



February 28, 2006

Bruce N. Hague, Esq.
Hague, Sahady & Co., P.C.
126 President Av.
Fall River, MA 02720

Re: Exemption Eligibility
Our File No. 2005-243

Dear Mr. Hague:

You requested clarification regarding the eligibility of an individual who has an estate for a "term" of years for a property tax exemption on his domicile.

We understand that [REDACTED] set up the [REDACTED] Family Use and Occupancy Trust and conveyed their residence located at 801 Wilbur Avenue in Somerset to the trustee of that trust. Mr. and Mrs. [REDACTED] reserved the right to live in and use their residence until death or for a lesser term of years. You refer to this as a "Term Estate". Mr. and Mrs. [REDACTED] "Term Estate" will terminate upon their deaths or on December 31, 2009 or upon the termination of their use of the realty as their primary personal residence, whichever occurs first. When the terminating event occurs, the trustee of the trust, who holds the remainder interest, will be entitled to immediate possession of the residence.

You maintain that there is no difference between a term estate and a life estate for purposes of meeting the requirements of an elderly exemption. We agree that the language of the deed appears to create a legal life estate.

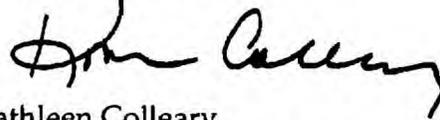
Estates in land are interests which presently are or may become possessory and which are measured by a period of time. Possessory estates give the holder the right to immediate possession. Future interests are estates that will or may become possessory in the future.

The creation of a life estate separates the present title and interest from the future title and interest. See IGR No. 91-209, §I(D). We have advised that the holder of a life estate satisfies the ownership requisite for a personal exemption because such a person possesses a present interest in the property. *Id.* The life tenant has the present interest making it the owner for property tax purposes. *Spring v. Hollander*, 261 Mass. 373 (1927); *Breare v. Board of Assessors of Peabody*, 350 Mass. 391 (1966). Any unrestricted right to the immediate use, possession, or enjoyment of property is a present interest in property. This includes life estates and terms certain. See e.g., Treas. Reg. § 25.2503-3(b).

Like the outright holder of a life estate, Mr. and Mrs. [REDACTED] also possess a present interest in their residence. Even though the estate can terminate on December 31, 2009 or upon termination by both Mr. and Mrs. [REDACTED] of their use of the realty as their primary personal residence, the deed still reserves the equivalent of a freehold interest which could last the length of their lives. They possess the present right to use and occupy the property, and the trustee of the trust has a remainder interest in the property. In addition, the estate is not subject to the power of the trustee. Mr. and Mrs. [REDACTED] have all the present possessory interest in the property. These are the essential characteristics of a legal life estate which provides the ownership interest required to qualify for exemption.

If you have any additional questions on this matter, please do not hesitate to contact us.

Very truly yours,



Kathleen Colleary
Chief, Bureau of Municipal Finance Law

KC/mcm