

Who gets property tax deduction on house in estate limbo?

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Q: My grandma's house is in probate, as she passed last year. Her grandchildren have been living in the house and paying the property taxes. Who gets the tax deduction for those tax payments?

A: We're sorry for your loss. One question comes to mind: Who actually owns the property now that your grandmother has died? There are many possible answers.

It's possible your grandmother left the home to the grandchildren who are living in the property through a will or a trust. Or she

might have named someone else the owner of the property. Was there a co-owner of the property, perhaps a child (your parent or aunt or uncle) or someone else who was on title? If your grandmother didn't have a will and the property wasn't in a trust, it's possible that all of her nearest relatives might own a piece of the property, which would then be divided according to state law.

Usually, the homeowner that pays the real estate taxes gets the tax deduction. And, typically, the ownership of the home and payment of real estate taxes go hand-in-hand. In this case, it sounds as though Grandma may have moved out of her home for

what we assume was medical reasons, and the grandchildren moved in to either take care of her or the property itself. That may have included paying property taxes.

If the grandchildren are in the process of obtaining title to the home through the probate court (or if there were no will and no other closer relatives such as adult children), state law would likely give the home to the grandchildren. Through probate, the grandkids would have title coming to them, and in anticipation of that ownership they would pay the real estate taxes. If that's the story, the grandchildren may be entitled to take the deduction.

However, there are some other considerations when thinking about taking a real estate tax deduction, particularly given that your grandma recently passed away, and it doesn't sound as though the estate is closed.

If the grandchildren choose to take the standard deduction on their federal income tax return, they would be ineligible for a real estate deduction. Homeowners frequently believe they will get a great benefit from mortgage interest and real estate tax deductions; however, when those payments are less than the standard deduction, the standard deduction is more valuable than itemizing deductions.

Having said that, usually the estate of the deceased pays all the expenses relating to the property until the property is transferred to the intended heir. The estate would still have legal title to the home and would pay the real estate taxes. And in this instance, the estate's tax return would include the payment of real estate taxes.

Given your situation, it's possible that the person who has the right to the title and pays the real estate taxes is entitled to take the deduction on their federal income taxes.

For more information or specifics in your situation you'll need to talk to your accountant, enrolled agent or tax preparer.

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