

Cite as 4 WTD 323 (1987)

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

In the Matter of the Petition) D E T E R M I N A T I O N
for Correction of Assessment of)
) No. 87-357
)
)
 . . .) Real Estate Affidavit No. . .
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)
)

[1] **REAL ESTATE EXCISE TAX:** RCW 82.45.010 -- WAC 458-61-210 -- WAC 458-61-370 -- ASSUMPTION -- TRADE -- ADDITIONAL CONSIDERATION. The exclusion from the "sale" provided by RCW 82.45.010 for a grantee's assumption of the mortgage balance owing does not apply where other property is received. If real property is traded for other real property, each transfer is subject to the real estate excise tax on the fair market value of the property.

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.

TAXPAYER REPRESENTED BY: . . .
. . .

DATE OF HEARING: June 16, 1987

NATURE OF ACTION

The taxpayer protests an assessment of real estate excise tax contending the property was transferred for assumption of debt only.

FACTS AND ISSUES

Frankel, A.L.J. -- . . . (hereinafter taxpayers) transferred real property to . . . (hereinafter grantees) in June of 1986. No excise tax was paid at the time of transfer. The taxpayer claimed an exemption on grounds the transfer was for no consideration -- assumption of debt only. They attached a notarized affidavit signed by themselves and the grantees stating the transfer was exempt for reason it was for assumption of mortgage or contract balance only.

The taxpayers and the grantees had executed a real estate purchase and sale agreement on May 29, 1986 for the transfer of the property at issue. The contract provided that the purchase price was "assumption of existing debt only." As part of the terms, the taxpayers agreed to execute a note, secured by a deed of trust on property to be determined by both parties, for the back taxes, interest and penalties.

In addition, the contract provided that the taxpayers would "assume" four properties of the grantees for the underlying indebtedness. Also, the grantees agreed to assign their interest in a \$25,000 note by a deed of trust on property located in

On November 12, 1986, the Department sent the taxpayer a real estate excise tax inquiry alleging the county records indicated the transfer was a taxable exchange of real property. The revenue officer relied on WAC 458-61-370. The Department assessed \$1,832.95 in additional tax and penalties based on the county assessed value of the property of \$131,000.00.

The taxpayers protested the assessment. They contend the exchange of the properties was in consideration of the assumption of debt only and exempt as provided by WAC 458-61-210.

DISCUSSION

[1] The real estate excise tax is to be paid by the seller on each sale of real property. RCW 82.45.080. As used in chapter 82.45 RCW, however, the term "sale" does not include all transfers of property for consideration. RCW 82.45.010. At issue is the exclusion from the term for a grantee's assumption of the mortgage balance owing, where no consideration passes otherwise.

RCW 82.45.150 provides that the Department shall, by rule, provide for the effective administration of the Real Estate

Excise tax laws. WAC 458-61-210 (Rule 210) is the administrative rule dealing with assignments.

During the period at issue, Rule 210 provided:

(1) The real estate excise tax does not apply to the following types of purchaser's assignments, provided that no consideration passes to the grantor:

. . . .

(b) Assumption by a grantee of the balance owing on an obligation which is secured by a mortgage, deed of trust or real estate contract; . . .

. . . .

The real estate excise tax affidavit is required for each of the above. If the transfer is to a third party other than the current lienholder, the grantor must furnish a notarized statement signed by both the grantor and grantee that no additional consideration of any kind is being paid by the grantee to the grantor or to any party other than current lienholders.

As Rule 210 notes, the exclusion is not limited to a transfer back to the original seller or mortgagee. The exclusion applies as well to a third party grantee where the purpose of the transfer is to avoid foreclosure. See AGO 55-57 No. 141 and AGO 58-58 No. 95.

In this case, the purchase and sale agreement states that the total purchase price is the assumption of the existing debt only. If that had been the only consideration, and the grantees had become personally and principally liable for the underlying debt, we would agree that the transfer would fall within the Rule 210 exclusion. The taxpayers, however, received more than the release of their indebtedness. They also received other property. WAC 458-61-370 provides that the real estate excise tax applies "when real property is exchanged for other real property or any other valuable property, either tangible or intangible." The rule states that when real property is exchanged for other real property, each transfer is subject to tax on the fair market value of the property -- not the owner's equity in the property.

The taxpayers contend that provision does not apply because no equity was transferred and that two otherwise exempt transactions should not be taxable because they are done at the same time. We disagree. The statute only excludes a grantee's assumption of the mortgage balance owing, where "no consideration passes otherwise." The receipt of other property, even where the property is subject to underlying indebtedness, is additional consideration. Consideration is defined as "[t]he inducement to a contract. The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract." Black's Law Dictionary, p. 379 (Revised Fourth Edition 1968).

The taxpayer is a licensed real estate broker. The contract document states that the properties received were subject to approximately \$75,832 in underlying indebtedness and liens. The county records show the properties had a total assessed value of \$141,800. The receipt of any additional property could be an inducement to a contract. Certainly in this case where the taxpayer received four homes appraised at more than their indebtedness, which he can try to sell at a profit, the receipt of the property was additional consideration.

Furthermore, the contract in this case also stated the grantees agreed to assign their interest in a \$25,000 note to the taxpayers. The receipt of \$25,000 is additional consideration.¹

As a licensed real estate broker, the taxpayer should be aware of the laws relating to real estate excise tax. We uphold the assessment of tax and penalties and find this is a case in which an evasion penalty might have been warranted based on the taxpayer's failure to disclose the assignment of the note as additional consideration. See RCW 82.45.100 (2).

DECISION AND DISPOSITION

The taxpayer's petition is denied.

DATED this 9th day of December 1987.

¹ The taxable amount on this transaction should have been increased by the amount of the note. As the purchase and sale agreement was disclosed to the Department prior to this appeal, we will not increase the assessment at this stage.

