

Cite as Det. No. 01-039, 20 WTD 520 (2001)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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. 01-039
)	
...)	Real Estate Excise Tax No. . . .
)	Docket No. . . .
)	
)	

WAC 48-61-225; WAC 458-61-410: REET – QUITCLAIM BY CO-PURCHASER – ASSUMPTION OF DEBT -- GIFT OF INTEREST IN REAL ESTATE. The real estate excise tax (REET) applies to transfers of real property when the grantee assumes an underlying debt on the property, such as where a co-purchaser quitclaims its interest to another co-purchaser who assumes the indebtedness balance. 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.

NATURE OF ACTION:

Taxpayer who quitclaimed his interest in real property he was jointly purchasing with a friend, as part of a transaction in which the friend refinanced the mortgage, requests refund of real estate excise tax (REET) he was charged on the transfer of his interest, arguing the transfer was a gift and he was not compensated in any way.¹

FACTS:

Prusia, A.L.J. -- In November 1998, the taxpayer and a friend purchased real property in Seattle as joint tenants. Both signed the loan documents to purchase the property; the amount of the mortgage note was \$. . . . Both moved onto the property. They made mortgage payments out of a joint account into which both paid.

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

In January 2000, the taxpayer moved from the property, and beginning that month the friend made the mortgage payments out of the friend's own funds.

Shortly thereafter, the friend wanted to refinance the loan to take advantage of low interest rates, and asked the taxpayer to quitclaim his interest in the property to the friend. The taxpayer agreed to quitclaim his interest on condition the taxpayer's name would not be on the new loan documents. The friend agreed to that. In early March 2000, the taxpayer quitclaimed his interest to the friend, and the friend refinanced the purchase of the real estate in the friend's name only. The quitclaim deed the taxpayer signed was prepared by the escrow company as part of the refinancing transaction. The quitclaim and the loan documents were signed on the same day. The taxpayer received nothing in exchange for signing the quitclaim, other than being relieved from liability on the loan obligation. The taxpayer considers the transfer to be a gift to the friend of the taxpayer's interest in the real property.

At the time of the quitclaim/refinancing transaction, the taxpayer was charged REET of \$. . . on the transfer of his interest in the real estate. The friend paid the tax in order for the transaction to be completed. On March 8, 2000, the taxpayer and the friend signed a REET affidavit that was filed with King County, in which they claimed the transfer was a gift transfer exempt from REET under WAC 458-61-410(c). King County forwarded a copy of the affidavit to the Department, for a refund determination. The Department's Special Programs Division denied the refund.

ISSUE:

Did the REET apply to the taxpayer's transfer, by quitclaim, of his joint tenancy interest in the real property to the other joint tenant?

DISCUSSION:

RCW 82.45.060 imposes an excise tax on every "sale of real estate" in Washington. The tax levied under Chapter 82.45 is the obligation of the seller. RCW 82.45.080. "Sale" is broadly and inclusively defined by RCW 82.45.010 as "any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, . . . or any estate or interest therein for a valuable consideration." Chapter 458-61 WAC contains the administrative rules implementing the REET statutory provisions. The following provisions of Chapter 458-61 WAC are relevant to this determination:

WAC 458-61-030 Definitions.

. . .

(3) "Consideration" means money or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, or services performed or contracted

to be performed in return for the sale and includes 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.

(a) "Consideration" includes the issuance of an ownership interest in any entity in exchange for a transfer of real property to the entity. In the case of partnerships, consideration includes the increase in the capital account of the partner made as a result of the partner's transfer of real property to the partnership, but notwithstanding the presence of consideration, such a transfer may not be taxable if it is specifically exempt under WAC 458-61-375 or 458-61-376.

(b) "Consideration" does not include the amount of any outstanding lien or encumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements.

WAC 458-61-225 Assumption of debt. (1) In addition to other circumstances where valuable consideration passes between the parties, the real estate excise tax applies to transfers of real property when an underlying debt on the property is assumed by the grantee.

(2) The measure of the tax is the combined amount of the debt and any other additional consideration.

(3) See WAC 458-61-374 for the transfers made when the grantor has no personal liability for the underlying debt.

WAC 458-61-255 Clearing title. (1) **In general.** The real estate excise tax does not apply to quitclaim deeds given for the purpose of clearing title only when no consideration passes otherwise. When any consideration is given for the clearance of title, the real estate excise tax applies to the transaction. A deed given to add a person to title for any purpose does not qualify for treatment under this section.

(2) **Documentation.** A narrative which explains the nature of the clearance of title must be signed by both grantor and grantee, or agents of either, and attached to the real estate excise tax affidavit. The original narrative will be retained with the original affidavit at the county treasurer's office and a copy of the narrative will be attached to the department's affidavit copy.

(3) **Examples.** Real estate excise tax would not apply in the following situations:

(a) An exiting minority partner gives the partnership a quitclaim deed for the purpose of removing any presumptive interest; or

(b) A developer deeds greenbelts, streets or common areas in a development to the homeowners association upon completion of the development and under the terms and covenants of the development.

(c) Parents, who have been on title as co-signors for their child's loan, are now issuing a quitclaim deed to exit title. The narrative accompanying the affidavit for this transfer must state that the co-signor was not a co-purchaser of the property and did not make payments toward the repayment of the loan.

WAC 458-61-410 Gifts. (1) In general. Transfers of real property as gifts are not subject to the real estate excise tax provided that the transfer is without consideration or that love and affection is the only consideration.

(2) **Consideration.** When any consideration other than love and affection is present in the transfer, the transaction is taxable to the extent of the consideration present. Consideration includes the indebtedness balance of any real property transferred which is encumbered by a lien securing an indebtedness. See WAC 458-61-030(3) for the full definition of "consideration."

(a) Examples. Mother, A, conveys lakefront cabin valued at \$200,000 to daughter, B. The tax consequences will vary dependent on whether B tenders consideration and the amount and the extent of A's equity. Consider:

(i) Example 1. No consideration given by B and A owns property outright. This is a gift by A to B of \$200,000 and exempt from the real estate excise tax.

(ii) Example 2. No payment given to A by B. A has \$175,000 equity and an underlying mortgage of \$25,000. The \$175,000 in equity is a gift, but the real estate excise tax applies to the \$25,000 owing on the mortgage.

(iii) Example 3. No consideration is given by B. A has \$175,000 equity and an underlying mortgage of \$25,000, on which A continues to make the payments. This is a gift by A to B of the \$175,000 and the payments on the underlying debt. It is exempt from the real estate excise tax.

(iv) Example 4. B gives A \$10,000 and A owns property outright. A has made a gift of \$190,000 in equity and real estate excise tax applies only to the \$10,000 paid by B for the property.

(v) Example 5. B gives A \$10,000 and A has \$175,000 in equity and an underlying mortgage of \$25,000. A has made a gift of \$165,000 in equity, but the real estate excise tax applies only to \$35,000: The \$10,000 paid by B to A for the property and the \$25,000 remaining on the mortgage.

(3) **Documentation.** Completion of the real estate excise tax affidavit is required for transfers by gift.

(a) A supplemental statement (see WAC 458-61-150) shall be signed by both grantor and grantee and attached to the real estate excise tax affidavit. The statement shall attest to the existence or absence of underlying debt on the property transfers made by gift.

(Emphasis added.)

The circumstances of this case bring it squarely under the rule set out in WAC 458-61-225. The quitclaim of the taxpayer's interest was a transfer of real property with the underlying debt being assumed by the grantee, and REET applied to the transfer. The gifts rule (WAC 451-61-410), and other rules emphasized above, are consistent with WAC 458-61-225.

The taxpayer argues that he received nothing of value in exchange for quitclaiming his interest. That argument overlooks his friend's assumption of the underlying debt on the property. Prior to the transaction, the taxpayer was jointly liable on the underlying debt. After the transaction, he

was free of the debt. Relief from a loan obligation is something of value. WAC 458-61-030(3) and WAC 458-61-410(2) expressly define it as “consideration.”

The taxpayer argues the transfer was a gift. Gifts generally are not subject to REET, but when any consideration other than love and affection is present in the transfer, the transaction is taxable to the extent of the consideration present. WAC 458-61-410. The taxpayer’s gift in this case was only of any equity he had in the property. As WAC 458-61-410(2) and WAC 458-61-225 make clear, the taxpayer received consideration when the friend assumed the underlying debt, and the transaction was taxable to the extent of the consideration present.

REET was properly imposed upon the taxpayer’s transfer of his interest in the real property. Accordingly, the petition for refund must be denied.

DECISION AND DISPOSITION:

The taxpayer’s petition for refund of REET is denied.

Dated this 16th day of March, 2001.