STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch

Technical Advice Memorandum – 2003-0028
February 18, 2003
Skilled Nursing and Intermediate Care Facility
Occupants Not Eligible for HRA

Requested By:	HRA Staff
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QUESTION PRESENTED

Are the residents of long-term care facilities entitled to assistance under the Senior Citizens Homeowner and Renter Property Assistance Law?

CONCLUSION

For the reasons expressed below, patients in Skilled Nursing Facilities and Intermediate Care Facilities are not occupying "rented residences" for purposes of the HRA program, and the residents are not entitled to property tax assistance under that program.

ANALYSIS AND DISCUSSION

Revenue and Taxation Code section 20542[1] established a program under which the Franchise Tax Board is required to provide assistance to a "claimant" based on (1) a sum equal to a percentage of the amount of property tax accrued and paid by a claimant on his residential dwelling, or (2) a sum equal to the percentage of the applicable statutory property tax equivalent with respect to a claimant renting his residence. This memo is concerned only with those who are not homeowners.

The term "claimant" is defined in section 20505(a) as an individual having various physical characteristics and being either the owner and occupier of a residential dwelling or the renter of a "rented residence." The code then defines "rented residence" as "premises rented and occupied by the claimant as his or her principal place of residence during the calendar year . . .." Further, rent is defined at section 20510 as " . . .the amount paid at arms length solely for the right of occupancy of a residence and utility payments required to be paid by the rental agreement."

Under California law, the rental agreement is generally referred to as a lease, express or implied. This agreement creates two sets of rights and obligations, one for the landlord and one for the tenant, creating the landlord-tenant relationship. However, the distinguishing characteristic of a leased property is that the lease gives the lessee (renter) the exclusive possession of the premises against the entire world, including the owner.

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[1] All reference to statutes will be to the Revenue and Taxation Code unless otherwise indicated.

(See *Rossetto v. Barross* (2001) 90 Cal.App.4th Supp. 1 at page 4 citing *Howard v. County of Amador* (1990) 220 Cal.App.3d. 962, 972.) That is the key element of a landlord-tenant relationship that appears to be absent in the situations presented by various long-term health care facilities.

Further, it also appears that any amount of payment made to these long-term health care facilities is not made solely for the right of occupancy as required under section 20510, referenced above as defining rent.

Long-term health care facilities are licensed under the provisions of the Health and Safety Code. The Health and Safety Code defines long-term health care facilities for licensing purposes at section1326. It includes in that definition any skilled nursing facility, intermediate care facility, intermediate care facility/developmentally disabled, intermediate care facility/developmentally disabled habilitative, intermediate care facility/developmentally disabled - nursing, or congregative living.

The licensing requirements for these facilities are found in Title 22 of the California Code of Regulations. The licensing requirements for each of these types of facilities outline the services that must be available, various physical standards of care, and medical protocol.

Reviewing these requirements reveals that both skilled nursing facilities and all types of intermediate care are allowed only to admit or accept a patient for care on the order of a physician. (Title 22 section 72315(a) (skilled nursing facilities) and section 73315(a) (intermediate care facilities).)

With regard to skilled nursing facilities, the regulations require that the patient be provided visual privacy during treatments and personal care. (Title 22 section 72315(l).)

At either type of facility, physician and nursing services must be provided to each of the residents. The attention to detail in the outline of the medical and physical maintenance that must be offered and maintained at these facilities to comply with licensing requirements makes it clear that these are institutions for the care of those who are suffering from a medical condition. (Title 22 sections 72301 through 72343 and 73301 through 73327.)

What is also clear from the regulations is that there is no discussion or requirement for privacy or any vested interest in any particular area or room. To perform the services required by law, the operators of the facility must have constant access to the residents and be able to move them from one situation to another for their own care and protection.

This is made clear by the above section that is specifically required to provide a window of "visual privacy" during treatments and personal care.

Under these conditions, the relationship between the operator of the facility and the patient cannot be characterized as that of landlord-tenant. The patient/occupant has no right of exclusive possession and/or private enjoyment of the facility, and clearly any payment made to the facility is not made solely for the right of occupancy. Instead, the relationship of the patient/occupant with the operator of the facility is based on a contractual agreement for services under the terms of which a patient receives defined medical attention. The nature of this relationship is made clear by the fact that a physician's order is required to even gain admittance to these facilities.
The above regulations make clear that no right to any particular real property is provided when an individual becomes a patient at one of these facilities. Further evidence that such facilities are not considered "rented residences" is the fact that the laws regulating the relationships between landlords and tenants in California, California Civil code § 1940 –1954.1, specifically addresses the minute details of the rental relationship and facilities which come within its provisions, but does not address the type of care facilities discussed above.

This regulatory scheme does not depend upon or relate to the conveyance of an interest in real property but to the regulation of services; the types of services and manner in which they are to be provided. The fact that the patients must live in the facility is only incidental to the care the facility is providing. Further, the courts have held that payments made to these facilities cannot be characterized as rent, nor that the operators of such facilities are lessors creating a landlord tenant relationship. (See In re Hillside Associates Ltd., 121 Bankr. 23, 25 (9th Cir. BAP 1990); Lacey Nursing Center, Inc. v. State of Washington, Department of Revenue, 103 Wn. App 169, 11 P3d 839 (2000); In re Woodstock Associates I, Inc., 120 Bankr. 436 (N.D. ILL 1990); and Connecticut Light and Power Company v. Overlook Park Health Care, Inc., 25 Conn. App. 177, 593 A.2d. 505 (1991).)

Further support for the conclusion that occupants of long-term care facilities do not pay rent is found in the admission contracts. The admission contracts and documents available for review in preparation of this memorandum address the type of services provided, informed consent regarding emergency health situations, incapacity of the patient, the right to refuse treatment, advance directives and medical records. There were no provisions granting the right to a specific area, no discussion of rights to possession and when such right would be forfeited or any of the usual clauses providing for the rights and responsibilities during the term of a rental agreement. On the contrary, the clear intent of the agreement was to provide medical services.

Patients in Skilled Nursing Facilities and Intermediate Care Facilities are not occupying "rented residences"[2] for purposes of the HRA program, and the residents are not entitled to property tax assistance under that program.[3]

Tax Counsel III

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[2] In addition to the fact that occupants of long-term care facilities cannot be considered "renters" for purposes of HRA, there are additional grounds on which the HRA claims of such individuals can potentially be denied. First, it appears that the "long-term care facility claimants" are at income levels that would make them eligible for Medi-Cal benefits. To the extent that Medi-Cal is paying for the services rendered by the long-term care facilities, the payments are ***third party medical*** payments made to satisfy the claimant's extraordinary medical expenses. Medi-Cal is only authorized to provide third party ***medical*** payments on behalf of needy individuals – it has no authority to satisfy indigents' rental expenses.

Second, it appears that most of the claims that have been brought to Legal's attention have been filled out and filed by staff of the facility. Although we have not had the opportunity to examine this issue, we question whether the facility employees can legally act on behalf of the occupants to make the claims. Absent express authorization by the claimant (or someone designated to act on behalf of the claimant), the claims would likely be invalid. In this context, questions of potentially fraudulent claims and whether or not the intended recipients actually receive the assistance must be addressed.

[3] In addition to the facilities addressed in this memorandum, there are other types of care facilities operating under different regulatory schemes and requirements. The conclusions reached in this memorandum apply ***only*** to facilities that are defined as long-term health care facilities in Health and Safety Code 1326. Other care facilities were not included in this memorandum due to the fact that there does not appear to be any basis for a "bright line" determination as to their operation as health care facilities and that the occupants of such other facilities are apparently not filing claims for assistance.