



July 24, 2009

Steve Van Sant
State Assessor
Office of the State Assessor
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**RE: Senior Citizen Property Tax Exemption for Same-Sex
Domestic Partners**

Dear Mr. Van Sant:

We are concerned about the State Assessor's position that same-sex domestic partners¹ are not entitled to the identical treatment that married couples are under AS 29.45.030(e), the Senior Citizen Property Tax Exemption. We understand that the State Assessor does not interpret the law, but rather applies it as advised by the Department of Law ("DOL"). We further understand that, to date, the DOL has stated that because the applicable state regulations refer only to "spouses," the State Assessor may not authorize the extension of the Senior Citizen Property Tax Exemption to eligible senior citizens with same-sex domestic partners. However, in *Alaska Civil Liberties Union, et al. v. State of Alaska, Municipality of Anchorage*, 122 P.3d 781 (Alaska 2005) ("*AkCLU v. State*"), the Alaska Supreme Court found that this differential treatment of same-sex domestic partners and married couples was unconstitutional. We are hopeful that, based on the decision in *AkCLU v. State* and the legal reasoning below, the DOL will revise its opinion and authorize your office to inform local taxing authorities to apply the Senior Citizen Property Tax Exemption in a constitutionally-sound manner.

Under the Senior Citizen Property Tax Exemption, a resident 65 years of age or older is exempt from taxation on the first \$150,000 of the assessed value of their real property. AS 29.45.030(e). The Alaska Administrative Code provides that when an eligible person and his or her spouse occupy the same permanent residence, the full exemption

¹ The Alaska Supreme Court uses the terms "domestic partnership" and "committed relationship" to describe "relationships between adult couples who reside together in long-term, interdependent, intimate associations." *Alaska Civil Liberties Union, et al. v. State of Alaska, Municipality of Anchorage*, 122 P.3d 781, 784 n.5 (Alaska 2005) ("*AkCLU v. State*"). The term "domestic partners" refers to people in these relationships and includes both same-sex and opposite-sex couples. *Id.*

her spouse occupy the same permanent residence, the full exemption applies, regardless of whether the property is held in the name of the husband, wife, or both. 3 AAC 135.085(a). Further, only one exemption is available per property, AS 29.45.030(e), and if the subject property is occupied by a person other than the eligible applicant and his or her spouse, the exemption applies only to the portion of the property permanently occupied by the eligible applicant and his or her spouse. 3 AAC 135.085(c).

Under these regulations, if two property owners live together but are not married, only one of them will receive the exemption and it will be reduced based on their physical share of the residence. Opposite-sex domestic partners in this situation could then marry and receive the full value of the tax exemption, but same-sex domestic partners cannot. This creates a constitutional conflict because same-sex domestic partners are prohibited by law from marrying in Alaska. They are permanently excluded from receiving the same tax benefit made available to married couples. This is the exact result the Alaska Supreme Court declared unconstitutional in *AkCLU v. State*.

This discriminatory situation is well-illustrated by the example of Louise Barnes and Jennine Williamson, who are same-sex domestic partners and the co-owners of property in Fairbanks. On September 4, 2007, Ms. Barnes, 67 years old at the time, applied to the Fairbanks North Star Borough for the Senior Citizen Property Tax Exemption on their property for the 2008 tax year. On October 22, 2007, the Borough informed her that she would only be entitled to one-half of the value of the exemption because she is not married to Ms. Williamson, her co-owner and co-occupant. On February 13, 2008, Ms. Barnes' attorney wrote to the Borough and requested that Ms. Barnes receive the full exemption as she would if she and Ms. Williamson were married. On June 3, 2008, the Borough, after consultation with your office, informed Ms. Barnes that her request for the full exemption remained denied because she is not married to her co-occupant.

This denial conflicts with *AkCLU v. State*. The Alaska Supreme Court made it very clear that same-sex domestic partners must be treated on equal footing with married couples in the provision of government benefits. The Court held that differential treatment violated the Equal Protection Clause of the Alaska State Constitution since individuals "in committed same-sex relationships are absolutely denied any opportunity to obtain [government] benefits, because [they] are barred by law from marrying their same-sex partners in Alaska or having any marriage performed elsewhere recognized in Alaska." *AkCLU v. State*, 122 P.3d at 788. Please note that, in reaching this conclusion, the Court found that treating same-sex couples differently from heterosexual married couples with respect to employment benefits was unconstitutional *and did not survive even the most minimal level of constitutional scrutiny*. *Id.* at 783, 786-87.

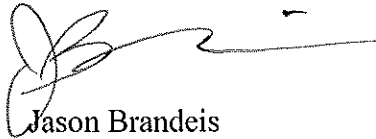
The same reasoning is true with respect to how the Senior Citizen Property Tax Exemption is being applied to same-sex domestic partners: it treats similarly-situated property owners differently. The Exemption provides a benefit to married couples that can never be obtained by same-sex couples in committed relationships because they cannot legally marry in this state. Thus, pursuant to *AkCLU v. State*, same-sex domestic partners are entitled to the same treatment as married couples under AS 29.45.030(e), and home owners like Ms. Barnes should receive the full value of the Senior Citizen Property Tax Exemption.

Steve Van Sant, State Assessor
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We anticipate that the DOL will provide an opinion that clarifies the State Assessor's and local taxing authorities' responsibility to allow same-sex domestic partners equal rights under Alaska's Senior Citizen Property Tax Exemption. We are hopeful that litigation is not necessary to resolve this issue. If, however, the DOL believes that the holding of *AkCLU v. State* does not apply to the Senior Citizen Property Tax Exemption, we would welcome a detailed analysis setting forth that conclusion and would be happy to discuss it with you.

Thank you for your time and attention to this serious matter. We look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Brandeis", with a long horizontal flourish extending to the right.

Jason Brandeis
Staff Attorney

cc: Jeffrey Mittman