

This notice was revoked by Revenue Notice # 01-07.

Department of Revenue

Revenue Notice # 1995-07 Property Tax - In Regard to Property Tax Homesteads

(i) Determining the Owner of a Residence which has been Conveyed to a Trustee; and, (ii) Establishing Owners Status by Oath, using a CERTIFICATE OF TRUST.

A. Background

Minnesota Statutes, section 273.124, subdivision 1, provides the General Rule for determining whether or not residential property is entitled to the homestead classification for property tax purposes. The general rule, as stated in paragraph (a) of that statute, states in part that the property must be *used for the purposes of a homestead by its owner...* (emphasis added).

Often, under the terms of a trust agreement, the trustee will be the legal owner of the trust property, while another person, such as a beneficiary or grantor, will have the right to direct how that property is to be used. In order to determine who among these individuals could rightfully claim to be the owner of the property for property tax homestead purposes, it was often necessary for the local property tax assessor to review all the details of the specific trust agreement governing the property. Trust agreements are often long and complex documents, making this potentially a difficult and time-consuming process for both the taxpayer and the assessor.

In reviewing any trust agreement for this purpose, the assessors task was to determine whether or not the trust documents allowed the person occupying the property to exercise full control over its use, as against the potential contrary wishes of the other parties to the agreement. There are well-established principles of law which assist the assessor in making this determination. There are two such principles, or guidelines, which are the most useful in determining whether or not a particular person can be considered the owner of the property for purposes of claiming a property tax homestead, when that question comes up in regard to property which is part of a trust.

The first principle is: if a person (i.e., the grantor) creates a trust, and conveys legal title to their residential property to the trustee of that trust, while retaining the power to freely revoke the trust, and, if a revocation of the trust would result in legal title to the property reverting in that grantor; then, that grantor will have retained enough control over the property to be considered its owner for purposes of Minnesota Statutes, section 273.124, subdivision 1, and related state property tax laws or rules. Taxpayers should note that this is the test provided under Internal Revenue Code, section 676, for determining who is to be treated as the owner of a trust, or trust property.

The second principle is: any person who has an unqualified legal right under the terms of the trust agreement to occupy specific property as their homestead, will be treated as the owner of that property for the purposes of Minnesota Statutes, section 273.124, subdivision 1, and related state property tax laws or rules. Taxpayers will note the similarity between this principle and the concept behind Internal Revenue Code, section 674, paragraph (a). Although any person can potentially qualify under this guideline or principle, the trustee generally will not, because -- although they may hold legal title to the property in question -- they generally will not have an unqualified legal right to occupy it.

B. Statement of New Policy

The purpose of this Revenue Notice is to notify taxpayers that a properly prepared CERTIFICATE OF TRUST form (i.e., Minnesota Uniform Conveyancing Blanks, Forms No. 40.1-M and 40.2-M) will be accepted as sufficient evidence of ownership, of property in a trust, for the limited purpose of obtaining a Minnesota property tax homestead, under the conditions described in this Revenue Notice. It will no longer be necessary, under these conditions, to submit the entire trust agreement, and all other pertinent documents, to the assessor for inspection and review.

In order for a CERTIFICATE OF TRUST (CERTIFICATE) to be used for the purpose described in

this Revenue Notice, the submitted CERTIFICATE must satisfy all the requirements described in the four numbered paragraphs which follow:

1. The submitted CERTIFICATE OF TRUST form must completely identify the involved trust. That is, the form must contain the identifying information provided for on the uniform version of the form. Specifically, this includes: the name of the trust; the date of the trust instrument; the name of each grantor (or settlor); and, the name and address of each trustee empowered to act on the date the certificate is executed for this purpose. (It is not necessary to identify each original trustee on a CERTIFICATE which is used for the purposes described in this Revenue Notice.
2. The involved property must be clearly and unambiguously described. The involved property for this purpose need not be all of the property in the trust, it is only necessary to identify the specific property that the declarant or declarants will claim as their homestead for property tax purposes.
3. The CERTIFICATE must name each person who is entitled to be treated as the owner of the property for purposes of the Minnesota property tax homestead statutes, and clearly indicate the reason why they are entitled to that treatment. As indicated in the *Background* portion of this Revenue Notice, there are only two reasons why a person may be entitled to be treated as the owner of trust property for purposes of the property tax homestead statutes. Either: (a) the occupant is the grantor of a trust which remains unconditionally revocable, and a revocation of that trust would cause legal title to the property in question to revert in that grantor; or (b) they have the unqualified and legally enforceable right under the terms of the trust to occupy the property in question as their homestead. *(Taxpayers will note that only a grantor may qualify under part (a) of the preceding sentence, but that either a grantor, a beneficiary, or a trustee may qualify under part (b).)*

The appropriate place on the CERTIFICATE OF TRUST form for one of these statements is either as a part of the statement which begins The Trustees are authorized by the Instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property, EXCEPT as limited by the following; or, as a part of the statement which begins Any other Trust provisions the undersigned wishes to include.

4. The submitted form must be signed by the declarant(s) and bear evidence that each person signing the form has subscribed to and sworn before a Notary Public or other official that the statements made on the form are true and correct. TAXPAYERS ARE CAUTIONED THAT THEY MAY BE SUBJECTING THEMSELVES TO FINES, OR IMPRISONMENT, OR BOTH, IF THEY SUBMIT A SIGNED FORM CONTAINING STATEMENTS WHICH ARE FALSE. In this regard, persons seeking to establish ownership for property tax purposes through the use of a CERTIFICATE OF TRUST form, are reminded of the provisions of Minnesota Statutes, section 609.41. Under that statute, anyone who intentionally makes a false statement on a material matter in order to obtain beneficial tax treatment to which they are not really entitled, is guilty of a gross misdemeanor and may be imprisoned for up to one year and fined up to \$3,000. Taxpayers are also reminded that, in addition to the criminal penalty just referenced, 200% of any homestead benefits fraudulently obtained can be recovered under the separate civil penalty provisions of Minnesota Statutes, section 273.124, subdivision 13. If the trust is a complex one, taxpayers may find it necessary to consult with an attorney, or another competent professional with knowledge or experience in these areas, in order to determine whether or not they may properly use a CERTIFICATE OF TRUST under the terms of this **Revenue Notice**.

C. Divided Ownership

In a non-trust setting, if property is owned outright by two or more individuals, of which only one occupies the property as their homestead, only that fraction of the property which is owned by the occupying part-owner is entitled to classification as a homestead for property tax purposes. This same limitation applies in the case of property which is in a trust. Thus, for instance, if two unrelated individuals, who are not grantors of the trust, each have an equal unqualified legal right under the terms of the specific trust

agreement to occupy certain real estate as their homestead, but only one of the individuals does in fact so occupy the property, only one half of the market value of that property will be entitled to classification as a homestead for property tax purposes. If, at some later time, both individuals in this example do occupy the property as their joint homestead, the entire property will be classified as a homestead for property tax purposes, subject to the acreage limits which apply to all property tax homesteads.

D. Relative-Homesteads for Property in a Trust

Since the declarant will be treated as the owner of the involved trust property upon a proper filing of a complete CERTIFICATE OF TRUST form under the terms of this **Revenue Notice**, such property can qualify as a relative-homestead under Minnesota Statutes, section 273.124, subdivision 1, paragraphs (c) or (d), if all the other requirements in those laws are fulfilled.

E. Does Not Affect Determinations Regarding Use (of the Property)

Finally, taxpayers are reminded that the execution and submission of a CERTIFICATE OF TRUST as indicated in this **Revenue Notice** will not have any bearing on the determination by local assessing officers that the property is, or is not, currently being used in a manner that would allow its classification as a homestead for property tax purposes. This **Revenue Notice** is solely concerned with answering the question of who is the owner of property -- for purposes of meeting the property tax homestead requirements -- in those situations where legal title to the property has been conveyed to a trustee, and the right to direct how the property will be used, has been granted to a beneficiary, or been retained by the grantor.

Dated: October 2, 1995 Patricia A. Lien
Assistant Commissioner for Tax Policy

Dated : 10/2/95
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