

Cite as Det. No. 16-0289, 36 WTD 399 (2017)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 16-0289
)	
...)	Registration No. . . .
)	

[1] WAC 458-61A-101; RCW 82.45.030: REAL ESTATE EXCISE TAX – TRANSFER OF A CONTROLLING INTEREST – MARKET VALUE ASSESSMENT MAINTAINED ON COUNTY PROPERTY TAX ROLLS. When relying on the market value assessment maintained on a county’s property tax rolls to determine the true and fair value of real property, the assessment relied upon must have been the one publicly available at the time of the transfer, as opposed to an assessment that was made publicly available later than the transfer date.

[2] WAC 458-61A-101; RCW 82.45.060: REAL ESTATE EXCISE TAX – TRANSFER OF A CONTROLLING INTEREST – SELLING PRICE. In a transfer of a controlling interest in any entity with an interest in real property located in Washington, the real estate excise tax liability is assessed on the full “selling price” of the underlying real property, regardless of the percentage interest the transferor of the controlling interest owns in the entity.

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.

Yonker, T.R.O. – An LLC (Taxpayer) that owns real property in Washington protests the assessment of real estate excise tax (REET) on the transfer by one of its two members of a fifty-percent interest in Taxpayer to the other member. Taxpayer argues that the Department’s Special Programs Division used an incorrect amount as the “selling price” of the fifty-percent interest, and also should have assessed REET proportional to the interest percentage transferred. We grant in part and deny in part Taxpayer’s petition, and remand to Special Programs.¹

ISSUES

1. In determining the selling price of a transfer of a controlling interest for the purpose of assessing REET tax under RCW 82.45.030(4), is the “market value assessment” the amount most recently assessed by the county prior to the sale, or the amount later assessed by the county for the calendar year in which the sale occurs.

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

2. Is REET calculated proportionally based on the percentage of controlling interest that was transferred under RCW 82.45.030 and WAC 458-61A-101?

FINDINGS OF FACT

[Taxpayer] which owns and operates a gas station with a convenience store (real property) located in . . . , Washington, was formed on November 26, 2012. At the time of its creation, Taxpayer had two members, . . . (Member 1) and . . . (Member 2) (referred to collectively as the Members), who both owned a fifty-percent interest in Taxpayer.

As of January 1, 2015, Member 1 transferred his fifty-percent interest in Taxpayer to Member 2.² Relevant to this review are the following amounts:

- The “market value” of the real property for the assessment year of 2014 was \$ This was the amount used to determine property taxes assessed by the . . . Assessor’s Office that were due in 2015.
- The “market value” of the real property for the assessment year of 2015 was \$ This was the amount used to determine property taxes assessed by the . . . Assessor’s Office that were due in 2016.
- Taxpayer represented that, as of the date of the transfer, Taxpayer owed \$. . . on the mortgage of the real property.

The Members subsequently filed a controlling interest transfer return in which they claimed that the “true and fair value” of the real property owned by Taxpayer was \$. . . , which is fifty percent of the amount Taxpayer owed on the mortgage of the real property at the time of the transfer. Based on that claimed “true and fair value,” the Members calculated Taxpayer’s REET liability as \$ The Members claimed that Member 1 gifted to Member 2 \$. . . in equity in the real property.

The Department’s Special Programs Division reviewed the Members’ claimed gift exemption and found that the exemption was not supported by the circumstances. Instead, Special Programs found that REET liability should have been calculated based on the market value as recorded by the . . . Assessor’s Office for the assessment year of 2015. On April 28, 2016, Special Programs issued a REET tax assessment for \$. . . , which included \$. . . in unpaid REET, a \$. . . tax assessment penalty, and \$. . . in interest. Taxpayer requested our review of the full amount of the tax assessment.

ANALYSIS

REET is imposed on each sale of real property located within Washington. RCW 82.45.060. RCW 82.45.010(1) defines “sale” to include: “any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property... for a valuable consideration.” Generally, it is the obligation of the seller to pay REET. RCW 82.45.080(1).

² Taxpayer’s annual report filed with the Secretary of State’s Office filed on December 17, 2014, indicates that at that time Member 2 was the only member of Taxpayer. This suggests that Member 1’s transfer of his fifty percent interest may have occurred earlier than January 1, 2015.

The term “sale” also includes “the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.” RCW 82.45.010(2)(a). In the case of a partnership, association, trust, or other entity, a “controlling interest” means “fifty percent or more of the capital, profits, or beneficial interest in such partnership, association, trust, or other entity.” RCW 82.45.033(1)(b); WAC 458-61A-101(2)(a)(ii). In the transfer of a controlling interest in an entity, the Department may assess REET “against the entity in which a controlling interest is transferred.” RCW 82.45.033(2)(b). Here, Taxpayer does not dispute that a transfer occurred, which is “a taxable event.” Instead, Taxpayer challenges the amount Special Programs used as the selling price for calculated Taxpayer’s REET liability.

1. Market Value Assessment Amount for Determining “Selling Price”

The rate used to determine REET liability is based on the “selling price.” RCW 82.45.030(2) defines “selling price” as follows:

If the sale is a transfer of a controlling interest in an entity with an interest in real property located in this state, the selling price shall be the true and fair value of the real property owned by the entity and located in this state. If the true and fair value of the real property located in this state cannot reasonably be determined, the selling price shall be determined according to subsection (4) of this section.

...

(4) If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, **the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price.**

(Emphasis added.)

Taxpayer concedes on review that its Members’ original method of using the amount owed on the mortgage of the real property at the time of the transfer as the “selling price” is not supported in statute, and now agrees that under RCW 82.45.030(4), the . . . property tax rolls are the proper source for determining the selling price. However, Taxpayer argues that Special Programs erred when it used the \$. . . figure, which was the assessed value on which property taxes were assessed for 2015 and due in 2016. Instead, Taxpayer argues that Special Programs should have used the \$. . . figure, which was the assessed value on which property taxes were assessed for 2014 and due in 2015. We agree with Taxpayer.

RCW 82.45.030(4) clearly states that the amount “on the county property tax rolls **at the time of the sale** shall be used as the selling price.” (Emphasis added). The sale occurred on or about January 1, 2015. If the Members had relied on the . . . property tax rolls on that date, the assessed value recorded in the county records would have been the \$. . . figure, the most recently assessed value recorded in 2014, for which property tax would have been due later in 2015. The larger \$. . . figure would not yet have been available on the tax rolls on January 1, 2015. We find no authority to suggest that when the Department subsequently reviews the REET liability on a

particular transfer, the Department may rely on figures that became available later than the actual date of that transfer. Thus, we remand to Special Programs for adjustment of the tax assessment based on the \$. . . figure as the selling price.

2. Proportion of “Selling Price” to be used for Calculating REET

Taxpayer also contends that the measure of REET should be proportional to the fifty-percent interest that Member 1 transferred to Member 2. RCW 82.45.060, however, states simply that REET is assessed based on the “selling price.” RCW 82.45.030, discussed earlier, states that the “selling price” is the “true and fair value of the real property,” which, in turn, is “market value assessment” amount on the county property tax rolls. Nowhere in these statutes is there any discussion that only a portion less than the entire “selling price” should be used to calculate REET liability.

Indeed, WAC 458-61A-101(4)(c)(iii) offers an example similar to the circumstances here:

An LLC owns real property and consists of two members, Frances and George. Each has a 50% LLC interest. Frances transfers her 50% interest to George. In exchange for the transfer, George pays Frances \$100,000. The true and fair value of the real property owned by the LLC is unknown. There is no debt on the real property. A fair market value appraisal is not available. The market value assessment for the property maintained on the county property tax rolls is \$275,000. The taxable selling price is the market value assessment, or \$275,000.

This example shows that even though only a fifty-percent interest was transferred, the taxable selling price was still the full market value assessment for the property.

The Washington Court of Appeals addressed this issue in similar fashion in *McFreeze Corp. v. Dep’t of Revenue*, 102 Wn. App. 196, 6 P.3d 1187 (2000). There, the court found that in the sale of a controlling interest of an entity that owned real property in Washington, “the value taxed is not the consideration paid, but the value of the real estate owned by the entity.” *Id.* at 201. The court explained that “nothing in the statutes authorizes the taxpayer to apportion the tax” and went on to state that “[i]f the sale is 49 percent or less of the entity, no tax is owed. But if the sale is 50 percent or more, **tax is owed on the full value of the real estate** owned by the entity.” *Id.* (emphasis added).

These authorities make clear that the full selling price of a controlling interest must be the basis for the assessment of REET here. Accordingly, we hold that the full amount of \$. . . , as determined earlier, should be used to calculate the amount of REET liability owed by Taxpayer.

DECISION AND DISPOSITION

We are remanding the case to the Special Programs Division (Operating Division) for adjustment to the assessment consistent with our holding above.

Dated this 6th day of September, 2016.