

Memorandum

To: Dean R. Kinnee, Chief
County-Assessed Properties Division (MIC:64)

Date: December 12, 2012

From: Sonya S. Yim
Tax Counsel III (Specialist) (MIC: 82)

Subject: *Disabled Veterans' Exemption
Assignment No. 12-267*

This is in response to your memorandum to Mr. Robert Tucker whereby you inquired whether the Disabled Veterans' Exemption is available to a veteran who is awarded a home under a Contract for Deed with the Military Warriors Support Foundation, if that veteran qualifies for the exemption in all other respects. For the reasons described below, we believe in that circumstance, a veteran would qualify for the Disabled Veterans' Exemption upon execution of the Contract for Deed, because the veteran would be considered the owner of the property for tax purposes at that time.

Facts

The Military Warriors Support Foundation (Foundation) is an Internal Revenue Code section 501(c)(3) non-profit organization that provides services for military veterans. One of those services is to award mortgage-free homes to qualifying veterans (or their unmarried surviving spouses)¹ who have injuries and severe or unique circumstances as a result of engaging in combat in Iraq or Afghanistan. An application for one of these homes must be submitted and when it is awarded, a purchase agreement is entered into through a Contract for Deed document, between the Foundation as "seller/landlord" and the veteran as "buyer/tenant." You forwarded us a copy of a sample Contract for Deed.

According to the Contract for Deed, close of escrow is scheduled to occur three years from the date of the agreement, and title to the property remains in the name of the Foundation until the three years has elapsed. The Contract provides that the purchaser must fulfill certain requirements, such as participating in three years of family and financial mentoring to assist with transition back to civilian life. During that time, the purchaser also pays a deposit of \$50 per month and is responsible for all property, school, and city taxes, unless they are waived by the state. If all the contract requirements are met, escrow may close and title to the home is then transferred to the veteran.

¹ The term "veteran" as used herein also refers to unmarried surviving spouses of qualified veterans, as described in subdivision (c) of Revenue and Taxation Code section 205.5.

You have also informed us that in relation to the sample Contract for Deed that you provided us, a Preliminary Change in Ownership Report (PCOR) was submitted to the Riverside County Assessor showing the Foundation as the owner of that particular property, and that according to the Assessor's office, none of the recorded documents included the Contract as an attachment to the PCOR.

Law & Analysis

Unless specifically exempted, all property in California is subject to property taxation. Article XIII, section 4, subdivision (a) of the California Constitution states in part that the Legislature may exempt from property taxation:

The home of a person or a person's spouse, including an unmarried surviving spouse, if the person, because of injury incurred in military service, is blind in both eyes, has lost the use of 2 or more limbs, or is totally disabled, or if the person has, as a result of a service-connected injury or disease, died while on active duty in military service, unless the home is receiving another real property exemption.

The Legislature exercised the above constitutional grant of power by enacting Revenue and Taxation Code² section 205.5. Section 205.5, subdivision (a) provides, in part:

Property that constitutes the principal place of residence of a veteran, that is *owned* by the veteran, the veteran's spouse, or the veteran and the veteran's spouse jointly, is exempted from taxation on that part of the full value of the residence that does not exceed one hundred thousand dollars (\$100,000), as adjusted for the relevant assessment year as provided in subdivision (h), if the veteran is blind in both eyes, has lost the use of two or more limbs, or if the veteran is totally disabled as a result of injury or disease incurred in military service. (Emphasis added.)

Subdivision (d) of section 205.5 describes "property that is owned by a veteran [or the veteran's unmarried surviving spouse]" to include various types of ownership by the veteran which would qualify for the tax exemption.

Thus, in order to qualify for the disabled veterans' exemption, the individual must qualify as a veteran, have served in a war or campaign, have a disability with certain criteria, and own a property that is used as a principal place of residence on relevant dates.³ In this case, assuming that the applicant to the Foundation is a qualified disabled veteran, and the home will be the veteran's principal place of residence, the only issue is whether the veteran is considered to "own" the property that is the subject of the Contract for Deed.

Evidence Code section 662 states that "[t]he owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." Clear and convincing evidence is proof that is explicit and unequivocal, so

² All further statutory references are to the California Revenue and Taxation Code, unless otherwise specified.

³ Further details of these criteria are described in sections 205.5, 276-276.3, 277-279.5, and in article XIII, section 3, subdivision (o) of the California Constitution.

clear as to leave no doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Tannehill v. Finch* (1986) 188 Cal.App.3d 224, 228.) To establish that the property is actually owned differently from the ownership shown on the deed, a county assessor may give consideration to, but is not limited by, the following: (1) A written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests. (2) Evidence of the monetary contribution of each party. (Property Tax Rule (Rule) 462.200, subd. (b)(1) and (b)(2).) The best evidence of any fact is a final judicial finding, order, or judgment, but proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by written evidence such as written agreements, canceled checks, insurance policies, and tax returns. (Rule 462.200, subd. (b)(2).)

In our opinion, even though legal title remains in the name of the Foundation for three years, the Contract for Deed transferred the beneficial ownership of the property to the disabled veteran as of the date of execution. Critically, as noted above, during the three year period, the veteran appears to have indicia of ownership, making him the beneficial owner of the property during those three years.

Civil Code section 2985, subdivision (a) provides that "[a] real property sales contract is an agreement in which one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract and that does not require conveyance of title within one year from the date of formation of the contract." Such a contract is categorized as an executory contract to convey real property, as opposed to an executed contract, because "[a]n executed contract is one, the object of which is fully performed. All others are executory." (Civ. Code, § 1661.) Such executory contracts have been held to be conveyances or transfers of real property, on the ground that they effectuate a grant of the whole beneficial interest in the property. The Supreme Court held as such in *Jackson v. Torrence* (1890) 83 Cal. 521, stating that "[s]uch a contract, if enforceable, has the effect of vesting the equitable estate in the vendee, leaving in the vendor the dry legal title. It is in effect a grant of the whole beneficial interest in the land. . . ." (*Id.* at p. 537; see also *Orange Cove Water Co. v. Sampson* (1926) 78 Cal.App. 334, 341.)

We have previously opined, in the context of an installment sale, that, consistent with the Civil Code sections cited above, the vendor retains bare legal title as a security interest in the property, and the vendee acquires equitable title to the property, as well as possession thereof. This results in a transfer of the present equitable interest as well as the present beneficial use in the property upon the execution of the contract. (Property Tax Annotation⁴ 220.0320 (May 9, 1984).)

We have also stated that a sales contract that transfers the use and control of a property to the buyer or vendee, while the seller or vendor retains title as security for payment, is a financing mechanism that results in the buyer becoming the beneficial owner of the property. (Assessors' Handbook (AH) section 401, *Change in Ownership* (September 2010) at p. 6.) We believe the Contract for Deed is analogous to a financing mechanism that results in the buyer becoming the beneficial owner of the property at the time of the execution of contract. Such a financing mechanism, usually in the form of a lease, is in reality a type of purchase agreement whereby the buyer gains

⁴ Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

possession and the seller accepts periodic payments for the purchase price while retaining title to the property for security purposes, until payment of the purchase price or a predetermined date. (See Annotation 220.0354 (May 24, 2005).) In this case, although the Contract for Deed is not for the purposes of financing, the three-year waiting period appears to be established solely for the purpose of requiring the disabled veteran to participate in a program to acquire tools necessary to succeed in the responsibilities of home ownership. Any restrictions on the use of the residence placed by the Contract for Deed appear to be for this purpose. Once the program is complete, legal title is transferred to the veteran with no other requirement to be met.

Therefore, although the Foundation holds legal title, it is our opinion that the terms of the Contract for Deed constitute clear and convincing evidence that the veteran is the beneficial owner of the property from the time of the execution of the Contract for Deed. Although the Contract for Deed was apparently not attached to the PCOR that was recorded with the Riverside County Assessor, we believe it should be submitted, as pertinent information for the Assessor's consideration.

SSY/mcb

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cc: Mr. David Gau MIC:63
Mr. Todd Gilman MIC:70
Margie Wing MIC:64