

Cite as 2 WTD 79 (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 Real Estate)
Excise Tax Assessment of) No. 86-308
)
. . .) Real Estate Excise Tax
)
)
)

[1] **REAL ESTATE EXCISE TAX and RCW 82.45.010:** CONSIDERATION
-- ASSUMPTION -- SATISFACTION OF DEBT. A transfer of
property is not exempt from retail excise tax as an
"assumption only" where transfer was also in satisfaction
of debt owed by transferor to transferee. Satisfaction
of the debt is consideration.

[2] **REAL ESTATE EXCISE TAX and RCW 82.45.030:** SELLING PRICE
-- SATISFACTION OF DEBT -- ASSUMPTION. The "selling
price" includes the amount of the encumbrances assumed
plus any obligation of the transferor to the transferee
that is satisfied by the transfer.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: November 20, 1986

NATURE OF ACTION:

The taxpayer petitions for an abatement of a real estate tax
assessment on grounds the transfer of property was not a "sale."
In the alternative, the taxpayer seeks a reduction of the
assessment on grounds the "selling price" was less than the
appraised value of the property on which the tax was computed.

FACTS AND ISSUES:

Frankel, A.L.J. -- The taxpayer, . . . , Inc., is wholly owned by .
. . . , its sole shareholder. Prior to the transfer of the property
at issue, the shareholder had loaned the taxpayer \$63,855.85. The
taxpayer stated that it could not repay the funds. It transferred
the property at issue to the shareholder by quit claim deed in
satisfaction of the debt on June 1, 1984. At the time of the
transfer, the property was subject to an underlying encumbrance of

\$15,103.56. The encumbrance was assumed by the shareholder transferee.

The taxpayer filed a real estate excise tax affidavit (. . .) claiming the transfer was exempt of excise tax. The affidavit states the claimed reason for the exemption was "satisfaction of debt only--no other consideration."

On April 29, 1986, the Department sent the taxpayer an inquiry regarding the transfer of the property. The inquiry stated the county assessed value at the time of the sale was \$189,600. The Department requested documentation showing full disclosure of all consideration passing in the sale.

On May 7, 1986, the taxpayer responded to the inquiry. The taxpayer's attorney stated he had prepared the Quit Claim Deed and Real Estate Excise Tax Affidavit and that instead of the word "satisfaction" he should have stated "assumption." He stated that the Deed indicates that the property was subject to an existing indebtedness which, from and after date of the transfer, was to be assumed by the Grantee. The attorney's letter stated, "It was the intent of the parties that the Grantee would assume the debt in question. That was the only consideration provided by the Grantee to the Grantor."

The taxpayer contended that the transfer was exempt under RCW 82.45.010. The Department requested written verification from the lender than an actual assumption took place. (. . . .)

The Department requested the information by May 30. The taxpayer's attorney responded, requesting more time to get the requested documentation (. . .). On June 9, the Department issued the assessment at issue. The assessment stated taxes owing of \$2,502.72 plus a delinquent penalty of \$660.65. The assessment was computed on the county assessed value of the property.

The taxpayer then submitted a statement from its accountant regarding the transfer. The letter stated that the taxpayer owed its shareholder the sum of \$63,855.85 and that because the taxpayer was unable to pay the sum owing, it transferred the real property "in satisfaction of that debt." The letter also indicates the property was subject to an underlying encumbrance in the amount of \$15,103.56, and that the satisfaction of the debt and the assumption of the underlying encumbrance was the only consideration for the transfer. (. . .)

On July 17, the taxpayer filed a petition for examination and review of the assessment pursuant to WAC 458-20-100. The petition states that "[u]nder the terms of RCW Chapter 82.45 this transfer of property was not a 'sale', and therefore is not subject to the real estate excise tax." In the alternative, the petition requests a reduction of the assessment, contending that the \$78,959.41

consideration was the selling price rather than the assessed value of the property.

DISCUSSION:

[1] Chapter 82.45 imposes an excise tax on real estate sales. A "sale" includes any transfer of the ownership of or title to real property for a valuable consideration. The term does not include an assumption by a grantee of the balance owing on an underlying debt "where no consideration passes otherwise." RCW 82.45.010. See also WAC 458-61-210. The tax applies to all real property transfers between a corporation and its stockholders unless done pursuant to a corporate merger, dissolution, or similar exempt transfer. WAC 458-61-320; Deer Park Pine Industry, Inc. v. Stevens County, 46 Wn.2d 852 (1955) (No "conveyance for a valuable consideration" where change of title was pursuant to a dissolution of a solvent corporation. Where stock holders assumed liabilities of the liquidating corporation, the real-estate excise tax applied to the extent of the liabilities assumed).

Clearly, in this case the satisfaction of the taxpayer's debt to the grantee shareholder was additional consideration. Crane v. Comm'r, 331 U.S. 1 (1947). Accordingly, the transfer is not exempt as a "non sale" under RCW 82.45.010.

We do agree that the amount of the assessment should be reduced based on the additional evidence provided by the taxpayer after the assessment was issued. "Selling price" is defined by RCW 82.45.030 and WAC 458-61-030(14) as the

consideration, including money or anything of value, paid or delivered or contracted to be paid or delivered in return for the transfer of the real property . . . and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

The WAC definition adds that:

The value maintained on the county assessment rolls at the time of the transaction will be used for the sales price if such cannot otherwise be ascertained. In the event that the property is under current use assessment, the market value assessment maintained by the county assessor shall be used for the sales price.

This definition is in accordance with the "Crane doctrine" which holds that where encumbered property is transferred, the amount realized by the transferor includes the amount of the encumbrances on the property plus any personal obligation of the transferor that is assumed by the transferee.

We agree, therefore, that the "selling price" in this case was \$78,959.41, the amount of the debt that was satisfied and the encumbrance that was assumed. The Property Tax Division shall issue an amended assessment computed on that amount. The assessment shall include interest on the unpaid tax from the time of the sale until the date of payment. RCW 82.45.100.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part. [The real estate tax] shall be amended to reflect the selling price of the property as \$78,959.41 rather than the assessed value. The assessment shall be due on the date provided thereon.

DATED this 5th day of December 1986.