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November 27, 2001

JAMES E. SPEED
Executive Director

Honorable Dick Frank
San Luis Obispo County Assessor
Room 100, County Govt. Center
San Luis Obispo, CA 93408-2070

Attn:

Re: *Homeowners' Exemption Questions*

Dear Mr. Frank:

This is in response to your October 15, 2001, facsimile to Ms. Kristine Cazadd wherein you asked several questions pertaining to the application of the homeowners' exemption. The questions and our answers thereto follow.

1. If a co-owner occupant is married, is it required that the occupant spouse's Social Security number be provided on the claim form?

For example, if Joe Jones and Mary Smith acquire title to property, and Joe Jones lives on the property and applies for the exemption, do we have to deny a claim until we get the Social Security number of Joe's spouse, Betty, who also lives on the property? If Joe and Betty Jones as husband and wife acquire a property, and Betty Jones sends in a claim with just her Social Security number and signature, would we be required to ask for Joe's Social Security number? If he doesn't live on the property, do we accept a statement, or would we need proof?

As indicated in the March 23, 1982, Letter to Assessors No. 82/50, 1982 Homeowners' Exemption - Questions and Answers, Nos. F.4 and F.14:

F.4. If a husband and wife occupy a home that is wholly owned by
Revised either spouse and listed on the roll in one name only, must both social security numbers be listed on the form and may the non-owner sign the claim?

Answer: Both social security numbers must be listed; only the owner may

sign the claim

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F.14. May the assessor accept a claim with the signatures and social security numbers of two or more related or unrelated coowner-occupants of a single dwelling?

Revised

Answer: Yes. The law states that an owner-occupant must file. Only one name and social security number must be reported to the state except that where there is a spouse, the spouse's number is also to be reported. However, the assessor may accept a claim with all coowner-occupant's names and social security numbers.

This is, of course, required to assure the accuracy of the state's reimbursements for the exemption and to prevent duplications of the exemptions within the state and improper overlapping with other benefits provided by law (Rev. and Tax. Code Sec. 218.5).

As to the questions in the example then:

- (a) The social security number of Joe's spouse, Betty, must be provided.
 - (b) The social security number of Joe must be provided, whether or not he lives on the property.
2. If a claim has the Social Security numbers of both spouses, but only the signature of the husband, and the husband dies, do we need to obtain the signature of the surviving wife? It appears from Rule 135(a)(3), that an assessor may require the signature, but it does not say it is required. This implies that it is okay in this circumstance to have a claim that is not signed by the owner/occupant. Is this correct? Would the same be true if instead of dying, the husband divorced or separated from the wife, and moved to another property?

Answer: As you note, Rule 135 (a)(3) states that the assessor may require the refiling of the claim by the other spouse if the spouse who signed the active claim has died. However, it begins with the statement that the "The signature of one spouse who is co-owning occupant is valid for the other co-owning occupant spouse for the year of filing and for subsequent years."

"(3) SIGNATURE OF CLAIMANT. The signature of one spouse who is a co-owning occupant is valid for the other co-owning occupant spouse for the year of filing and for subsequent years....The assessor may require the refilling of the claim by the other spouse if the spouse who signed the active claim has died...."

Thus, under the concept of one-time filing, Rule 135 (a)(3) contemplates that the signature of one spouse who is a co-owning occupant will be valid for both co-owning occupants

so long as they or one of them continues to reside on the property as his/her/their principal place of residence. Whether the signing spouse or the non-signing spouse is the first to die, the claim remains in effect during the life of the remaining owner-occupant spouse. Rule 135 (a)(3) permits the assessor to require the refile of the claim by the non-signing spouse if the spouse who signed the claim has died. Additionally, Question and Answer No. F.14 recognizes an alternative procedure for obtaining the signature of both spouses, at the time of filing:

F.14. May the assessor accept a claim with the signatures and social security numbers of two or more related or unrelated co-owner-occupants of a single dwelling?

Revised

Answer: Yes. The law states that an owner-occupant must file. Only one name and social security number must be reported to the state except that where there is a spouse, the spouse's number is also to be reported. However, the assessor may accept a claim with all coowner-occupant's names and social security numbers.

A more preferable procedure is to have each owner-occupant who cares to file a claim complete a separate claim form listing their social security number and the social security number of their spouse. The assessor must report at least one of the claimants to the Board but may report all of the claimants if he so desires. The assessor must use care to allow only one exemption for a single dwelling. This procedure assures that an acceptable claim is on file should any of the owner-occupants die or move to another location. A typical example of where the exemption is now being lost is where a mother and her son own a property as, say, joint tenants, and only the mother signs a claim. If the mother moves or dies, a valid claim is not on file so that the exemption can be continued for the son.

As to your other questions then, if instead of dying, the husband and wife divorced and the husband moved to another property, the claim would no longer be valid. Unless and until the wife filed a claim for the exemption and met all of the requirements for exemption, the property would no longer receive the exemption. If the husband and wife separated but remained legally married and the husband moved to another property, the claim would remain in effect during the wife's occupancy of the property as her principal place of residence, the same as if the husband had died.

3. When property is transferred 100%, a claim form should be sent to the new owner, and the old claim cancelled. However, if A and B are on title together, and A is claiming the exemption, and B transfers to C, does the A's claim need to be cancelled, and a new claim

submitted? It doesn't seem as though it should be, but I wanted to verify, based on wording in the material I received.

Answer. No.

A property may be owned by multiple owners, with the one owner residing on the property and claiming the exemption. For example, Question and Answer F.3 states:

F.3. If ownership of a duplex is indicated on the roll by the entry of two names, must both names be included on the claim for the homeowners' benefits?

Revised

Answer: Only one owner need sign the claim and it must be an owner who also occupies the duplex. The claim form must include the claimant's name and may include the name of one or more other owners. If owner-occupants occupy both sides, each must file a separate claim in order for each to receive the exemption.

Thus, if B transfers to C, C will be substituted for B on the roll, but A's claim for the exemption will remain in effect since he continues to reside on the property and, presumably, to meet all the requirements for exemption.

4. Can a claim for the homeowners' exemption be allowed on property held by an LLC? Since most LLC's choose to be looked at as partnerships instead of corporations, it would seem that allowing a claim would be the same as for a partnership. Is this correct?

Answer: No.

For property tax exemption law purposes, LLCs are, like corporations, separate entities. Thus, as indicated by current property tax annotation numbers 880.0145, 880.0146, and 880.0641 and the letters upon which they are based, which pertain to the welfare exemption, there is no authority for disregarding a limited liability company's separate entity status for purposes of ownership, operation, or use of property in determining eligibility for the welfare exemption; thus, properties owned and operated by limited liability companies are not eligible for the welfare exemption. Similarly, there is no authority for disregarding a limited liability company's separate entity status for purposes of ownership of property and determining eligibility for the homeowners' exemption. And in the recent case of PacLink Communications Internat., Inc. v. Superior Court (2001) 90 Cal. App. 4th 958, the court of appeal confirmed that a limited liability company has a legal existence separate from its members:

(2) "A limited liability company is a hybrid business entity formed under the Corporations Code and consisting of at least two 'members' [citation] who own membership interests [citation]. The company has a legal existence separate from its members. Its form provides members with limited liability to the same extent enjoyed by corporate shareholders [citation], but permits the members to actively

Honorable Dick Frank

November 27, 2001

Page 5

participate in the management and control of the company [citation]." (9 Witkin, Summary of Cal. Law (2001 supp.) Corporations, § 43A, p. 346.) (p. 963)

Thus, the court has confirmed this interpretation.

Accordingly, claims for properties held by LLCs should not be allowed, the same as claims for properties held by corporations (Question and Answer G.7) are not allowed:

G.7. May a person receive the homeowners' exemption on property that is recorded in the name of a wholly-owned corporation?

Answer: No. The property is owned by a separate legal entity that does not qualify for the exemption. See M6 for cooperatives.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ James K. McManigal, Jr.

James K. McManigal, Jr.
Tax Counsel IV

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