

Cite as Det. No. 13-0292, 33 WTD 81 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 13-0292
...)	
)	Registration No. . . .
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RCW 82.45.030(3); WAC 458-61A-201; WAC 458-61A-103: REET – CONSIDERATION – ASSUMPTION OF DEBT. If a transferee agrees to assume payment of the transferor’s debt on property in return for the transfer of the property, there is consideration, and the transfer is subject to real estate excise tax (REET).

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.

Eckholm, A.L.J. – A transferor of a real property interest appeals a Real Estate Excise Tax (REET) assessment claiming that the transfer is not subject to REET because she transferred her interest in the property as a gift. The Department of Revenue (Department) assessed REET on the transferor’s relief of debt following the transfer. The taxpayer’s petition is denied.¹

ISSUE

Whether the transfer of real property is a gift not subject to REET, pursuant to WAC 458-61A-201, when the transferee makes the payments on the transferor’s and transferee’s joint debt on the property after the transfer.

FINDINGS OF FACT

In December 2006, [Taxpayer] and [Transferee] purchased, with joint financing, real property located in . . . Washington. Both parties contributed to the payments of the joint debt and lived in the residence on the property. In July 2010, the taxpayer moved out of the residence and in

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

August, 2010, the transferee began making the full payments on the joint debt. On October 27, 2010, the taxpayer transferred her 50 percent ownership interest in the real property to [the Transferee] by quit claim deed based on the transferee's agreement to continue to pay 100 percent of the loan payments following the transfer. The parties filed a REET Affidavit indicating that the transfer was not subject to REET by referencing WAC 458-61A-201, the Department's rule that explains the gift exclusion.

The Department's Special Programs Division (Special Programs) reviewed the October 27, 2010, transfer and concluded that the taxpayer did not meet the requirements of the gift exclusion set forth in WAC 458-61A-201 because the taxpayer received consideration for the transfer in the form of the transferee's making the full payments on the joint debt beginning in August, 2010, and following the transfer. On August 20, 2012, Special Programs issued a REET assessment against the taxpayer in the amount of \$² Special Programs imposed REET on the amount of the taxpayer's debt relief, \$. . . , or one-half of the mortgage balance on the property at the time of the transfer.

The taxpayer appealed the assessment, asserting that her transfer of real property to the transferee was a gift and not subject to REET. The taxpayer asserts that though the transferee is making the payments on the loan, she did not receive any consideration for the transfer because she is still obligated as a debtor on the loan to make the payments. The taxpayer indicates the circumstances here constitute a gift because they are distinguishable from the example of a presumed sale subject to REET, described in WAC 458-61A-201(6)(d)(ii), that includes reference to a refinance subsequent to the transfer and no such refinance occurred here. Special Programs filed a detailed response disputing the taxpayer's assertion.

ANALYSIS

Washington imposes REET on "each sale of real property" in this state. RCW 82.45.060. "Sale" is defined in RCW 82.45.010(1) as "any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property . . . for a valuable consideration" Transfers by gift are not included in the definition of "sale" and, therefore, are not subject to REET. RCW 82.45.010(3)(a); WAC 458-61A-201. If a transferee agrees to assume payment of the transferor's debt on the property in return for the transfer, there is consideration, and the transfer is not exempt from REET. RCW 82.45.030(3); WAC 458-61A-201(2)(b); WAC 458-61A-201(3); WAC 458-61A-103(1); Det. No. 05-0117, 24 WTD 474, 476 (2005); Det. No. 01-039, 20 WTD 520, 523-524 (2001). REET is due on the amount of debt assumed, in addition to any other form of payment made by the transferee to the transferor in return for the transfer. *Id.*

WAC 458-61A-201(6)(c)(vi) provides the following example where relief from existing debt is given in exchange for the transfer of a property interest:

² Document number . . . included assessments of REET of \$. . . , interest of \$. . . , delinquency penalties of \$. . . , and an assessment penalty of \$. . . , for a total amount of \$ The taxpayer paid the assessment in full on November 8, 2012.

Bill and Melanie, as joint owners, convey their residence valued at \$200,000 to Melanie, as her sole property. There is an underlying debt of \$170,000. Prior to the transfer, both Bill and Melanie had contributed to the monthly payments on the debt. After the transfer, Melanie begins to make 100% of the payments, with Bill contributing nothing toward the debt. Bill's equity (\$15,000) is a gift, but Melanie's taking over the payments on the mortgage is consideration received by Bill. Real estate excise tax is due on \$85,000 (Bill's fractional interest in the property multiplied by the outstanding debt at the time of transfer: $50\% \times \$170,000$).

This example is directly applicable to the circumstances here. Prior to the transfer, both the taxpayer and the transferee contributed to the monthly payments on their joint debt on the property, and after the transfer the transferee made 100 percent of the mortgage payments with the taxpayer contributing nothing toward the debt.

The taxpayer relies on the example in WAC 458-61A-201(6)(d)(ii) that states, in pertinent part:

(d) Examples—Refinanced debt.

...

(ii) Casey and Erin, as joint owners, convey their residence valued at \$200,000 to Erin as sole owner. There is an underlying mortgage on the property of \$170,000. Prior to the transfer, Casey and Erin had both contributed to the monthly mortgage payments. Within one month of the transfer, Erin refinances the mortgage in her name only and begins to make payments from her separate account. In this case, there is a rebuttable presumption that this is a disguised sale, since Erin, through her refinance, has assumed sole responsibility for the underlying debt. Real estate excise tax is due on \$85,000 (Casey's fractional interest in the property multiplied by the total debt on the property: $50\% \times \$170,000$).

The taxpayer's reliance on this example is misplaced. The fact that there was no refinance of the loan on the property following the taxpayer's transfer of her interest does not change the fact that she received consideration for the transfer in exchange for the transfer. The taxpayer received consideration in the form of relief from her debt on the loan on the property by the transferee's making the payments on the debt. *See* WAC 458-61A-103(1), WAC 458-61A-201(2)(b), and WAC 458-61A-201(3). Special Programs correctly assessed the taxpayer REET on the amount of debt relief or fifty percent of the mortgage amount remaining on the property at the time of the transfer. The REET assessment is affirmed.

DECISION AND DISPOSITION

The taxpayer's petition is denied.

Dated this 21st day of October 2013.