

Ruling 97-08

Vermont Department of Taxes

Date: September 8, 1997

Written By: Mary L. Bachman, General Counsel

Approved By: Edward W. Haase, Commissioner of Taxes

You have requested a ruling with respect to the Homestead Property Tax Income Sensitivity Adjustment enacted as part of the Equal Educational Opportunity Act of 1997 (Act 60). This ruling relies on information conveyed in your letter of September 8, 1997 and subsequent conversation with the undersigned.

Facts: You hold title to [number] acres of land in Vermont as trustee of the [Trust]. The beneficiary of the trust is [Beneficiary]. Under the terms of the Trust Declaration and Agreement, you hold title to the trust estate for the benefit of [Beneficiary] and "may pay to [him] so much of the net income and principal of the trust estate, or convey such property of the trust to [him] as may be necessary to provide for [his] welfare, comfort, support and maintenance and costs incidental to the maintenance of [his] household ... " as you determine advisable. Currently, a house is being constructed on the property. You and the beneficiary of the Trust will occupy this house as your full time residence. Question: Will you qualify for the Homestead Property Tax Income Sensitivity Adjustment under the provisions of Act 60?

Ruling: Section 51 of the Act provides that the "property tax of an eligible claimant who owned the homestead on the last day of the taxable year shall be adjusted"¹. 32 V.S.A. § 6066(a). "Own" is not defined in the Act. It is presumed that the Legislature intended the term to carry its plain, ordinary meaning. Burlington Electric Department, 154 Vt. 332, 576 A.2d 450 (1990). In its usual sense "own" means to have or possess. American Heritage Dictionary, Second Edition. "Ownership" is defined as the legal right to possession of a thing. Id.

In a trust relationship, perfect ownership is divided into its constituent elements of legal title and beneficial title 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) and In re Fulham's Estate, 96 Vt. 308 (1923). Thus, a trustee possesses only a portion of the bundle of rights which constitute ownership, with no right to appropriate the remaining legal rights in himself or herself. As trustee you hold legal title, but no right to the use, possession or enjoyment of the property. You have the sole discretion to make decisions regarding the management of the trust, payment of trust income and principal and conveyance of trust property, but your discretion may only be exercised for the benefit of the named beneficiary and not

on your own behalf. Holding bare legal title under a trust agreement will not qualify you as the owner of the trust property for purposes of the adjustment afforded by Act 60. The beneficiary of the trust has possession of the property, but does not have legal title. Except in the case of a sole beneficiary of a trust who has the immediate right to revoke the trust and re-vest title in himself or herself (a grantor trust), beneficial ownership under a trust is not sufficiently close to outright ownership for purposes of the homestead property tax adjustment². Since the [Trust] property trust agreement expressly creates an irrevocable trust, ownership is irrevocably divided between the parties to the trust and neither one is the "owner" in the usual sense of the word.

This ruling is issued solely to you 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.

¹ Under Act 60 the statewide property tax of an eligible claimant whose household income is less than \$75,000 is limited to the lesser of 2 percent of household income or the amount of statewide education property tax the municipality would have assessed on the homestead if its equalized value had been reduced by \$15,000. This limitation in turn reduces the claimant's local share property tax which is the municipal percentage established under the Act multiplied by the claimant's statewide property tax liability. There is a further limitation for claimants whose income is \$47,000 or less.

² 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 re-vest in himself or herself the trust property is treated as the owner thereof. I.R.C. § 676. Certain federal benefits are available to one who is treated as the owner of a trust. Also see *In re Fulham's Estate*, supra (For purposes of determining whether property was actually transferred prior to death so as to escape inheritance taxes, beneficial owner who retained right to revoke trust, not the person who held legal title, was the "owner").