



STATE BOARD OF EQUALIZATION

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Controller, SacramentoH. F. FREEMAN
Executive Secretary

February 10, 1969

Attention:

Gentlemen:

Re: Homeowner's Property Tax Relief Payment

In your letter of January 22, 1969, addressed to Mr. Hugh Strachan, you posed several factual situations and requested our opinion as to who is the party eligible to claim the subject \$70 payment and who is the proper party to file the claim with the assessor. Although it results in a rather long reply, we are repeating, for the sake of clarity, the facts presented.

A. A BANK AS EXECUTOR OF AN ESTATE

Questions 1 & 2:

1. On March 1, 1968, John Doe owns and occupies a dwelling which is his principal place of residence. Subsequent to March 1, 1968, John Doe dies and the property is presently in his estate, but the dwelling is vacant since his death and is not left under Doe's will to an individual as his residence. Instead the home is simply an asset of the estate.

2. Assume the same set of facts as 1 above, except that John Doe died prior to March 1, 1968.

(27)

Answer to 1 & 2 combined:

Since Mr. Doe owned or occupied a dwelling on March 1, 1968, he satisfies the owner-occupant requirements for exemption. Since he is now dead, the executor of his estate should file a claim for exemption on behalf of the estate. It is immaterial as regards the receipt of the \$70 payment whether the dwelling is presently occupied or vacant or that Mr. Doe left the dwelling to a specified individual by will.

If we assume that Mr. Doe died prior to March 1, 1968, we would have to conclude that his failure to satisfy the owner-occupant qualification on that date prohibits granting the exemption to him. If, however, a co-owner or an heir was residing in the property on that date, that person could claim the exemption. It would be necessary to determine under the law of wills or the laws of succession who owned the property on the lien date. As you are no doubt aware, property is owned by an heir as of the date of the decedent's death.

Questions 3 & 4:

3. On March 1, 1968, John Doe, a married man with children, owns and resides in a dwelling which is his principal place of residence. Subsequent to March 1, 1968, John Doe dies and the dwelling is presently in his estate. However, the home is specifically devised under his will to his wife, and she is presently living there. Would the same result follow if the home was devised to the children and they were living there?

4. Assume the same set of facts as in 3 above, except that John Doe died before March 1, 1968

Answer to 3 & 4 combined:

Here again, Mr. Doe's death subsequent to March 1, 1968, does not affect his eligibility for the \$70 payment. If the executor of the estate could file for the payment as indicated above, the fact that the home was devised under the will to his wife or his children would not be material if we assume that they had no ownership interest on the 1968 lien date. If the wife was a co-owner she could claim exemption in her own right.

If John Doe died before March 1, 1968, then the proper claimant would be any person who resided in the dwelling and had

title to it on the 1968 lien date. If the estate is still in probate it would probably be best for the executor or administrator to file the claim on behalf of the estate. In this way the \$70 would be distributed as an estate asset and the wife and children would share the payment.

Questions 5 & 6:

5. John Doe is married to Jill Doe on March 1, 1968, and on that date both reside in a dwelling (which is held as community property) as their principal place of residence. Assume that John Doe dies on April 1, 1968, and devises his one-half of the community property to his children. Assume that under applicable law all of the community property is subject to probate in the husband's estate. Who is entitled to the refund-- the executor, the wife, or the children?

6. Assume the same set of facts as in 5 above, except that Jill Doe dies on April 1, 1968, and under applicable law only her one-half of the community property is subject to probate.

Answers to 5 & 6 combined:

Since both John Doe and Jill Doe are stated to be owner-occupants of the property on March 1, 1968, either would be eligible to claim the exemption. The fact that John died April 1, 1968, would require that a claim be submitted by the executor of his estate or that the wife claim the exemption on her own behalf. There could not be two exemptions.

If we assume that all the community property is subject to probate in the husband's estate, no difference in our reply would result. The wife could claim because of her community property interest, or the executor or administrator of the estate could file on behalf of the husband's estate. The children would not be eligible for exemption since they were not owners on the lien date in 1968. If we assume that Jill Doe rather than John Doe died on April 1, 1968, either would, nevertheless, be eligible for the \$70 payment. It does not appear important that only her one-half of the community property might be subject to probate.

In both situations it appears preferable that the executor file for the exemption. This would seem the best way to prevent confusion and at the same time allow for the proper distribution of the payment.

B. A BANK AS TRUSTEE

Question 1:

On March 1, 1968, the bank is the trustee of an intervivos or testamentary trust which holds title to residential property. Beneficiaries of the trust reside in the dwelling, which they occupy as their principal place of residence on said date.

Answer to Question 1:

It is our opinion that since one or more of the beneficiaries of the trust are the owners of equitable interests in the dwelling and reside therein, it would be proper for the trustee to claim the exemption on behalf of the eligible beneficiary or beneficiaries. The trustee could file the claim in the name of the eligible party and indicate that it was doing so as trustee. A copy of the trust instrument should be made available and if requested be submitted along with the claim so that the assessor may satisfy himself that the beneficiaries do in fact have an ownership interest in the property even though legal title to the property is recorded in the name of the bank.

Question 2:

2. On March 1, 1968, John Doe owns and resides in a dwelling which is his principal place of residence. Subsequent to March 1, 1968, John Doe transfers title to the residence to a bank, as trustee of an intervivos trust. John Doe is a life beneficiary of the trust and reserves the right to live in the residence as his principal place of residence, which he is presently doing.

Answer to Question 2:

Since John Doe was the owner-occupant of the property on March 1, 1968, he could claim the \$70 payment. If he were to file for the exemption payment, there is little doubt that the assessor would certify him as eligible in that his name would appear on the 1968 property tax rolls as the assessee of the property. His subsequent transfer of title to the property to a bank as trustee would not affect his eligibility. At the same time the appointment of a trustee after the eligibility date would enable the trustee to submit a claim on behalf of the trustor if

he wished it that way. Here again, if the assessor requested it, a copy of the trust instrument would have to be submitted.

Question 3:

3. Assume the same set of facts as 2 above, except that John Doe provides in the trust instrument that another trust beneficiary may reside in the home as the beneficiary's principal place of residence, and the beneficiary is so residing.

Answer to Question 3:

Since the trust instrument which granted the right to reside in the home to another party was executed subsequent to the lien date, that person's occupancy of the home after March 1, 1968, would not affect Mr. Doe's eligibility. Mr. Doe would be the proper claimant and the trustee would not be involved. In subsequent years the trustee could file a claim on behalf of the life tenant beneficiary.

C. MISCELLANEOUS SITUATIONS

Question 1:

1. Assume that on March 1, 1968, John and Jill Doe, husband and wife, own and occupy as joint tenants a dwelling as their principal place of residence. On April 15 John Doe dies and Jill Doe takes the entire property by right of survivorship. Is Jill Doe entitled to the \$70 refund? If so, how should the claim for refund be filed?

Answer to Question 1:

Inasmuch as both John and Jill Doe were each qualified for exemption on the lien date in 1968, she could claim the exemption in her own right whether she now owns the entire property by right of survivorship or because of a provision in a will. Here again, she would most probably be one of the persons shown on the 1968 tax roll and could sign and file the claim without difficulty. In situations where property is owned by two persons, both of whom are

eligible for exemption, a question does arise if one dies and leaves his interest to a third party. Should the third party benefit from the fact that the former owner could have claimed the exemption or, stated another way, should benefits accruing to a property be divided proportionately among the present owners of that property? Since this example states that the wife becomes owner of the entire property, the question does not seem important. Owning all interest in the property, she alone should receive the payment.

Question 2:

2. Assume that John Doe occupies a dwelling as his principal place of residence on March 1, 1968. John Doe is the legal life tenant of the property and the remainder interest is held by Jill Doe. Jill Doe does not occupy the property. Who is entitled to the \$70 refund, and who may file the claim for refund?

Answer to Question 2:

As life tenant of the property, John Doe would be the proper party to claim the exemption. His life estate is an ownership interest which qualifies him and Jill Doe's nonoccupancy disqualifies her. The life tenant should file the claim.

Questions 3 & 4:

3. Assume that John Doe owns and occupies a dwelling as his principal place of residence on March 1, 1968, prior to which time a bank had been appointed his conservator or guardian. May the bank file the claim for refund?

4. Assume the same facts as in 3 above, except that the bank was appointed conservator or guardian subsequent to March 1, 1968.

Answer to Questions 3 & 4:

Since John Doe is qualified for the \$70 payment, it does not seem material when the bank was appointed as conservator or guardian of his estate. If John is eligible for the payment but incompetent to claim it at the time he is required to do so, the

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bank should file the claim in its official capacity as conservator or guardian.

We concur in your opinion that whenever a trustee, guardian, etc., files on behalf of a person whose estate or affairs it is managing, it should make available documents which will enable the assessor to verify the trustee's authority to file the claim. It does not follow, however, that the documents should be presented with the claim, since the lack of time and personnel would make review and analysis of such documents impossible. Perhaps the best procedure would be to check with your assessor to determine his view of what evidence of authority would be acceptable.

Very truly yours,

J. J. Delaney
Tax Counsel

JJD:dse

cc:

October 23, 1970

Attention:

Dear

RE Homeowners' Exemption

As we understand your recent letter you are concerned with the proper application of the homeowners' exemption to a situation in which a husband and wife put their home in a trust: The husband has been appointed trustee and the wife is the trust beneficiary. Both husband and wife occupy the structure as their permanent residence.

It is our opinion that Mrs. Bennett, if otherwise qualified, is eligible to claim the homeowners' exemption since she is, in fact, the owner of the structure. Mr. Bennett is not eligible to claim the exemption for himself but may file the exemption claim as trustee for the benefit of Sylvia E. Bennett.

Since the trust was established in 1963 it would have been appropriate for either the trustee or beneficiary to apply for the 1969 or 1970 homeowners' property tax exemption. Unfortunately the period for filing such claims has expired and there is presently no statutory authority which approves late filing. The Bennetts must therefore lose the benefit of this exemption for these two years. Obviously they should be sure to file during the period March 1--April 15, 1971, for the 1971-72 homeowners' exemption. We are not sending a copy of this letter to the Bennetts but are trusting that you, as their representative, will inform them of our conclusion.

Very truly yours,

J. J. Delaney
Assistant Chief Counsel

JJD:shh

cc:

Messrs. Knowles, Hartigan, Bertane

Refer to the following excerpts from LTA 82/50 for information regarding,

Trusts

- Trustee: E 14, and F 7

Beneficiary: E 4, E 7, and G 14

STATE BOARD OF EQUALIZATION

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March 23, 1982



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RICHARD NEVINS
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KENNETH CORY
Controller, Sacramento
DOUGLAS D. BELL
Executive Secretary
No. 82/50

TO COUNTY ASSESSORS:

1982 HOMEOWNERS' EXEMPTION--QUESTIONS AND ANSWERS

Here is an updated version of the questions and answers that reflect the Board's views on administration of the homeowners' exemption. The prior questions and answers were dated April 9, 1975; we have indicated in the margin "NEW" for a new question and "REVISED" where the concept has changed since 1975. Please inform your staff of these additions and revisions. We suggest you follow the information in this guide when processing current claims. Destroy, or mark as superseded, prior year's compilation.

Major amendments in the processing of homeowners' exemptions have occurred since 1975. The changes include:

1. Late filing. The deadline for filing remains 5:00 p.m., April 15, but late filing (for 80 percent of the exemption) is permitted through 5:00 p.m., December 1. The claimant no longer need establish good cause for late filing. See Letter to Assessors' 79/64, dated April 3, 1979.
2. One-time filing. For 1975 and thereafter, only an occupant who either acquired title to an eligible dwelling during the preceding assessment year or is otherwise seeking the exemption on a property not exempted in the prior year need file a claim. Filing before March 1 is permitted if the applicant is the owner of the property and intends to occupy the property by 12:01 a.m. on March 1.
3. Claims not open to public. The homeowners' exemption claim is not a public document. The assessor must provide names of homeowners' exemption recipients to the State Board of Equalization under the provisions of Section 218.5, Revenue and Taxation Code.

E. ESTATES, TRUSTS, POWER OF ATTORNEY, GUARDIAN (owner died, see G35)

E1: May an occupant of property who owns a life estate in that property receive the homeowners' exemption?

ANSWER: YES. An occupant remainderman (the person who acquires the property after the death of the owner of the life estate) may not receive the exemption under any conditions as long as the life estate interest exists.

E2. Must a life estate be segregated on the roll?

ANSWER: NO. The roll may contain the entire property value and the amount of the homeowners' exemption. The assessor's records will indicate the computations necessary to determine the value available for the exemption and the amount of the exemption allowed. It is not required, but preferable, that the name of the holder of the life estate appear on the roll; it is the holder's name and social security number that must be provided to the Board under the provisions of Section 218.5 of the Revenue and Taxation Code.

E3. May a homeowner who has a life estate in a home located on land owned by his brother receive the homeowners' exemption on the land?

ANSWER: NO. He may only receive the exemption on the home; no part of the exemption may apply to the land.

E4. May the exemption be applied where a deed absolute on its face is subject to an unrecorded trust agreement between a grantor and a grantee which creates a life estate and a right of revocation in the grantor?

ANSWER: YES. A well-known religious organization has been deeded property in this manner. The grantor-beneficiary of the trust must sign the claim.

E5. May the homeowners' exemption be allowed on property where the trustor has created a revocable "living trust" and presently occupies the dwelling?

ANSWER: YES. This procedure is currently being followed to avoid probate proceedings upon the death of the trustor.

E6. May the homeowners' exemption be allowed on property where the trustor has created an irrevocable trust and presently occupies the dwelling?

ANSWER: YES.

- E7. Does the homeowners' exemption apply to property occupied by a beneficiary of a trust even though legal title may be held in trust by a bank?
- ANSWER: YES. The occupant or the trustee could file the claim. The assessor should require the claimant to present a copy of the trust. The bank could file the claim on behalf of the beneficiary and sign as trustee of the property owned by the occupant beneficiary.
- E8. If a person dies testate, when is a devisee or legatee considered to be the "owner" of the property?
- ANSWER: Ownership transfers at the time of death. The administrative act of probate need not be final.
- E9. If a person dies intestate, when is the heir considered to be the owner of the property?
- ANSWER: At the time of death of the deceased.
- E10. A person died intestate several years ago leaving a home that was his separate property. His widow has not put the property through probate proceedings but has continued to occupy the home. Is she entitled to the homeowners' exemption?
- ANSWER: YES. A widow is one of the heirs at law to separate property owned by her husband at the time of his death. Property is owned by an heir as of the date of the decedent's death.
- E11. A person dies intestate, leaving a home that was owned as community property or in joint tenancy with his wife. The estate is still unsettled on tax lien date. Is his widow entitled to the homeowners' exemption if she occupies the home on tax lien date?
- ANSWER: YES.
- E12. A person dies intestate leaving a home that was owned in joint tenancy with a genetically unrelated person. The estate is still unsettled on tax lien date and the surviving joint tenant occupies the home. Is he automatically entitled to the homeowners' exemption?
- ANSWER: NO. The survivor must file a homeowners' exemption claim form. The exemption is not automatically extended to a joint tenant who is not a widow or widower.

E13: A person dies intestate leaving a home that was owned in tenancy in common with his sister. The estate is still unsettled on tax lien date, and his sister occupies the home. Is she automatically entitled to the homeowners' exemption?

ANSWER: NO. The sister must file a homeowners' exemption claim form.

E14: Are there preferable ways in which a trustee, guardian, or conservator should sign an exemption claim?

ANSWER: YES. The law does not specify how a claim is to be signed in such situations, but we suggest the following:

- a. Estate of John Doe
by X bank, Executor or Administrator of the estate of John Doe. (This form would be used if John Doe died after the lien date but was an owner-occupant upon his death.)

E15: A person dies intestate leaving a home that was owned in partnership with several genetically unrelated persons. There is nothing in the partnership agreement about rights of survivorship. The estate is still unsettled on the tax lien date and one of the surviving partners occupies the home. Is he automatically entitled to the homeowners' exemption?

ANSWER: NO. He must file a homeowners' exemption claim form. He is then eligible if he occupies the dwelling, pays all of the expenses of maintaining the dwelling, and pays no rent to the other partners.

E16: May a person holding a power of attorney execute the claim form for a qualified owner-occupant?

ANSWER: YES. See our Letter to Assessors', dated February 5, 1970, titled "Homeowners' Exemption-Filing by Legal Representative."

E17: How should the executor of an estate or the guardian of a minor or incompetent complete the form for the 1982 homeowners' property tax exemption?

ANSWER: He should add "Estate of--" in front of the minor's or incompetent's name and sign his own name as "Executor for the Estate of..." or in the case of guardianship, sign his ward's name and his own as guardian for the owner-occupant ward.

F6. REVISED Must the names of all claimants of exemptions for a single parcel, whether a single or multiple-dwelling, appear on the assessment roll?

ANSWER: NO. Only the total amount of the exemptions need appear on the roll; if it is feasible to list all claimants, do so. Otherwise, the assessor must identify the name of each claimant on a subsidiary public record arranged in parcel number order to which the public has access. However, the assessor must report a social security number or numbers for each exemption to the state. He must ensure his records indicate the name and address or apartment number of each claimant and the amount of each exemption allowed. Beginning with 1974-75, the homeowners' exemption claims and records are no longer open to public inspection if they include the social security number of the claimant and/or spouse.

F7. May the homeowners' exemption be allowed where the claimant has completed the claim form but has failed to sign the claim?

ANSWER: NO. An unsigned claim may not be allowed. However, if the claimant has filed a timely claim, the assessor may allow a reasonable extension of time for the claimant to provide required information or to sign the claim. Only one extension shall be allowed, and with exception (see Section 255.1 of the Revenue and Taxation Code), the extension shall not go beyond October 15 which is six months from the due date of the claim. A trustee or other agent may act for the claimant who is unable to complete the form.

F8. May the homeowners' exemption be transferred from one property owned and occupied by the claimant on the lien date to a property to which the claimant has subsequently moved?

ANSWER: NO.

F9. How is it possible to determine whether a unit eligible for the homeowners' exemption exists in a commercial structure in order to mail a claim form as required by Section 255.3 of the Revenue and Taxation Code?

ANSWER: Section 255.3 requires the claim form be mailed to a person acquiring and recording title to an eligible dwelling since the preceding lien date. If the newly acquired structure is not of a type which might reasonably be expected to contain an eligible dwelling unit, the assessor may rely on newspaper articles and spot announcements on radio and television to alert potential claimants.

G12. What type of documentation should an assessor require from a person claiming ownership of a structure located on land owned by another; e.g., when a son claims ownership of a home on land owned by his father?

ANSWER: Request a written statement of separate ownership in accordance with Section 2188.2 of the Revenue and Taxation Code. The statement need not be recorded. Though not legally required, it is best that both parties sign the agreement.

Social Security Account Number

G13. Must a claimant provide his social security number? He may feel that an assessor has no legal authority to require the social security number.

ANSWER: YES. A claimant may choose not to reveal his social security number and waive the exemption (see Section 260, Revenue and Taxation Code). The claim containing the social security number is confidential information and not open to public inspection. There is nothing in federal law which prohibits an individual from divulging his number. Reference: State Board of Equalization Letter to Assessors' dated 4-22-71. Revenue and Taxation Code, Section 218.5 provides, in part, "The board (SBE) may specify that the information (on the form) include all or part of the names and social security numbers of claimants and spouses..." (clarification added)

G14. Whose social security number is listed if a person or corporation other than the occupant files a claim on behalf of the owner or beneficiary?

ANSWER: The social security number of the occupant; the word "NONE" should be entered if he has no number.

Temporarily Away

G15. May a person who is temporarily away from his residence, and the residence was not leased or rented to others on the lien date, qualify for the homeowners' exemption?

ANSWER: YES. An absence of more than one year would raise considerable doubt that this is the principal residence.

G16. May a person who is unable to occupy the home he owns during the winter because it is snowed-in, and who obtains temporary residence elsewhere, qualify for the exemption?

ANSWER: YES. The person should demonstrate that he returns to his home when possible to do so. The exemption does not extend to property which is a vacation or second home, but temporary absences because of fire, flood, or snow do not change the status of a principal place of dwelling.