

Cite as 8 WTD 433 (1989)

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. 89-534  
 )  
 ) REAL ESTATE EXCISE TAX  
 . . . ) Assessment No. . . .  
 )  
 )

[1] WAC 458-61-210: REAL ESTATE EXCISE TAX--  
ASSUMPTION--DELINQUENT PAYMENTS. The payment of  
delinquent payments due on a mortgage by a purchaser  
of the property, who assumes the mortgage by  
becoming personally and principally liable for it,  
does not constitute additional consideration so as  
to invalidate the 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.

NATURE OF ACTION:

A purchaser of real property protests the assessment of real  
estate excise tax on the basis that he assumed the mortgage  
and therefore the transaction was exempt.

FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer ( . . . ) purchased certain  
real property on December 24, 1986, from the [A]s. Taxpayer  
is the father of [A]. Taxpayer assumed the mortgage on the  
house by becoming personally and principally liable for it.  
As part of the transaction, he also paid the delinquent  
payment amounts. Taxpayer later refinanced the mortgage.

A Revenue Officer for the Department of Revenue started  
sending notices in March of 1989 to the [A]s regarding the

transaction. The [A]s have never responded to the notices. Eventually, the purchaser, taxpayer, was informed of the Department's claim for real estate excise tax. The Revenue Officer bases the Department's claim on the fact the taxpayer paid the delinquent payments on the mortgage. The Revenue Officer believes that this constitutes additional consideration and therefore voids the exemption for assumption of indebtedness only.

DISCUSSION:

The real estate excise tax is imposed on all sales of real property, with certain exemptions. One of those exemptions is when the buyer assumes the seller's mortgage and no consideration passes otherwise. RCW 82.45.010. WAC 458-61-210 provides, in relevant part, as follows:

(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 existing obligation which is secured by a mortgage, deed of trust or real estate contract where the grantee has become personally and principally liable for payment of that obligation.

[1] In this case, the grantee (taxpayer) assumed the mortgage by becoming personally and principally liable for it. As part of that assumption, he paid the delinquent payments due on the mortgage. The payment of the delinquent payments does not constitute additional consideration to the seller/grantor, but is instead part of the mortgage on which the grantee has become personally and principally liable.

DECISION AND DISPOSITION:

Taxpayer's petition is granted. Real estate excise tax assessment number . . . is dismissed.

DATED this 12th day of December 1989.