

Memorandum

505.0065

To: Mr. James Barga

Date: March 6, 1989

From: Ken McManigal

Subject: Homeowners' Exemption

This is in response to your request that we review the January 17, 1989, letter and attachment from San Diego County Assessor Smith to Verne Walton concerning the availability of homeowners' exemption under the following circumstances.

According to the letter, "The Meadows Mobilehome Park" conversion has resulted in a number of the spaces being leased (subleased) by Meadows Homeowners Acquisition Corporation to the former tenants pursuant to "condominium subleases." According to the "condominium sublease" attached thereto, on October 1, 1972, the lease for The Meadows Mobilehome Park was created by Jack H. Howard, Chieko Howard, and Jack H. Howard, Trustee, as lessors, and by the Gardners, Morgans, and Fromes, as lessees. Thereafter, as the result of a series of transfers, the interest of the lessees was acquired by Meadows Homeowners Acquisition Corporation, which converted the leasehold estate into 260 sublease condominium spaces for sale/lease to sublessees under the terms of the lease and the sublease. The term of the attached sublease is for 83 years (recording date (1988) to 2071).

Article XIII, section 3(k) of the Constitution provides that \$7,000 of the full value of a dwelling, as defined by the Legislature, when occupied by the owner as his principal residence, is exempt from property taxation. After restating article XIII, section 3(k), Revenue and Taxation Code section 214 states, among other things, that:

“Dwelling” means a building, structure or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated.

“The exemption . . . shall first be applied to the building, structure or other shelter and the excess, if any, shall be applied to any land on which it may be located.

“The exemption does not extend to property which is rented, vacant, under construction on the lien date, or which is a vacation or secondary home of the owner or owners.”

Applying these provisions to mobilehomes and land on which they are situated:

1. A mobilehome subject to property tax on owned land is eligible for the exemption, mobilehome first and excess, if any, to land (April 17, 1981, LTA No. 81/54 and September 21, 1981, LTA No. 81/118).
2. A mobilehome subject to property tax on leased land is eligible for the exemption on the mobilehome or for the renter’s credit on the land, but not both (LTA Nos. 81/54 and 81/118).
3. A licensed mobilehome on owned land: land only is eligible for the exemption (LTA Nos. 81/54 and 81/118).

Turning to the question of whether the spaces being leased/subleased pursuant to the condominium subleases are owned or leased for purposes of the exemption then, it seems clear that they are leased, with the result that the spaces are not eligible for the exemption:

- A. The property is subject to a master lease.
- B. The lessee is subleasing the spaces, subject to the master lease.
- C. Sublessees take their rights to use the spaces under condominium subleases.
- D. Sublessees acquire only the right to use the spaces and may only sublease or assign the spaces to others under certain conditions.
- E. Sublessees have no ownership interests in the spaces.

This mobilehome/land situation is similar to the condominium/land situation we have previously considered:

“C3. May a person who has leasehold or subleasehold condominium qualify for the homeowners’ exemption?”

“Answer: No. If there is a lease in effect, rental payments would be involved, rental property does not qualify.”

“C4. May the homeowners’ exemption be allowed on a condominium where a portion of the improvement is owned in fee but the land is leased?

“ANSWER: The exemption may be allowed on the structure only.” (March 23, 1982, LTA No. 82/50.)

Again, the land is not eligible for the exemption.

Because the term of the sublease is 83 years and the term of the master lease is 99 years, you suggest that the sublessees might be considered owners of the land. While such is the case for change in ownership/assessment purposes (article XIII A, sec. 2 and Rev. & Tax. Code, secs. 60 and 61 (c)), such is not the case for exemption purposes (article XIII, sec. 3 (k) and sec. 218). As indicated, both article XIII, section 3(k) and section 218 refer to dwellings occupied by owners thereof, and section 218 provides that the exemption applies to dwellings and to land but that the exemption does not extend to property which is rented/leased.

We are returning the letter and attachment herewith.

JKM:wak
2253H

Attachments

cc: Mr. John Hagerty
Mr. Robert Gustafson
Mr. Verne Walton
Legal