homestead was donated to the disabled veteran by a charitable organization:

(1) at no cost to the disabled veteran; or

(2) at some cost to the disabled veteran in the form of a cash payment, a mortgage, or both in an aggregate amount that is not more than 50 percent of the good faith estimate of the market value of the residence homestead made by the charitable organization as of the date the donation is made.

(c) The surviving spouse of a disabled veteran who qualified for an exemption under Subsection (b) of a percentage of the appraised value of the disabled veteran's residence homestead when the disabled veteran died is entitled to an exemption from taxation of the same percentage of the appraised value of the same property to which the disabled veteran's exemption applied if:

(1) the surviving spouse has not remarried since the death of the disabled veteran; and

(2) the property:

(A) was the residence homestead of the surviving spouse when the disabled veteran died; and

(B) remains the residence homestead of the surviving spouse.

(d) If a surviving spouse who qualifies for an exemption under Subsection (c) subsequently qualifies a different property as the surviving spouse's residence homestead, the surviving spouse is entitled to an exemption from taxation of the subsequently qualified residence homestead in an amount equal to the dollar amount of the exemption from taxation of the former residence homestead under Subsection (c) in the last year in which the surviving spouse received

an exemption under that subsection for that residence homestead if the surviving spouse has not remarried since the death of the disabled veteran. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the former residence homestead was located a written certificate providing the information necessary to determine the amount of the exemption to which the surviving spouse is entitled on the subsequently qualified residence homestead.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 122 (H.B. 97), § 1, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 1131 (H.B. 150), § 1, effective January 1, 2018.

Sec. 11.133. Residence Homestead of Surviving Spouse of Member of Armed Services Killed in Action.

(a) In this section:

(1) "Residence homestead" has the meaning assigned by Section 11.13.

(2) "Surviving spouse" means the individual who was married to a member of the armed services of the United States at the time of the member's death.

(b) The surviving spouse of a member of the armed services of the United States who is killed in action is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the member of the armed services.

(c) A surviving spouse who receives an exemption under Subsection (b) for a residence homestead is entitled to receive an exemption from taxation of a property that the surviving spouse subsequently qualifies as the surviving spouse's residence homestead in an amount equal to the dollar amount of the exemption from taxation of the first property for which the surviving spouse received the exemption under Subsection (b) in the last year in which the surviving spouse received that exemption if the surviving spouse has not remarried since the death of the member of the armed services. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the first property for which the surviving spouse claimed the exemption was located a written certificate providing the information necessary to determine the amount of the exemption to which the surviving spouse is entitled on the subsequently qualified homestead.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 138 (S.B. 163), § 1, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(44), effective September 1, 2015 (renumbered from Sec. 11.132).

Sec. 11.134. Residence Homestead of Surviving Spouse of First Responder Killed in Line of Duty.

(a) In this section:

(1) "First responder" means an individual listed under Section 615.003, Government Code.

(2) "Residence homestead" has the meaning assigned by Section 11.13.

(3) "Surviving spouse" means the individual who was married to a first responder at the time of the first responder's death.

(b) The surviving spouse of a first responder who is killed or fatally injured in the line of duty is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead if the surviving spouse:

(1) is an eligible survivor for purposes of Chapter 615, Government Code, as determined by the Employees Retirement System of Texas under that chapter; and

(2) has not remarried since the death of the first responder.

(c) The exemption provided by this section applies regardless of the date of the first responder's death if the surviving spouse otherwise meets the qualifications of this section.

(d) A surviving spouse who receives an exemption under Subsection (b) for a residence homestead is entitled to receive an exemption from taxation of a property that the surviving spouse subsequently qualifies as the surviving spouse's residence homestead in an amount equal to the dollar amount of the exemption from taxation of the first property for which the surviving spouse received the exemption under Subsection (b) in the last year in which the surviving spouse received that exemption if the surviving spouse has not remarried since the death of the first responder. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the first property for which the surviving spouse claimed the exemption was located a written certificate providing the information necessary to determine the amount of the exemption to which the surviving spouse is entitled on the subsequently qualified homestead.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 511 (S.B. 15), § 1, effective January 1, 2018.

Sec. 11.135. Continuation of Residence Homestead Exemption While Replacement Structure Is Constructed; Sale of Property.

(a) If a qualified residential structure for which the owner receives an exemption under Section 11.13 is rendered uninhabitable or unusable by a casualty or by wind or water damage, the owner may continue to receive the exemption for the structure and the land and improvements used in the residential occupancy of the structure while the owner constructs a replacement qualified residential structure on the land if the owner does not establish a different principal residence for which the owner receives an exemption under Section 11.13 during that period and intends to return and