

Cite as 2 WTD 75 (1986)

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

In the Matter of the Petition           )     D E T E R M I N A T I  
O N   )  
For Correction of Assessment of         )  
  )                     No. 86-307  
  )  
. . .   )     Real Estate Excise Tax  
  )                     Assessments  
  )

**REAL ESTATE EXCISE TAX:** TRANSFERS -- PARTNERSHIP OWNED BY TRANSFEROR -- TRANSFEROR NOT A NATURAL PERSON. The exemption from real estate excise tax for transfers to partnerships wholly owned by the transferor and/or the transferor's spouse or children (RCW 82.45.010) does not apply if the transferor is not a natural person.

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 HEARING: March 27, 1986

NATURE OF ACTION:

The taxpayer petitions for a correction of the assessment of real estate excise tax on the transfer of real property in six Washington counties.

FACTS AND ISSUES:

Potegal, A.L.J. -- In November 1985 the taxpayer corporation transferred real property in six counties to a wholly owned limited partnership. The taxpayer submitted real estate excise tax affidavits in each of the six counties claiming that the transfers were exempt of tax because they were

transferred to a partnership wholly owned by the transferor. The taxpayer believes that the third paragraph of RCW 82.45.010 excludes such transactions from the definition of sale and thereby renders them not subject to the real estate excise tax.

The Department of Revenue examined the affidavits. In a letter dated January 24, 1986 the Department advised the taxpayer that the transactions were subject to real estate excise tax and demanded payment. The Department took the position that the statutory provision relied upon by the taxpayer only applied to family-owned partnerships and corporations.

#### DISCUSSION:

The real estate excise tax is imposed upon each "sale" of real property in this state. RCW 82.45.060. The term "sale" is defined in RCW 82.45.010 which provides in its third paragraph:

The term sale shall further not include a transfer to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or children: Provided, that if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse, or children voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (1) the transferor and/or the transferor's spouse or children, (2) a trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of the transfer to the trust, or (3) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within five years of the original transfer to which this exemption applies, excise taxes shall become due and payable on the original transfer as otherwise provided by law.

RCW 82.45.150 provides that, with certain exceptions not applicable here, all of chapter 82.32 RCW shall apply to the real estate excise tax. RCW 82.32.300 provides that the rules adopted by the Department shall have the same force and effect as the law, unless declared invalid by a court of records not appealed from.

Two rules adopted by the Department, and therefore having the force of law, bear on the language quoted from RCW 82.45.010. WAC 458-61-560 is entitled, "Partnership -- Family." It repeats in substance the language from the third paragraph of RCW 82.45.010. WAC 458-61-570 is entitled, "Partnership -- Nonfamily." It provides that transfers of real property into partnerships are taxable.

The effect of the rules is to exempt from real estate excise tax transfers to partnerships owned by members of the transferor's nuclear family and to tax transfers to all other partnerships. Because the taxpayer in this instance is not a natural person it is unable to qualify for the exemption for transfers to family partnerships described in WAC 458-61-560. Under WAC 458-61-570 this transfer is subject to tax. As both of these rules have the force of law, we must deny the taxpayer's petition.

Nevertheless, we wish to comment briefly on the taxpayer's objections. The taxpayer's basic contention is that the Department has overreached its authority in interpreting "transferor", within the context of the third paragraph of RCW 82.45.010, to mean a natural person. That portion of the statute excludes from the definition of sale, and thereby exempts from real estate excise tax, transfers to a:

. . . partnership which is wholly owned by the transferor and/or the transferor's spouse or children . . .

According to the taxpayer the word "transferor" clearly means both natural persons and other entities. We do not think such a meaning is at all clear. The use of the words, "and/or the transferor's spouse or children" indicates to us that "transferor" means a natural person capable of having a spouse or children. In view of these conflicting interpretations the word "transferor" in this context must be considered ambiguous.

The taxpayer cited Buffelen Lumber & Manufacturing Co. v. State, 32 Wn.2d 40, 200 P.2d 509 (1948) in support of the proposition that ambiguous taxing statutes are construed most strongly against the taxing power and in favor of the citizen. That proposition, while true, does not apply to this case. The statutory language in question here provides an exemption from tax. The rule for interpreting ambiguous exemption language is different than the rule for taxing language. "An

exemption in a statute imposing a tax must be strictly construed in favor of the application of the tax and against the person claiming the exemption." Yakima Fruit Growers Association v. Henneford, 187 Wn. 252, 60 P.2d 62 (1936). This rule supports the Department's interpretation of "transferor."

The final point we wish to make concerns the proviso in the third paragraph of RCW 82.45.010. Under that proviso a transfer to a partnership wholly owned by the transferor loses its exemption if, within five years, interest in the partnership capital is transferred to an entity other than: the transferor, spouse or children; a trust having the transferor, spouse or children as beneficiaries, or; a corporation or partnership owned by the transferor, spouse or children. We understand that limited partnership shares have been or will be sold publicly. Thus, even if the taxpayer had prevailed in its argument that it was a transferor it would lose the exemption because of the transfer of limited partnership shares.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 5th day of December 1986.