

Cite as Det. No. 14-0009, 33 WTD 223 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 14-0009
.....)	
)	Registration No. . . .
)	

[1] WAC 458-61A-101; RCW 82.45.030: REET: CONTROLLING INTEREST TRANSFER – REET IS IMPOSED ON THE TRUE AND FAIR VALUE OF REAL PROPERTY OWNED BY THE ENTITY LOCATED IN THIS STATE. The rebuttable presumption that “true and fair value” equals total consideration paid or contracted to be paid does not apply where Taxpayer fails to provide sufficient proof of such selling prices for parcels, and in the absence of a fair market appraisal or allocation of assets pursuant to the Internal Revenue Code, the true and fair values of the parcels are the value maintained on the county property tax rolls at the time of the controlling interest transfer.

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.

Anderson, A.L.J. – A real estate development limited liability company (“LLC”) assessed real estate excise tax (“REET”) in a controlling interest transfer disputes the measure of tax for one parcel of real property and asserts the county assessor’s value is not the true and fair value of such parcel. Petition denied.¹

ISSUE

Pursuant to RCW 82.45.030 and WAC 458-61A-101, has Taxpayer shown the Department overstated the value of the real property parcel in assessing REET on the county assessor’s value?

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

FINDINGS OF FACT

[Taxpayer] was formed July 11, 2006, with two equal members, [Partner A] and [Partner B].

On April 16, 2012, [Partner A] and [Partner B] entered into a Membership Interest Purchase and Assignment of Judgment Agreement (“Purchase Agreement”) for the transfer of [Partner A]’s 50% membership interest in Taxpayer, effective March 31, 2012. At the time of the transfer, Taxpayer owned two parcels of real property located in [Washington] and other assets valued at \$. . . .²

On September 19, 2012, Taxpayer reported the controlling interest transfer on its corporate renewal form filed with the Washington State Secretary of State. [Partner B], the purchaser and Taxpayer’s remaining member, did not file an asset allocation statement (Form 8594) with the Internal Revenue Service pursuant to section 1060.³

On October 3, 2012 and November 28, 2012, the Washington State Department of Revenue’s (the “Department’s”) Special Programs Division (“Special Programs”) contacted Taxpayer to request that it complete and file a Real Estate Excise Tax Affidavit – Controlling Interest Transfer Return (the “Return”), by October 11, 2012 and December 12, 2012, respectively. Taxpayer did not timely provide the Return.

Using property locator tools, Special Programs determined that Taxpayer owned two parcels of real property located in [Washington] and assessed REET based upon the . . . County Assessor’s values of \$. . . for Parcel [A] and \$. . . for Parcel [B]. On December 11, 2012, Special Programs issued Taxpayer an estimated assessment for \$. . . comprised of \$. . . in REET,⁴ \$. . . in interest, \$. . . in delinquent penalty, and \$. . . in assessment penalty.

Taxpayer appealed,⁵ disputing only the value assigned to Parcel [A], claiming the true and fair value to be \$. . . , not \$. . . , because Parcel [A] is raw land, located in a floodplain, and development would require a considerable amount of work and costs; specifically, excavation of peat in order to build a required road that Taxpayer estimates would cost \$. . . . In addition, Taxpayer asserts that the recent sale of a neighboring undeveloped parcel for \$. . . supports Taxpayer’s lower asserted value for Parcel [A].⁶

While the appeal was pending, Taxpayer provided a heavily redacted copy of the Purchase Agreement. The un-redacted portions indicate that [Partner A] sold his 50% membership interest

² During the hearing, [Partner B] estimated that Taxpayer had \$. . . in cash at the time of the transfer.

³ In certain purchases of a group of assets that make up a trade or business, the Internal Revenue Service requires both the seller and purchaser to file a Form 8594 that allocates consideration received to specific asset transfers. 26 U.S.C. §1060. However, this section also contains significant exceptions to the filing requirement. 26 U.S.C. § 1060.

⁴ Special Programs determined a total taxable amount of \$. . .

⁵ Taxpayer paid \$. . . with respect to the assessment – an amount Taxpayer identifies as the undisputed amount of REET with applicable interest and penalties.

⁶ [Taxpayer did not obtain or provide a fair market value appraisal of the Parcel.]

in Taxpayer – along with membership interests in other entities and an interest in a judgment – to [Partner B] for an undisclosed price. The Purchase Agreement indicates that of the undisclosed total purchase price, \$. . . was allocated to the purchase of the 50% membership interest in Taxpayer. The Purchase Agreement states that the membership interests were to be conveyed through a Bill of Sale/Transfer of Membership Interest. No such Bill of Sale/Transfer of Membership Interest has been provided.

ANALYSIS

Washington imposes REET upon the selling price of each sale of real property in Washington. RCW 82.45.060. The term “sale” for REET purposes includes “the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.” RCW 82.45.010(2)(a). “Controlling interest” is defined as “fifty percent or more of the capital, profits, or beneficial interest in such . . . entity.” RCW 82.45.033(1)(b). In this case, [Partner A] transferred his 50% membership interest in Taxpayer effective March 31, 2012.⁷ Taxpayer owned two parcels of real property in Washington at the time of the transfer. This transfer is subject to REET. At issue, is the true and fair value of the property at the time of the transfer for the purpose of determining the amount of REET.

REET is imposed on the selling price of the real property transferred. RCW 82.45.060. [The term “real property” includes “the ownership interest or beneficial interest in any entity which itself owns land or anything affixed to land.” RCW 82.45.032(1)] Under RCW 82.45.030(2), for controlling interest transfers of entities owning real property located in this state:

. . . the selling price shall be the true and fair value of the real property owned by the entity located in this state. If the true and fair value of the real property located in this state cannot reasonably be determined, the selling price shall be determined according to (4) of this section.

RCW 82.45.030(4) provides as follows:

If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price.

Therefore, under RCW 82.45.030, to determine the selling price, one must first ascertain the “true and fair value” of the real property held by the transferred company. If the true and fair

⁷ We note that REET is imposed on the full value of the real estate owned by the entity transferred, and not on the percentage of ownership that the party transferred. *McFreeze Corp. v. Dep’t of Revenue*, 102 Wn. App. 196, 200, 6 P.3d 1187 (2000). This is because REET is imposed on the value of the real estate owned by the entity transferred, and not on the consideration paid. *Id.*; Det. No. 98—83, 17 WTD 271 (1998).

value cannot be ascertained, or “reasonably be determined,” then REET is imposed on the market value assessed for property tax purposes. *Id.*

“‘True and fair value’ means market value, which is the amount of money that a willing, but unobligated, buyer would pay a willing, but unobligated, owner for real property, taking into consideration all reasonable, possible uses of the property.” WAC 458-61A-101(2)(c).

....

WAC 458-61A-101(4) explains the measure of tax for controlling interest transfers. It provides:

(4) **Measure of the tax.** The measure of the tax is the “selling price.” For the purpose of this rule, “selling price” means the true and fair value of the real property owned by the entity at the time the controlling interest is transferred.

(a) If the true and fair value of the property cannot reasonably be determined, one of the following methods may be used to determine the true and fair value:

(i) A fair market appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made pursuant to section 1060 of the Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2005.

(b) If the true and fair value of the property be valued at the time of the sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained on the county property tax rolls at the time of the sale will be used as the selling price.

The rule then provides an example that is similar to the facts of this case:

An LLC owns real property and consists of two members, Frances and George. Each has a 50% LLC interest. Frances transfers her 50% interest to George. In exchange for the transfer, George pays Frances \$100,000. The true and fair value of the real property owned by the LLC is unknown. There is no debt on the real property. A fair market value appraisal is not available. The market value assessment for the property maintained on the county property tax rolls is \$275,000. The taxable selling price is the market value assessment, or \$275,000.

WAC 458-61A-101(4)(c)(iii).

Taxpayer did not obtain a fair market appraisal of the property, and [Partner A] and [Partner B] did not file an allocation of assets pursuant to section 1060 of the Internal Revenue Code of 1986. Accordingly, we conclude that the selling price of Parcel [A] for REET purposes is the value assessed on the county property tax rolls at the time of the transfer, or \$. . .

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 15th day of January, 2014.