

Cited as 1 WTD 349 (1986)

BEFORE THE INTERPRETATION AND APPEALS SECTION
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. 86-291
)
)
) Real Estate Excise Tax
) Audit No. . . .
)
)

REAL ESTATE EXCISE TAX. TRANSFER FROM GENERAL
PARTNERSHIP TO LIMITED PARTNERSHIP -- NO
CONSIDERATION.

The Real Estate Excise tax does not apply to a transfer from a general partnership to a limited partnership where no valuable consideration is exchanged for 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: October 28, 1986

NATURE OF ACTION:

The taxpayer petitions for correction of an assessment of real estate excise tax.

FACTS AND ISSUES:

Gregory I. Potegal, Administrative Law Judge-- X General Partnership is a Washington general partnership composed of A, his wife A1, B, and his wife B1. Each marital community owns an undivided one-half interest.

X Limited partnership is a Washington limited partnership formed on December 27, 1985. It is composed of A, his son A2, B, and and his son B2, all as general partners, and A, his wife A1, their children A2, A3, A4, and A5, B, his wife B1, their children B2, B3, and B4, all as limited partners.

On December 30, 1985 the general partnership conveyed certain real estate by statutory warranty deed to the limited partnership. At the time of conveyance the property was free and clear of any encumbrances. The limited partnership assumed no liabilities with respect to the property. The deed recited a consideration of one dollar.

Simultaneously with the conveyance to the limited partnership Mr. and Mrs. A and Mr. and Mrs. B each received units of partnership capital in the limited partnership equal in value to the fair market value of their respective undivided one-half interest in the property which was conveyed. After this, Mr. and Mrs. A and Mr. and Mrs. B each gifted some of their partnership units in the limited partnership to their children.

The Department of Revenue examined this transfer to determine if the real estate excise tax was applicable and found that it was. The real estate excise tax affidavit which was filed at the time of transfer claimed exemption on grounds that the transfer was between one family owned partnership to another and that no consideration was paid in the transfer. In a letter dated May 29, 1986 the Department asked for payment of the real estate excise tax on the transfer. It took the position that the exemption for a transfer to family partnerships, WAC 458-61-560, did not apply where the partnership consists of more than one family.

The taxpayer objects on the following grounds:

1. The transfer is not subject to the real estate excise tax because no consideration was returned to the transferor.
2. The transfer is not subject to the real estate excise tax because it comes within one of the exclusions provided in RCW 82.045.010.

DISCUSSION:

AGO 1977 No. 14 concerned a transfer of real property from a corporation to a partnership. Even though the fact situation here at issue pertains to a transfer from a general to a

limited partnership, we nevertheless find the rationale of that opinion to be applicable.

AGO 1977 No. 14 states, in pertinent part:

By letter previously acknowledged you have requested our opinion regarding the applicability of the one percent real estate excise tax provided for under chapter 38A.45 RCW to the following transaction:

"A corporation desires to change its business structure from that of a corporation to a partnership. For federal tax purposes, the corporation will be liquidated and a new partnership formed in which the shareholders will become general partners in the same percentage of ownership as they held stock in the corporation. Rather than transferring the stock of the corporation to the partnership and then liquidating directly into the partnership, the shareholders will retain their stock through the liquidation, but will direct the corporation to distribute all corporate assets including real property (no liabilities) in the shareholders' name to the new partnership. The transfer will be consummated by this one deed from the corporation, on behalf of the shareholders, to the partnership."

For the reasons set forth in our analysis, it is the opinion of this office that the one percent real estate excise tax is not applicable to the conveyance involved in the foregoing factual situation.

ANALYSIS

The one percent real estate excise tax is imposed pursuant to chapter 28A.45 RCW upon sales of real property. RCW 28A.45.010 defines a sale, for the purposes of this tax, as follows:

"As used in this chapter, the term 'sale' shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, or transfer of the ownership of

or title to real property, including standing timber, or any estate or interest therein for a valuable consideration . . ." (Emphasis supplied.)

Thus, the two prerequisites for a taxable transaction are (1) actual transfer of real property and (2) actual consideration paid or contracted to be paid in exchange for the ultimate transfer of the designated interest in real property. State ex rel. Namer Inv. Corp. v. Williams, 73 Wn.2d 1, 435 P.2d 975 (1968); and see, also, AGLO 1977 No. 6, the most recent of several opinions on the subject which we have written to your office during the past several years.

Under the factual situation which you have described there will clearly be a conveyance (i.e., a transfer of real property) - from the corporation (prior to its dissolution) to the new partnership (subsequent to its formation). That conveyance will, in essence, constitute the second of three distinct steps in the transaction. The first step, of course, will be the formation of the partnership by the shareholders of the corporation after the conveyance of its real property to the partnership. Assuming that the transaction follows that sequence, however, it is our opinion that the second requisite element of a taxable sale-i.e., a valuable consideration-will be lacking and it is for this reason that we answer your question in the negative.

As we further explained in AGLO 1977 No. 6, supra, the tax base against which the one percent rate applies is the "selling price." "Selling price" is defined in RCW 28A.45.030 as follows:

"As used in this chapter, the term 'selling price' means the consideration, including money or anything of value, paid or delivered or contracted to be 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 supplied.)

Construing RCW 28A.45.010 and .030 together, our state supreme court has set forth the following guidelines for determining whether (or to what extent) the consideration requirement for the tax has been satisfied:

" . . . The basis for any excise tax to be levied, then, must be the actual consideration paid or delivered or contracted to be paid or delivered in exchange for the ultimate transfer of the designated interest in real property. . . ." (Emphasis supplied.) State ex rel. Namer Inv. Corp. v. Williams, at p. 9.

In the case of the T & D partnerships there has been no consideration paid or delivered or contracted to be paid or delivered by the limited partnership to the general partnership in exchange for the property. There is therefore no basis upon which to assess real estate excise tax in this transaction. The taxpayer's petition will be granted.

Because we have ruled favorably on the taxpayer's first ground for objection it is unnecessary to rule on the second ground.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The assessment of real estate excise tax on the transfer from X General Partnership to X Limited Partnership is cancelled.

DATED this 13th day of November 1986.