

HOMEOWNERS' EXEMPTION

505.0010 Conservator or Guardian. The exemption may be claimed by the conservator or guardian of a homeowner eligible for the exemption but incompetent to make the claim. C 2/10/69; LTA 3/23/82 (No. 82/50).

(See also Homeowners' Exemption – Claims)



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February 10, 1969

Law Office of Redacted

Attention: Redacted

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.

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 property 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 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: Mr. Joseph E. Tinney
Assessor, San Francisco