

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF REVENUE  
DIVISION OF LOCAL SERVICES

Property Tax Bureau  
Informational Guideline Release (IGR) No. 91-209  
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**EXEMPTION ELIGIBILITY OF PROPERTY HELD IN TRUST**

Relating to  
Personal and Residential Exemptions  
Available under Chapter 59, S. 5 and 5C

To qualify for a personal or residential tax exemption on his or her domicile under Ch. 59 §5 or §5C, an individual must, among other things, have been an owner of that domicile on the qualification date for the fiscal year to which the tax relates. For exemptions under Section 5, the qualification date is July first of that year. For exemptions under Section 5C, that date is the preceding January first.

Frequently, however, persons place their domiciles in trust, most often for estate planning purposes. In those cases, the assessors must determine whether the person has a sufficient ownership interest in that property to qualify for a local property tax exemption.

A trust is a right to the beneficial enjoyment of property, either real or personal, the title to which is vested in another. A person in whom the title to trust property is vested is called a trustee. A holder of the right to enjoy such property is called a beneficiary. This separation of the legal title from the beneficial or "equitable" interest is the essential element embodied in the concept of a trust.

If a taxpayer places his domicile in trust, he must retain both (1) a sufficient beneficial interest and (2) a record legal interest in the property in order to be eligible for a personal exemption on that property.

Exemptions from taxation are strictly construed. The Supreme Judicial Court has held that "[a] taxpayer is not entitled to an exemption unless he shows that he comes within either the express words or the necessary implication of some statute conferring this privilege upon him." Animal Rescue League v. Assessors of Bourne, 310 Mass. 330 (1941), 332. Therefore, assessors should not allow exemptions on property held in trust unless the individuals to be benefited clearly satisfy the requirements for eligibility explained in these guidelines.

**GUIDELINES:**

**I. ELIGIBILITY REQUIREMENTS: LEGAL AND BENEFICIAL INTEREST**

The Supreme Judicial Court has held that, for property placed in trust, the ownership requirement for a personal exemption is satisfied only when the applicant possesses both a sufficient beneficial interest and a record legal interest in the subject property. In Kirby v. Board of Assessors of Medford, 350 Mass. 386 (1966), the Court upheld the denial of an elderly exemption applied for under Ch. 59 §5(41) to an applicant who possessed no more than a beneficial interest in his domicile, even though he met all other statutory requirements for the exemption.

**THEREFORE, AN APPLICANT FOR A PERSONAL OR RESIDENTIAL EXEMPTION ON A DOMICILE WHICH HAS BEEN PLACED IN TRUST MUST HAVE STATUS BOTH AS (1) A TRUSTEE AND AS (2) A BENEFICIARY OF THAT TRUST.**

**A. TRUSTEE**

1. Legal Interest

- a. The trustee is holder of the legal title of any property subject to the trust.

- b. In order to satisfy the ownership requirement for a personal exemption, an individual who places his domicile in trust (settlor, trustor, etc.) must name himself as a trustee.

**THEREFORE, REGARDLESS OF ANY OTHER CIRCUMSTANCES, AN INDIVIDUAL WILL NOT QUALIFY FOR A PERSONAL EXEMPTION UNLESS HE WAS A NAMED TRUSTEE ON JULY FIRST OF THAT FISCAL YEAR OR FOR A RESIDENTIAL EXEMPTION UNLESS HE WAS A NAMED TRUSTEE ON THE PRECEDING JANUARY FIRST.**

2. Revocable Trust; Legal Title

Assessors should be aware that certain trusts may be altered, amended or revoked. An individual who establishes a trust (settlor) may reserve the right to subsequently alter, amend or revoke that trust.

**HOWEVER, A SETTLOR WHO RESERVES THE RIGHT TO ALTER, AMEND OR REVOKE A TRUST DOES NOT THEREBY SATISFY THE OWNERSHIP REQUIREMENT FOR AN EXEMPTION. HE MUST NAME HIMSELF A TRUSTEE TO OBTAIN LEGAL TITLE.**

3. Multiple Trustees

- a. A interest to fulfill the ownership requirement for an exemption. In Board of Assessors V. Bellissimo, 357 Mass. 198 (1970), the Supreme Judicial Court upheld a personal exemption where a husband and wife were co-trustees. To fulfill the ownership requirement, however, a person is not limited to serving as a co-trustee with a spouse, alone. Kirby requires only that a person have "ownership of a record legal interest."

**THEREFORE, A PERSON WHO IS A CO-TRUSTEE HOLDS SUFFICIENT LEGAL INTEREST NO MATTER HOW MANY OTHER PERSONS, FAMILY MEMBERS OR NOT, ARE ALSO CO-TRUSTEES.**

- b. Where property upon which an elderly exemption is sought under Ch. 59 §5 Clause 41, 41B or 41C is owned jointly or as a tenant in common with a person not the spouse of the applicant, an exemption is only available if all joint tenants or tenants in common, individually, satisfy the annual income and whole estate requirements set out in the relevant provisions of the statute. In addition, the amount of the applicant's exemption cannot exceed his percentage interest in the property multiplied by \$500, the full exemption amount.

**THE SAME RULE APPLIES FOR TRUSTS.** Where property is held in trust with multiple trustees other than the applicant's spouse, each to-trustee must, also, satisfy the relevant annual income and whole estate requirements in order for the applicant to be eligible for an elderly exemption. Similarly, the amount of the applicant's exemption cannot exceed his percentage interest in the property multiplied by the full exemption amount. Thus, an applicant who serves as a co-trustee with one other trustee will be said to possess a 50% interest, etc.

- c. Where a property is held in trust with multiple trustees and the exemption sought is other than an elderly exemption under Ch. 59 §5 Clause 41, 41B or 41C, only the applicant, not his co-trustees, must satisfy the eligibility requisites for the particular exemption. In addition, such applicant upon qualifying is eligible for the full exemption amount, unreduced by the percentage of his co-trustees' interest in the subject property.

4. Tax Liability for Trust Assets

- a. Pursuant to Ch. 59 §11, taxes on real estate are to be assessed to "the person appearing of record, in the records of the county...where the estate lies, as owner on January first ...."
- b. Realty held in trust should be assessed to holders of legal title as owners. Assessors of Boston v. Neal, 311 Mass. 192 (1942).
- c. Assessors, therefore, should assess property held in trust to the party or parties who were trustees of record of that property on the January first preceding the fiscal year to which the tax relates.

- d. Where more than one person serves as trustee of real or personal property held in trust, all of the trustees are jointly and severally liable for the tax on that property. The collector may send the tax bill to any or all of such trustees.

## **B. BENEFICIARY**

1. The beneficiary of a trust is holder of the equitable or beneficial interest in the trust property.
2. To qualify for a personal exemption or a residential exemption on a domicile held in trust, an individual must, in addition to possessing a record legal title, also possess sufficient beneficial interest in that trust.
3. Generally, the possession of this requisite beneficial interest must be apparent from language of the trust instrument or of other recorded documents.
4. If the trust instrument contains a Schedule of Beneficiaries, either referenced within or attached to the instrument, a person seeking a tax exemption on property subject to the instrument must be shown on that schedule to possess a substantial beneficial interest in the trust.
5. The document which evidences possession by an applicant of sufficient beneficial interest must be on record, at the registry of deeds of the county where the subject land is located, on the qualification date for the fiscal year to which the tax relates.
6. There may, however, be instances in which a beneficiary is not expressly named. For example, in a case where a trust instrument stipulated that the net income of the trust was to be disposed as the settlor directed from time to time, and if the settlor made no such direction, that income was to be paid to the settlor, the Appellate Tax Board concluded that the settlor possessed enough of a beneficial interest to satisfy the Kirby requirement.

**THEREFORE, IN CASES WHERE A BENEFICIARY IS NOT NAMED, THE REQUISITE OF A SUFFICIENT BENEFICIAL INTEREST MAY BE FULFILLED WHERE A SETTLOR (1) RESERVES THE RIGHT TO DISBURSE THE INCOME OF A TRUST AND (2) SPECIFIES THAT IF NO DIRECTION FOR SUCH DISPERSION IS MADE, THE INCOME INURES TO THE SETTLOR.**

## **C. MULTIPLE TRUSTS**

To fulfill the ownership requirement for property held in trust, an individual must possess both legal title and sufficient beneficial interest in the particular trust in which the domicile is held.

THEREFORE, IF AN INDIVIDUAL ESTABLISHES MORE THAN ONE TRUST, RETAINING LEGAL TITLE TO HIS DOMICILE UNDER ONE TRUST BUT TRANSMITTING THE FULL BENEFICIAL INTEREST IN THAT DOMICILE TO SOME OTHER TRUST, THE INDIVIDUAL DOES NOT QUALIFY FOR A PERSONAL OR A RESIDENTIAL EXEMPTION.

## **D. RETENTION OF LIFE ESTATE**

In contrast to the creation of a trust, which separates the legal title from the beneficial interest, the creation of a life estate separates the present title and interest from the future title and interest. It divides ownership of the property in time. A life tenant is considered the owner of the property during his lifetime for the purposes of assessing property taxes under Ch. 59 §11, Thayer v. Shorey, 287 mass. 76 (1934), and may qualify for an exemption if he satisfies the applicable requirements.

**THEREFORE, IF A SETTLOR CONVEYS HIS DOMICILE INTO A TRUST, RETAINING A LIFE ESTATE IN THE PROPERTY, HE HAS A SUFFICIENT PROPERTY INTEREST TO SATISFY THE OWNERSHIP REQUIREMENT FOR A PERSONAL OR RESIDENTIAL EXEMPTION.**

## **II. DOCUMENTS NECESSARY TO ESTABLISH ELIGIBILITY**

When assessors (1) process an application for a personal exemption or (2) determine eligibility for a residential exemption on property which is held in trust, they should examine the following documents:

### **A. TRUST INSTRUMENT**

1. The document which sets out the terms of any particular trust is called the trust instrument or declaration of trust. Where assessors are requested to allow an exemption on property held in trust, they should require a complete copy of the trust instrument, together with all relevant amendments and schedules. **IN ORDER FOR AN EXEMPTION TO BE ALLOWED, ALL PERTINENT TRUST INSTRUMENTS, AMENDMENTS AND SCHEDULES MUST BE ON RECORD, AT THE REGISTRY OF DEEDS OF THE COUNTY WHERE THE SUBJECT LAND IS LOCATED, ON THE QUALIFICATION DATE FOR THE FISCAL YEAR TO WHICH THE TAX RELATES.** Unless the assessors find from the trust instrument, including any schedules or amendments that were on record on the qualification date, that the applicant possesses both status as a trustee and sufficient beneficial interest, they should not allow an exemption.
2. Assessors should read trust instruments to determine whether the trust terms may be changed by a settlor. Where assessors allow an exemption to an individual who has reserved the right to alter, amend or revoke, they should obtain a copy of the trust instrument, effective on July first of each subsequent fiscal year for personal exemptions and on the preceding January first for residential exemptions, to determine whether this right has been exercised in a way which has terminated the individual's eligibility.
3. Since trust instruments are often complex legal documents, assessors should, when necessary, seek the assistance of their municipal lawyer when construing them and when applying these guidelines.

B. DEEDS; ETC.

When an individual seeks an exemption on trust property, the assessors should require a copy of the deed, or some other document, which establishes that the property has been conveyed to the trust.

### III. EXAMPLES

The following examples illustrate the requirements explained in these guidelines.

**EXAMPLE NO. 1.** An elderly husband and wife place their home in trust, retaining to themselves full beneficial interest in that home, but making their children trustees under the trust instrument.

**RESULT:** This couple does not satisfy the ownership requirement for an exemption. To satisfy this requirement, the couple would have to possess both a sufficient beneficial interest and a record legal interest in the subject property. Here, the husband and wife clearly possess a sufficient beneficial interest, but they do not possess any legal interest. To possess a legal interest in the assets of a trust, a person must be a named trustee of that trust. See Section I-A-1-b.

**EXAMPLE NO. 2.** A widow places her home in trust, dividing the beneficial interest equally between herself and an adult son. She names herself a co-trustee with her two sisters and with two other friends. Subsequently, she applies for an elderly exemption under Ch. 59 §5, Clause 41C.

**RESULT:** This woman satisfies the ownership requirement or an exemption. She possesses sufficient beneficial interest, having divided that interest equally between herself and an adult son. Since she is a co-trustee, she possesses the requisite legal interest. However, even though she satisfies the ownership requirement, she qualifies for an elderly exemption under Clause 41C only if each of the individuals she named as a co-trustee satisfies the annual income and whole estate requirements set out in the statute. See Section I-A-3-b. In any case, the maximum amount to which she could be eligible is \$100, her 20% legal interest multiplied by \$500, the full exemption amount. Again, see Section I-A-3-b.

**EXAMPLE NO. 3.** A widower places his home in trust, naming himself sole trustee. In addition, he creates a second trust, and he conveys the full beneficial interest in his home to that second trust.

**RESULT:** This widower does not satisfy the ownership requirement. Having named himself sole trustee of the first trust, he clearly possesses the requisite legal title to his home. However, having conveyed the full beneficial interest in that home to a second trust, he does not, himself, possess the requisite beneficial interest for purposes of a local property tax exemption. See Section I-C.

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The Division of Local Services is responsible for oversight of and assistance to cities and towns in achieving equitable property taxation and efficient fiscal management.

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