

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Real Estate)	
Excise Tax Assessment of)	No. 87-327
)	
)	Affidavit No. . . .
. . .)	Tax Audit No. . . .
)	

- [1] **REAL ESTATE EXCISE TAX:** RCW 82.45.010 -- WAC 458-61-310 -- SALE -- EXCLUSION FROM -- TRANSFERS TO FAMILY CORPORATIONS. The real estate excise tax does not apply to the transfer of property to a family corporation where the transferee corporation did not transfer the property or stock in the corporation to a third party within five years of the original transfer.
- [2] **REAL ESTATE EXCISE TAX:** CORPORATE DISSOLUTION -- NO CONSIDERATION. The real estate excise tax does not apply where a change of title to real property is effected solely as the result of the distribution of the real property to stockholders of a solvent corporation in the process of dissolution, where the stockholders assume no liabilities of the liquidating corporation. Deer Park Etc. v. Stevens County and Doric Co. v. King County cited.

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.

NATURE OF ACTION:

The taxpayer protests the assessment of real estate excise tax on grounds the transfer was without consideration.

FACTS AND ISSUES:

Frankel, A.L.J. -- The taxpayer submitted the following history of the origination of the corporation:

1977 - Corporation formed and assets transferred to it by father.

1978 - Stocks gifted to sons - . . . (Gift tax paid)

1980 - Father died, a premature death, - at which time Inheritance tax was paid.

Dec. 18, 1987 - Corporation liquidated -

(A form of transfer, but not a sale)

The assets of the corporation being held by the stockholders nine (9) years, which is more than five years of original transfer.

Dec. 26, 1987 - Sold a building to . . . , at which time excise was paid in the amount of \$660.00.

At issue is whether real estate excise tax was due on the December 18, 1987 transfer of title upon the corporate dissolution. On the real estate excise tax affidavit the taxpayer had claimed an exemption on the basis of WAC 458-61-310. The Department assessed tax on the transfer because the property was not held by the sons for five years.

1] RCW 82.45.010 defines the term "sale" for purposes of the excise tax on real estate sales. The statute provides, inter alia, that the term does not include:

A transfer to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or children: **Provided**, That if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse, or children voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (1) the transferor and/or the transferor's spouse or children, (2) a trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of the transfer to the trust, or (3) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within five years of the original transfer to which this exemption applies, excise taxes shall become due and payable on the original transfer as otherwise provided by law.

WAC 458-61-310 (Rule 310) is the administrative rule which also states the exclusion for transfers to family corporations. As Rule 310 states, no real estate excise tax was due on the transfer to the family corporation in 1977 by the father, because the transfer to the third party was more than five years after the initial transfer.

2] Rule 310 did not apply to the 1987 transfer at issue. That transfer was not a transfer to a family corporation, but was a transfer to the shareholders as a result of the corporate dissolution.

During the hearing, the taxpayer stated that the corporation was solvent and that the shareholders, the sons, assumed no corporate liabilities. She provided a written statement to that effect subsequent to the hearing. A change of title to real property which is effected solely as a result of its distribution to stockholders of a solvent corporation in the process of dissolution, where the stockholders assume no liabilities of the liquidating corporation, is without consideration and not subject to the real estate excise tax. Deer Park Pine Industry, Inc. v. Stevens County, 46 Wn.2d 852 (1955); Doric Co. v. King County, 57 Wn.2d 640 (1961). See also WAC 458-20-320(2).

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 12th day of October 1987