

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 Prior Determination of Tax        )  
Liability of                                )                No. 89-229  
)  
  )     Real Estate Excise Tax  
              . . .                                )  
)  
)

[1] **REAL ESTATE EXCISE TAX:** RCW 82.45.030 -- WAC 458-61-030(14) -- SELLING PRICE INCLUDES ALL ENCUMBRANCES ON THE PROPERTY. Where a statute specifically states that an unpaid indebtedness is to be included in the "selling price" amount, and this statement is unconditional whereby the "selling price" includes any debt remaining on the property regardless if the purchaser becomes liable on the debt or not, the "selling price" for real estate excise tax purposes is all consideration received including debts forgiven plus all indebtedness remaining on 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: . . .

FACTS AND ISSUES:

Zagelow, A.L.J. -- The taxpayer is a creditor of the debtor real estate owner. The real estate in question is a parcel of land to which a mobile home is affixed. The creditor is willing to exchange a forgiveness of \$4,400.00 of debt for a Quit Claim Deed to the property. The property has an underlying Deed of Trust upon the property in the amount of \$24,000.00 which the creditor will not assume. As the holder

of the encumbrance has not received payment from the debtor, or contacted the creditor since 1983, the creditor intends to wait the 10 year period of limitation and thereafter quiet title to the property in himself. The creditor has no intention of paying or assuming the underlying obligation. The taxpayer seeks a determination of the "selling price" for purposes of the real estate excise tax, suggesting that \$4,400.00, the amount of the debt forgiven, is the proper measure.

#### DISCUSSION:

RCW 82.45.030 defines "Selling price":

As used in this chapter, the term selling price means the consideration, including money or anything of value, paid or delivered in return for the transfer of the real property or estate or interest in real property, 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. (Emphasis added.)

[1] The above-quoted statutory language is determinative of this inquiry. The statute specifically states that an unpaid indebtedness is to be included in the "selling price" amount. This statement is unconditional whereby the "selling price" includes any debt remaining on the property regardless if the purchaser becomes liable on the debt or not. Here, the seller is transferring his interest in the property for consideration and the amount of the selling price is that amount as is statutorily determined. As an administrative agency, the Department does not have discretion to change the law and grant relief. See: Det. 85-283A, 2 WTD 123 (1986), Det. 87-19, 2 WTD 151 (1986). According to the facts as presented in this case, the selling price would be the \$24,000.00 indebtedness plus the \$4,400.00 consideration for the forgiveness of the debt for a total selling price of \$28,400.00.

#### RULING:

The "selling price" for real estate excise tax purposes is all consideration received including debts forgiven plus all indebtedness remaining on the property. RCW 82.45.030.

This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the petitioner. In this regard, the Department has no obligation to ascertain whether the petitioner has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the department on this facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately found to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have prospective application only.

DATED this 21st day of April 1989.