

Mar 11, 1992

Honorable W.L. Pritchett, Jr., C.F.A.
Putnam County Property Appraiser
Post Office Box 1920
Palatka, Florida 32178-1920

RE: Valuation; Life Estate Section 196.041 F.S.; Rule 12D-
7.009, F.A.C.

Dear Mr. Pritchett:

Your letter of January 6, 1991, to Mr. Norman McMillan has been forwarded to this office for review and reply.

FACTS

Mr. Smith is the holder of a life estate to property in Putnam County, Florida as recorded in the public records of Putnam County. A Mr. Book requests you to lower the assessment of this property.

ISSUE

You have asked this office to review the life estate document and offer an opinion regarding whether your office is correct in assessing the Smith land as an unencumbered fee or if Mr. Book is correct that your office may render a lower assessment.

DISCUSSION

A life estate is a possessory interest in land. See Burby, Real Property, section 84, 3d Ed. (West 1965). It is a freehold estate. Id. section 2. Its maximum duration is fixed by reference to the life or lives of one or more persons. There are no provisions of Florida Statutes and case law relating to life estate property that allow any preferential treatment for this particular class of property. However, section 196.041(2),

Florida Statutes provides:

A person who otherwise qualifies by the required residence for the homestead tax exemption provided in s. 196.031 shall be entitled to such exemption where his possessory right in such real property is based upon an instrument granting him a beneficial interest for his life, such interest being hereby declared to be "equitable title to real estate," as that term is employed in s. 6, Art. VII of the State Constitution; and such person shall be entitled to the homestead tax exemption irrespective of whether such interest was created prior or subsequent to the effective date of this act.

Rule 12D-7.009, F.A.C. recognizes the possessory nature of a life estate. A review of the documents submitted with your letter indicates that in this particular instance, there exists a possessory right as mentioned above. The property may be subject to the homestead tax exemption as provided for in section 196.031 Florida Statutes; however, nothing in the statute could be construed to lower the assessment of this class of property.

The question of whether land in Putnam County is entitled to a homestead exemption is a mixed question of law and fact for you as property appraiser to answer in the first instance. The opinion set forth in this letter and the documents you attached to your letter, in my opinion, make it easy for you as property appraiser to make an informed determination that this land is entitled to the homestead exemption.

The second issue presented is the value of a life estate to the owner of the life estate, as opposed to the owner of the fee.

The issue of encumbrances or restrictions and their effects on property assessments was visited by the Florida Supreme Court in Department of Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1977). In that case, the Supreme Court held that:

... An encumbrance or restriction... will not per se reduce the assessment value of land simply because the owner has

been divested of some proprietary interest. This does not mean, however, that an assessment may be made without regard to the effect of an encumbrance on the value of the land. The encumbrance becomes one factor among many the assessor must consider in determining the just value...

This issue was revisited by the Supreme Court in Valencia Center, Inc. v. Bystrom, 543 So.2d 214 (Fla. 1989) and again in Schultz v. TM Florida-Ohio Reality LTD Partnership, 16 FLW S225 (Fla. 1991).

The Supreme Court in Valencia found:

... In arriving at fair market value, the assessor must consider, but not necessarily use, each of the factors set out in section 193.011...

The Supreme Court in TM-Ohio relied on Morganwoods and Valencia Center and held:

... the assessor must consider but not necessarily use each of the factors set out in section 193.011. The ultimate method of valuation employed and the weight, if any, to be given each factor considered is within the discretion of the property appraiser. However, the resulting valuation must represent the value of all interests in the property-- in other words, the fair market value of the unencumbered fee...

CONCLUSION

The fee should be assessed as the unencumbered fee, the owner of a life estate should be assessed with the value of the life estate, and the owner of the fee should be assessed with the residual. Thus, in my opinion, you are correct in assessing the Smith land as an unencumbered fee. The owner of the fee would be assessed with the value of the unencumbered fee less the value of the life estate. The owner of the life estate would be assessed with the value of the life estate. There is no statutory or case law authority to lower the assessment solely on the basis of the existence of the life estate. In arriving at

the just valuation close attention should be given to the eight factors enumerated in chapter 193.011, Florida Statutes.

I hope that this satisfactorily answers your question. If I may be of further service, please do not hesitate to contact me at (904) 488-3338.

Sincerely,

Stephen J. Keller
Assistant General Counsel
Office of General Counsel

SJK/JCK/sk