

Cite as Det. No. 95-153, 16 WTD 39 (1995)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment)	
)	No. 95-153
)	
. . .)	Unregistered
)	Real Estate Excise Tax
)	Affidavit
)	

WAC 458-61-420: REET -- EXEMPTION -- EMINENT DOMAIN -- CONDEMNATION/INVERSE CONDEMNATION. Whether a property is condemned or inversely condemned, it is transferred as a result of the actual exercise, or threat of, eminent domain and the transfer is therefore exempt from the REET.

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:

Petition concerning the applicability of the real estate excise tax (REET) to the transfer of real property to a Washington municipal corporation resulting from an inverse condemnation proceeding.¹

FACTS:

Bauer, A.L.J. -- The taxpayer filed for refund of REET paid on the transfer of real property to a Washington municipal corporation (hereafter, "the city"). The city's landfill had contaminated the property so badly that the property had become essentially worthless for building. The taxpayer filed a lawsuit against the city seeking compensation for the city's taking of the property. The sixth cause of action in the lawsuit was that the city had inversely condemned the property.

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

The city's answer to the suit included a counterclaim alleging that, if the taxpayer established that the city had damaged the property, then the city was entitled to "acquire an interest in the properties equivalent to the amount of the judgement under principles of eminent domain as a condemnation of the same."

The property was ultimately transferred to the city for compensation in settlement of the lawsuit.

The Miscellaneous Tax Section of the Department of Revenue denied the taxpayer's petition for a REET refund, reasoning that it found no evidence that the city planned to use, or admitted to using, condemnation proceedings to acquire the property. The taxpayer timely appealed.

ISSUE:

Whether the taxpayer is entitled to exemption from the REET under WAC 458-61-420, subsection (5)(e), when real property has been transferred pursuant to a settlement of an inverse condemnation proceeding.

DISCUSSION:

RCW 82.45.010(3) excludes from the term "sale" for purposes of the REET:

(g) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

In accordance with WAC 458-61-420 the REET does not apply to:

. . . (c) Transfers to . . . a municipal corporation, either under threat of the exercise of eminent domain or as a result of the actual exercise of eminent domain. . . .

Thus, transfers are exempt from the REET if they are the result of the exercise, or threatened exercise, of eminent domain.

Under the Constitution of the State of Washington, "eminent domain" is the taking or damaging of private property by a public entity:

No private property shall be taken or damaged for public or private use without just compensation having first been made

(Wash. Const. art. I, § 16)

Eminent domain can be exercised in two ways:

First, by "condemnation." For example, a city files a petition in court and then takes title to the property upon paying just compensation. Condemnation procedures are set forth in chapter 8.12 RCW.

Second, by "inverse condemnation." This is the opposite of condemnation, and involves the taking of property followed by the property owner suing to obtain just compensation. For example, the city first takes the property, the owner then files suit, and the city then takes title upon paying just compensation.

The Washington Supreme Court has held that when property owners have established a taking or damaging of their property, the resulting right to compensation when the property owners are forced to bring an inverse condemnation action is the same as if the property was taken by the usual, formal method of condemnation:

[T]he action [for inverse condemnation] is strongly analogous to the eminent domain proceeding. It differs from eminent domain only in that the landowner institutes the action, rather than the entity possessing the condemnation power.

Martin v. Port of Seattle, 64 Wn.2d 309, 318, 391 P.2d 540 (1964). (Emphasis added.); See also Sinatra, Inc. v. Seattle, 119 Wn.2d 1, 13, 829 P.2d 765 (1992)² and 27 Am. Jur. 2d Eminent Domain § 478 (1966).³

² A taking by regulation is often called an inverse condemnation, because the condemnation is found by the court after it has

[1] Thus, whether a property is condemned or inversely condemned, it is transferred as a result of the actual exercise or threat of eminent domain and the transfer is therefore exempt from the REET.

In its lawsuit, the taxpayer-plaintiff sued for inverse condemnation of its property. The city-defendant counterclaimed for the property's condemnation. As a result of these claims, the parties settled, and the city purchased the taxpayer's property for just compensation.

Because the property was transferred to the city for compensation under the threats of both inverse condemnation and condemnation, the transfer here was excludable from the definition of "sale" for purposes of the REET. It was therefore properly exempt.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is granted. This file shall be remanded to the the Miscellaneous Tax Section for a refund to be issued in accordance with this determination.

DATED this 31st day of July, 1995.

already implemented the regulation. Compensation is nonetheless required under the constitution if the property was taken for public use.

³ Inverse condemnation" has been characterized as an action or eminent domain proceeding initiated by the property owner rather than the condemnor . . .