

Cite as Det. No. 14-0257, 33 WTD 632 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| In the Matter of the Petition for Refund of |) | <u>D E T E R M I N A T I O N</u> |
| |) | |
| |) | No. 14-0257 |
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| ... |) | Registration No. . . . |
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[1] WAC 458-61A-102, WAC 458-61A-201; RCW 82.45.030: REAL ESTATE EXCISE TAX (REET) – CONSIDERATION – QUITCLAIM BY CO-PURCHASER – ASSUMPTION OF DEBT. The real estate excise tax (REET) applies to transfers of real property when the grantee assumes an underlying debt on the property, such as when a co-purchaser quitclaims his one-half interest to the grantee co-purchaser in exchange for the grantee's agreement to pay the balance of indebtedness. The measure of the tax is the combined amount of the debt and any additional consideration.

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.

Weaver, A.L.J. – A joint owner of real estate quitclaimed his one-half interest in the real estate to the other owner. Prior to the transfer the grantor was paying 50% of the mortgage payment but, after the transfer, the grantee began paying 100% of the mortgage payment on the property. The grantor petitions for refund of real estate excise tax (REET) paid on 50% of the outstanding debt on the property at the time of transfer. We deny the petition for refund, because the grantee relieved the grantor of his monthly mortgage payment, which constitutes consideration.¹

ISSUE

Whether, under RCW 82.45.030 and chapter 458-61A WAC, a grantor who quitclaimed his one-half interest in jointly held real property is subject to REET on 50% of the outstanding debt on the real property when the grantee began paying 100% of the mortgage payments after receiving the grantors half-interest in the real property.

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

FINDINGS OF FACT

[Taxpayer] and [Grantee] jointly purchased real property in . . . Washington on May 20, 2010. A deed of trust [securing the purchase money debt on the property was filed with Thurston County Auditor's Office] on May 20, 2010, listing both Taxpayer and Grantee as borrowers of funds used to purchase the subject property. On September 1, 2011, Taxpayer transferred ownership of his one-half interest in the subject property by way of a quitclaim deed to Grantee. There was a total debt of \$. . . on the property at the time of the transfer. In the REET affidavit, dated September 1, 2011, Taxpayer claimed that the transfer to Grantee was a gift without consideration. Taxpayer attested in that REET affidavit that the "Grantee has made and will continue to make 100% of the payments on total debt of \$. . . , and not paid [Taxpayer] any consideration towards equity." Taxpayer did not pay REET on the transfer.

The Special Programs Division of the Department of Revenue (Department) sent Taxpayer an inquiry letter on April 18, 2012, which asked him to provide documentation to support the gift exemption on the transfer of the property. Taxpayer did not respond to this request, and a second request was sent on May 29, 2012. Taxpayer did not respond to the second request and the Special Programs Division issued a tax assessment to Taxpayer on July 2, 2012, based on the total debt outstanding on the subject property.

On October 11, 2012, Taxpayer responded by sending the Special Programs Division a narrative associated with the subject property transfer. Taxpayer stated that he and Grantee bought the house together and had lived in the house for 2 years as an unmarried couple. Taxpayer then moved out and the Grantee became the sole resident on the property.

Taxpayer sent the Special Programs Division bank statements for June, 2010, through December, 2011. The bank statements show that both Taxpayer and the Grantee contributed funds toward the monthly mortgage payment until August, 2011. On September 1, 2011, Taxpayer quitclaimed his interest in the property to Grantee. Because Taxpayer and Grantee were both making payments on the debt of the property prior to Taxpayer's transfer of ownership to Grantee, on October 11, 2012, the Special Programs Division adjusted the REET assessment, using 50% of the outstanding debt on the property as the basis for the REET assessment, which totaled \$. . . . The adjusted REET assessment totaled \$. . . .

After Taxpayer transferred his interest in the subject property to Grantee, Grantee obtained her own bank account and mortgage payments on the subject property are now made from Grantee's account. Before issuing the adjusted REET assessment the Department concluded that Taxpayer quit contributing funds toward the mortgage payments after the transfer. Taxpayer paid the REET assessment on November 6, 2012, and appealed for a refund.

In his petition for refund, Taxpayer claims that he is still responsible for mortgage payments on the home loan. Taxpayer provided a copy of the 2012 Form 1098 Mortgage Interest Statement he received from the bank listing both Taxpayer and Grantee as "Payer's/Borrowers." On September 16, 2013, the Special Programs Division responded to Taxpayer's petition for refund and provided handwritten notes from a telephone conversation with Taxpayer. Those notes

indicate that Taxpayer represented that he was contributing funds to the joint checking account from September, 2010, through August, 2011, that were used to pay the mortgage payments, but stated that he quit making deposits to the checking account in September, 2011.

On September 26, 2013, Taxpayer provided the Appeals Division with a “Supplement to the Petition for Refund” in which he once again claims that he is responsible for paying half of the mortgage. Taxpayer’s claim is based on the fact that he is still listed as a “Payer” or “Borrower” on mortgage documents with the lending bank. However, Taxpayer has not claimed nor has he provided any documents or evidence that would support a claim that he has made any payments toward the debt on the subject property after the transfer of his ownership interest to Grantee on September 1, 2011.

ANALYSIS

RCW 82.45.060 imposes an excise tax on the sale of real property in Washington. The tax is the obligation of the seller. RCW 82.45.080. A “sale” includes any transfer of the ownership of or title to real property for valuable consideration. RCW 82.45.010(1). The term does not include a transfer by gift, devise, or inheritance. RCW 82.45.010(3). WAC 458-61A-201(1) provides, “If consideration is given in return for the interest granted, then the transfer is not a gift, but a sale, and it is subject to the real estate excise tax to the extent of the consideration received.”

RCW 82.45.030 defines “total consideration paid” as including “the amount of any lien, mortgage, contract indebtedness, or other encumbrance, either given to secure the purchase price, or any part thereof, or *remaining unpaid* on such property at the time of sale.” RCW 82.45.030(3) (emphasis added). WAC 458-61A-103(1) also states: “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. The measure of the tax is the combined amount of the underlying debt on the property and any other consideration.”

WAC 458-61A-102 defines “consideration” as follows:

(2) “**Consideration**” means money or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property. The term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale

WAC 458-61A-102(2). WAC 458-61A-201 further discusses the concept of “consideration” as follows:

(2) . . . Consideration may also include:

(a) Monetary payments from the grantee to the grantor; or

(b) Monetary payments from the grantee toward underlying debt (such as a

mortgage) on the property that was transferred, whether the payments are made toward existing or refinanced debt.

(3) Assumption of debt. If the grantee agrees to assume payment of the grantor's debt on the property in return for the transfer, there is consideration, and the transfer is not exempt from tax. Real estate excise tax is due on the amount of debt assumed, in addition to any other form of payment made by the grantee to the grantor in return for the transfer. However, equity in the property can be gifted.

WAC 458-61A-201(2), (3) (emphasis added). Example (vi) in WAC 458-61A-201(6) is illustrative:

(vi) 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% x \$170,000).

WAC 458-61A-201(6)(d)(vi).

In this case, Taxpayer quitclaimed his one-half interest in the subject property to Grantee. Prior to the transfer he was making contributions into the checking account from which the monthly mortgage payment was made. After the transfer, Grantee began making 100% of the mortgage payment.² Taxpayer has provided no documentation or evidence that he has contributed any actual payments towards the debt on the property after he transferred his interest in the subject property to Grantee.

Taxpayer's argues that he continues to be responsible for the mortgage, because he is still liable to the bank. However, the facts of the case show that the Grantee has agreed to assume payment of Taxpayer's debt, as she is now paying 100% of the mortgage without any assistance from Taxpayer. As illustrated in Example (vi) listed above, this arrangement is [subject to tax on the amount of debt relieved by the transfer]. Taxpayer transferred his interest in the subject property to Grantee and, in return, he was relieved of a monthly mortgage payment, as Grantee began paying 100% of the mortgage after the transfer. Under these circumstances, REET is due on Taxpayer's fractional interest in the property multiplied by the outstanding debt at the time of transfer. *See* WAC 458-61A-201(6)(d)(vi).

The Special Programs Division assessed REET on 50% of outstanding debt at the time of the transfer. The amount of the REET assessment was correct. Taxpayer is not entitled to a refund.

² [Grantee's act of making payments on the property, even though it does not relieve the Taxpayer of liability under the note, is still consideration.]

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 14th day of August 2014.