

Ruling 92-06

Vermont Department of Taxes

Date: July 7, 1992

Written By: Mary L. Bachman, Attorney for the Department

Approved By: Joyce H. Errecart, Commissioner of Taxes

You have requested confirmation that your client will not be ineligible for the Property Tax Rebate Program, found at Title 32, Chapter 153 of Vermont Statutes Annotated, by reason of a contemplated transfer of her residence into a trust. Pursuant to our conversation of July 1, 1992, your request is being treated as a request for a formal ruling. This ruling relies on the information conveyed in your letters of April 21, 1992, and May 8, 1992.

Your client, [Client], is contemplating transfer of her residence from her own name to her name as trustee under a revocable trust of which she will be the sole beneficiary during her lifetime (commonly called a grantor trust). Your client will have the right to revoke the trust at any time. She will continue to have full control over the property as the trustee.

Under Title 32, Chapter 153 a credit equal to the amount by which the property taxes upon the individual's homestead for the taxable year exceeds a specified percentage of the individual's household income for the taxable year is allowed against individual income tax. 32 V.S.A. § 5967. It is clear that the legislature intended that to qualify for a rebate a claimant must own the property. See e.g., 32 V.S.A. § 5962(c), which provides that "[w]hen a homestead is owned by two or more persons ... the property tax is the same proportion of the property tax levied on that homestead as the proportion of ownership of the homestead by the claimant...; and 32 V.S.A. § 5962(d) "when a claimant owns his homestead for part of a preceding year ..." (emphasis added). While it is likely that "owner" was intended in the common sense of one who holds title rather than in the sense of one who enjoys a beneficial interest in property, a beneficiary of a trust which holds legal title to property used by the beneficiary as his or her homestead will be considered the owner thereof under certain circumstances.

In a trust relationship, perfect ownership is divided into its constituent elements of legal title and beneficial interest which are vested in different persons at the same time: the trust beneficiary possesses an equitable ownership interest in the trust property, while the trustee possesses legal title to the property. Restatement 2d Trusts §3(3); also see, McDonogh v. Murdoch, 56 U.S. 367 (1853). Where one is the sole beneficiary of a trust during his or her lifetime and the trust holds legal title to the property used as the beneficiary's homestead and the beneficiary has the right to revoke the trust at any time

and revest title in himself or herself, the beneficiary's interest in the property is sufficiently close to outright ownership that it will be treated as such for purposes of the property tax rebate program. Thus, the sole beneficiary of a grantor trust who otherwise qualifies for a rebate is not disqualified by the fact that legal title is held in trust. This is in accord with federal treatment of grantor trusts. For purposes of federal taxation, a grantor who retains the power to revoke a trust and revest in himself or herself the trust property is treated as the owner thereof. I.R.C. § 676. Federal tax benefits are available to one who is treated as the owner of a trust, e.g., the one-time exclusion from the capital gains tax permitted sellers over age 55 on their principal residences, I.R.C. § 121, and the rollover provision regarding gain on the sale of principal residence, I.R.C. § 1034.

Where title to property is held by a trust which the beneficiary does not have absolute power to revoke, the beneficiary possesses only a portion of the bundle of rights which constitute ownership, without the right to appropriate the remaining legal rights to himself or herself. This interest is not considered ownership for purposes of the rebate program. Where the equitable interest in trust property is split among multiple beneficiaries, only a beneficiary possessing the power to revoke the trust and revest the trust property in himself or herself is considered to be the owner of the trust property for rebate purposes. The property tax which such a beneficiary may claim for rebate purposes is the same proportion of property tax levied on the homestead as the proportion of the equitable interest of the beneficiary in the trust. However, where such a claimant is 62 years of age or older, the property tax which may be claimed is that proportion of the property tax as the equitable interest of the claimant, members of the claimant's household and the claimant's descendants. See 32 V.S.A. § 5962(c).

Where title is held by another entity such as a partnership or S corporation none of the attributes of ownership is retained by an individual and therefore no individual qualifies for a rebate. This is true regardless of whether a partner or shareholder uses the property as his or her homestead.

This ruling is issued solely to your firm and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.