

Cite as Det. No. 14-0102, 33 WTD 228 (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. 14-0102
...)	
)	Registration No. . . .
)	
)	
)	

[1] WAC 458-61A-102, WAC 458-61A-103; RCW 82.45.010, RCW 82.45.030, RCW 82.45.060: REAL ESTATE EXCISE TAX (REET) – GIFT EXEMPTION – CONSIDERATION – DEBT RELIEF. Taxpayer paid the balance of her existing home mortgage with a refinance loan. Taxpayer and her partner jointly borrowed the refinance funds. After the refinance, Taxpayer quitclaimed an ownership interest in the real property to her partner and claimed the REET gift exemption. Because Taxpayer’s partner gave her consideration, in the form of debt relief, for his interest in the real property, Taxpayer is not entitled to the gift exemption.

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.

Valentine, A.L.J. – [Taxpayer] appeals the assessment of Real Estate Excise Tax (REET) on the addition of a second person to the title of her residential property, in conjunction with a refinance of the mortgage adding the second person to the mortgage liability, asserting that the transfer of ownership interest is exempt as a gift. Taxpayer’s petition is denied.¹

ISSUE

Under RCW 82.45.010, RCW 82.45.030, WAC 458-61A-103, and WAC 458-61A-102, was a taxpayer’s quitclaim transfer of ownership interest in real property to her partner a gift, and therefore exempt from REET, when the transfer was in conjunction with a refinance that paid off the old mortgage, for which only the taxpayer had liability, and created a new mortgage, for which both the taxpayer and her partner have liability?

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

FINDINGS OF FACT

Prior to June 2012, Taxpayer was the sole owner of the residential property at issue in this appeal. On June 6, 2012, a new Deed of Trust was secured by the property through [the Lender], listing Taxpayer and [her partner] [Partner] as joint borrowers. As part of the refinance, \$. . . was paid to the previous mortgage holder. On June 8, 2012, Partner was added to the title via a quitclaim deed. Taxpayer claimed the gift exemption and did not pay REET on the transfer.

The new mortgage holder, Lender, provided a written statement, dated March 7, 2013, describing the purpose of Taxpayer's refinance. It reads, in pertinent part:

This letter is an explanation for [Taxpayer] and [Partner] refinance. [Taxpayer] applied for a HARP (Home Affordable Refinance Program) loan. After receiving her financial documentation it was determined that [Taxpayer] didn't have the income to qualify for the loan. In order for [Taxpayer] to refinance into a better interest rate and loan term [Partner] was added to the loan to help qualify. [Lender] requires all parties on the note to be added to [the] title.

[Partner] moved into Taxpayer's home in September 2011. At that time, he began making contributions to monthly household expenses.² After the refinance and quit claim transfer in June 2012, Partner began making monthly payments, for half the mortgage amount due, directly to the lender.³

The Department of Revenue's (Department) Special Programs Division (Special Programs) reviewed Taxpayer's quit claim gift exemption and determined that the transfer was a sale and that REET was due. Special Programs assessed REET on 50 percent of the assessed value of the home at the time of the quitclaim transfer.

ANALYSIS

RCW 82.45.060 imposes an excise tax "upon each sale of real property." RCW 82.45.010 defines the term "sale," for real estate transactions, as "any conveyance, grant, assignment, *quitclaim*, or transfer of ownership or title to real property . . . for a valuable consideration." RCW 82.45.010 (emphasis added). The term "sale" does not include, "A transfer by gift, devise, or inheritance." *Id.* RCW 82.45.080 imposes the REET obligation on the seller. RCW 82.45.030 defines "total consideration paid" as including "money or anything of value, paid, delivered or contracted to be paid or delivered in return for the sale, 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."

² The record contains copies of cleared checks from [Partner] to Taxpayer. The dates range from September 2011 to March 2013. The amounts range from \$. . . to \$. . . . The monthly mortgage payment during this time period was \$. . . . The record also contains a written statement, dated January 30, 2013, from Taxpayer wherein she explains that [Partner] "assisted in the household expenses."

³ After the refinance, the amount due on the home was \$. . . . The monthly mortgage payment, including taxes and insurance, was \$. . . . The record contains copies of cleared checks from Partner to Lender for half the mortgage payment.

WAC 458-61A-103 is the Department's rule dealing with transfers involving underlying debt. It reads in pertinent part: "(1) **Introduction.** The real estate excise tax applies to transfers of real property when the grantee relieves the grantor from an underlying debt on the property or makes payments on the grantor's debt."⁴ In addition, WAC 458-61A-102 includes "the assumption of an underlying debt on the property by the buyer at the time of the transfer" in the definition of "consideration."

As stated in Det. No. 11-0026, 31 WTD 78 (2012):

Under these rules, even if no money is directly paid to the grantor for the transfer of real property, a grantor receives consideration where a grantee makes payments toward underlying debt on the transferred property, or the grantee agrees to assume payment of the grantor's debt on the property in return for the transfer. *See* Det. No. 01-039, 20 WTD 520 (2001); *C.f.*, Det. No. 04-0106, 23 WTD 344 (2004). If consideration is given in exchange for the transfer, then the transfer is not a gift, but a sale, and subject to REET to the extent of the consideration given.

In the present case, Taxpayer gave Partner an ownership interest in real property in conjunction with a refinance that paid off the old mortgage for which only Taxpayer had liability and created a new mortgage for which both Taxpayer and Partner have liability. In addition, after the refinance, Partner began making monthly payments directly to Lender for 50 percent of the mortgage payment. We conclude, therefore, that the transfer at issue was a sale, not a gift, and is subject to REET.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 19th day of March 2014.

⁴ *See also* Det. No. 11-0026, 31 WTD 78 (2012).