

Cite as Det. No. 92-264, 12 WTD 443 (1992).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 92-264
)	
. . .)	Registration No. . . .
)	REAL ESTATE EXCISE TAX
)	
)	

[1] RCW 82.45.010 -- REAL ESTATE EXCISE TAX -- DEFINITION OF SALE -- ASSUMPTION OF LIABILITY. Where the purchaser of real property agrees with the seller to assume the seller's mortgage, deed of trust, or real estate contract and no other consideration is paid to the seller, the transaction is not treated as a sale for real estate excise tax purposes. **[NOTE: EFFECTIVE JULY 1, 1993, THE ASSUMPTION EXCEPTION TO THE DEFINITION OF SALE WAS DELETED. SECTION 502, CHAPTER 25, LAWS OF WASHINGTON 1993, 1ST SP. SESS.]**

[2] RCW 82.45.010 -- REAL ESTATE EXCISE TAX -- REFINANCING. If the purchaser of real property refinances the assumed debt and fully pays the seller's liability, there will not be a "sale" for real estate excise tax purposes if the purchaser was under no obligation to the seller to obtain the refinancing. Citing: Groesbeck v. Department of Rev., 63 Wn. App. 371 (1991). **OVERRULING:** Det. No. 87-209, 3 WTD 253 (1987); Det. No. 87-237, 3 WTD 369 (1987); and Det. No. 87-290, 4 WTD 71 (1987).

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .

DATE OF TELEPHONE CONFERENCE: . . .

NATURE OF ACTION:

Taxpayer protests the assessment of Real Estate Excise Tax on the transfer of title of real property where the taxpayer, as seller, received no consideration for the transfer other than the assumption of the underlying mortgage.

FACTS:

Coffman, A.L.J. (as successor to Heller, A.L.J.) -- [Taxpayer] is a partnership which owned and operated a resort in The taxpayer became delinquent on its payments on the underlying property mortgage. The mortgagee had filed suit to foreclose on the property. The taxpayer entered into an agreement with the purchaser in May 1989 whereby the purchasers would assume the underlying liability on the property of \$ The purchase price [allocated Real Property; Sewer Treatment Plant Plans; Hotel Architectural drawings; and Furniture, fixtures, structures, improvements, docks, sewer system and water distribution lines.]

The closing statement prepared by the escrow attorney indicates that the purchase price was \$. . . plus miscellaneous costs. The \$. . . difference was the result of a covenant not to compete. The contract provided that the title insurance policy would be in the amount of \$ The total liability owed the bank on the mortgage [exceeded purchase price]. Additional charges against the taxpayers in the amount of \$. . . were assessed. The taxpayers paid cash in the amount of \$. . . to arrange the closing. The purchaser arranged for the underlying mortgage to be paid in full by refinancing the property. The underlying mortgage was paid at or around closing.

ISSUES:

1. Did the purchaser acquire title to the property by assuming a mortgage or deed of trust without the payment of additional consideration to the taxpayers?
2. If the purchaser assumes an underlying obligation of the seller and at closing arranges for that liability to be extinguished by obtaining alternative financing, does the transaction qualify for the exemption from the real estate excise tax under RCW 82.45.010?

DISCUSSION:

RCW 82.45.060 imposes the real estate excise tax on "each sale of real property". The terms "sale" and "real property" are defined in Chapter 82.45 RCW. There is no question that the property

involved in this case is real property as so defined. If the transaction in this case is outside the definition of a sale then the real estate excise tax is not due.

RCW 82.45.010 states, in part:

As used in this chapter, the term "sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property . . . or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, . . . or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person by his direction, which title is retained by the vendor as security for the payment of the purchase price.

The term shall not include . . . the assumption by a grantee of the balance owing on an obligation which is secured by a mortgage or deed in lieu of forfeiture of the vendee's interest in a contract of sale where no consideration passes otherwise

(Emphasis added.)

The exemption from the definition of a sale for assumption of loans requires:

1. The grantee assume the mortgage¹ and
2. The grantor receive no other consideration.

The taxpayer received no cash or other property as the result of the transaction. The purchaser refinanced the property upon the closing of the transaction. However, this was not part of the contract between the taxpayer and the purchaser. The agreement to purchase only required the purchaser to assume and hold the taxpayer harmless for the assumed debt.

[1,2] All that is required to have a valid assumption is "a binding agreement between the mortgagor and the person assuming the obligation, and the rights of the mortgagee are irrelevant." Groesbeck v. Department of Rev., 63 Wn. App. 371, 372 (1991). The fact that the purchaser refinanced the property and fully

¹The term mortgage includes deeds of trust and real estate contracts per WAC 458-61-210(1)(b).

satisfied the taxpayer's liability is unimportant because between the taxpayer and the purchaser there was no obligation to do so. To the extent that Det. No. 87-209, 3 WTD 253 (1987); Det. No. 87-237, 3 WTD 369 (1987); and Det. No. 87-290, 4 WTD 71 (1987) state that where the assuming party refinances the property there can be no assumption under RCW 82.45.010 they are overruled.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The notice of real estate excise tax issued to the taxpayer is hereby canceled.

DATED this 28th day of September 1992.