

Cite as Det. No. 99-185, 19 WTD 655 (2000)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition of Refund of Real	)	<u>D E T E R M I N A T I O N</u>
Estate Excise Tax	)	
	)	
...	)	No. 99-185
	)	
	)	Unregistered
	)	REET Refund Request

WAC 456-61-230 ("RULE 230"): REET EXEMPTION – RECEIVERSHIP.  
Rule 230 provides an exemption from payment of REET when the conveyance of real property is made under either a Chapter 11 or Chapter 12 bankruptcy plan. The REET exemption does not apply to real property conveyances made by a trustee under a court appointed receivership order.

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 appeals the Department of Revenue's ("Department's") denial of a request for refund of Real Estate Excise Tax (REET).<sup>1</sup>

FACTS:

Lewis, A.L.J. (Successor to Rene, A.L.J) – . . . ("Taxpayer") is engaged in the home insurance business. Taxpayer experienced extreme financial difficulty. In . . . 1994 the Circuit Court of . . . , Virginia appointed a permanent receiver for Taxpayer's Rehabilitation or Recovery.

The Receivership Order vested the Receiver with legal and equitable title to all assets and property of Taxpayer, including real property. Under the Receivership Order, the Receiver was authorized to take any and all actions that it deems advisable in connection with Taxpayer's rehabilitation or liquidation.

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

At the time the Receivership Order, Taxpayer owned four condominium units (. . .), in . . ., Washington.

In . . . 1994 [after appointment of the Receiver], Taxpayer sold Condominium Unit No. . . . . As seller, Taxpayer paid REET of \$, . . in connection with the sale. On January 15, 1995, Taxpayer wrote to the Department requesting a refund of REET paid and a ruling that future sales of real property by the Receiver were exempt from payment of REET.

WAC 458-20-230 (Rule 230) allows an exemption from REET for real estate transfers made under approved Chapter 11 and Chapter 12 bankruptcy plans. According to Taxpayer:

“Receivership proceedings of [Taxpayer] are similar in nature to the reorganization proceedings of a company in bankruptcy” and the “sale of real property by the Receiver of [Taxpayer] is analogous to the sale of real property by a trustee in bankruptcy when made under a Chapter 11 plan of reorganization or a Chapter 13 plan of adjustment”.

In addition, Taxpayer maintained that Federal law prohibits insurance companies from filing bankruptcy and that state receivership process is the equivalent of bankruptcy.

On January 31, 1995 the Department’s Special Programs Division issued a letter denying Taxpayer’s request for refund and ruling that future real estate transactions by the Receiver were not exempt from payment of REET. The Special Programs Division denied Taxpayer’s petition finding that:

[s]ince the wording of WAC 458-61-230 pertains only to approved bankruptcy plans, my position must be that receivership proceedings do not qualify for the exemption. **Therefore, the exemption under that rule does not apply to these transfers and real estate excise tax is due.**

(Bold original text.)

In February 1995, Taxpayer sold Condominium Unit No. . . . . Taxpayer paid \$. . . REET in connection with the Condominium’s sale. On February 27, 1995 Taxpayer filed a petition appealing the Special Programs Division January 31, 1995 ruling and requesting a refund of \$. . . REET and a determination that Taxpayer is not required to pay REET in connection with its sale of real estate in Washington during the receivership proceeding. In August 1995, Taxpayer amended its petition to request a refund of an additional \$. . . REET paid in July 1995 in connection with the sale of Condominium Unit No. . . . .

#### ISSUE:

Does Taxpayer’s sale of real property by a Receiver qualify for the REET exemption allowed by WAC 458-61-230?

#### DISCUSSION:

[1] RCW 82.45 provides for an excise tax on the conveyances of real property. The statutory language of RCW 82.45.060(1) requires that the tax be paid on “each sale of real property”:

There is imposed an excise tax upon each sale of real property at the rate of 1.28% of selling price.

(Emphasis added.)

RCW 82.45.010(1) defines “sale” as:

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, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

Payment of the tax is the obligation of the seller. RCW 82.45.080. RCW 82.45.020 defines “seller” as:

...any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, quasi municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise; but it shall not include the United States or the state of Washington.

(Emphasis added.)

Specific exemptions from the tax are provided by means of defining the term “sale” not to include certain conveyances, which are listed in RCW 82.45.010. However, a more specific tax exemption is provided by WAC 458-61-230 (Rule 230). Rule 230 provides a REET exemption for conveyances of real property made by a trustee under a Chapter 11 or 12 Bankruptcy plan. Rule 230(1) states that:

The real estate excise tax applies to conveyances of real property by a trustee in bankruptcy when made under either a chapter 7 plan or chapter 13 plan, but not when made under a chapter 11 plan or chapter 12 plan.<sup>2</sup>

(Footnote added.)

Rule 230 allows a very specific exemption for conveyances of real property by a trustee in a Chapter 11 or 12 bankruptcy reorganization.<sup>3</sup> Taxpayer maintained that it should be allowed the REET exemption because its receivership proceedings are similar to the reorganizational proceedings of a company in bankruptcy and that the “sale of real property by the receiver ... is analogous to the sale of real property by a trustee in bankruptcy when made under a Chapter 11 plan of reorganization or a Chapter 13 plan of adjustment.”

With very few limited exceptions, the REET is imposed on the seller when real property is conveyed. The REET that Taxpayer was required to pay on the sale of the condominiums is the same tax it would have been required to pay had it not been in receivership. See, California State Bd. of Equalization v. Sierra Summit, 490 U.S. 844, 109 S.Ct 2228, 104 L.Ed.2d 910 (1989).

The Supreme Court has repeatedly held that exemptions from taxation must be plainly and unmistakably authorized by legislative authority.

The Supreme Court of the United States, in the case of Chicago Theological Seminary v. Illinois, 188 U.S. 662, 23 S. Ct. 386 (1903) said:

The rule is that, in claims for exemption from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim.

Tacoma v. Washington Tax Commission, 177 Wash. 604, 33 P.2d 899 (1934).

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<sup>2</sup> **Chapter 7 (Straight Bankruptcy)** A proceeding designed to liquidate the debtor’s property, pay off his or her creditors, and discharge the debtor from his or her other debts. **Chapter 13 (Wage Earner’s Plan)** allows an insolvent debtor, who is a wage earner to formulate and file a plan with the court that provides the debtor with additional time to pay off unsecured creditors. **Chapter 11 (Business Reorganization)** a debtor may petition for reorganization under Chapter 11 when it realizes it will become insolvent or unable to pay its debts as they mature. The debtor business is normally permitted to continue its operation under court supervision until some plan of reorganization is approved by two-thirds of the creditors. If the business is insolvent at the time a petition for reorganization is filed, a majority of the shareholders must also approve the plan. If agreement cannot be reached, then the court will supervise liquidation proceedings for the business as in any other situation of bankruptcy. **Chapter 12 (Family Farmer Bankruptcy)** provides a special debt repayment relief for a “family farmer with regular income” whose annual income is sufficiently stable and regular to enable such a farmer to make payments under a plan.

<sup>3</sup> Despite the fact that the statutory definition of seller includes a “trustee in bankruptcy”, RCW 82.45.020, the Supremacy Clause of the United States Constitution precludes taxation of transfers in Chapter 11 and 12 Bankruptcy proceedings.

In this case, Taxpayer is asking that a very narrow REET exemption be extended by implication. Neither RCW 82.45 nor Rule 230 provides an exemption for real estate conveyances made by state appointed receivers. Nor, does the supremacy clause of the United States Constitution apply to Taxpayer in a State of Virginia receivership. We are unable to grant the relief requested by Taxpayer because the Department, as an administrative agency, does not have the discretion to waive the requirements for an exemption mandated by law. Det. No. 86-278, 1 WTD 287 (1986).

DECISION AND DISPOSITION:

Taxpayer's request for refund is denied.

DATED this 17<sup>th</sup> day of June 1999.