

Cite as Det. No. 99-251, 19 WTD 574 (2000)

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. 99-251
)	
...)	Registration No. . . .
)	REET Refund Request

[1] WAC 458-61-330, RCW 82.45.010: REAL ESTATE EXCISE TAX – SALE – IN LIEU OF FORFEITURE OF CONTRACT – RECISSION. A seller is not entitled to a refund of real estate excise tax as a transfer in lieu of forfeiture of a contract of sale when the buyer defaults on the real estate contract and abandons the property. In order for the Department of Revenue to treat a sale as though it never occurred, there must be both a rescission of the original contract and both parties must be restored to their original positions.

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:

A marital community seeks a tax refund of real estate excise tax (REET) paid on the original transfer of a mobile home to a contract buyer who later defaulted on the contract and abandoned the mobile home.¹

FACTS:

Gray, A.L.J. -- The taxpayers, a marital community, live in Washington. On August 11, 1994, the taxpayers sold a mobile home on contract to a buyer. The taxpayers paid REET on the sale of the mobile home. The buyer took possession of the property on or about August 11, 1994. The buyer later defaulted on the contract and abandoned the mobile home. The taxpayers sought a tax refund of the 1994 conveyance to the buyer. The taxpayers cited WAC 458-61-330 as the basis for their tax refund. The Special Programs Division of the Department of Revenue denied the refund request on May 15, 1998. The taxpayers appealed to this Division.

ISSUE:

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

Whether REET previously paid on the sale of real property is refundable if the buyer subsequently defaults on the contract to purchase the real property.

DISCUSSION:

As with all tax questions, the starting point is with the statutes. Chapter 82.45 RCW contains the REET. RCW 82.45.010(1) and (2) define "sale." RCW 82.45.010(1) broadly defines "sale:"

(1) 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.

Under this broad definition of sale, the August 11, 1994 conveyance from the taxpayers to the buyer was a sale of real property.

WAC 458-61-330, relied on by the taxpayers, states:

(2) The real estate excise tax does not apply to the following transfers where no additional consideration passes:

...

(b) A transfer from a contract purchaser to the contract holder in lieu of forfeiture of a contract of sale upon default of the underlying obligation[.]

However, this language applies to the default by the buyer, not to the 1994 sale.² The Department did not attempt to tax the recovery of the mobile home by the taxpayers, nor did the taxpayers pay the tax and seek a refund. The requested refund is the tax paid in 1994 when the taxpayers sold the mobile home to the buyer. We find no statutory authority to support the petition for refund.

In order for the Department to treat a sale as though it never occurred there must be both a rescission of the original contract and both parties must be restored to their original positions. This situation was discussed in Det. No. 88-365, 6 WTD 403 (1988):

Chapter 458-61 of the Washington Administrative Code contains the rules established by the Department for the administration of the real estate excise tax. WAC 458-61-100 states

² The statutory authority for WAC 458-61-330 is RCW 82.45.010(3).

the only transactions for which the Department is authorized to issue tax refunds. WAC 458-61-100(4)(a) provides for a refund for "[t]ransactions that are completely rescinded as defined in WAC 458-61-030(19)."

WAC 458-61-030(19) defines a "rescinded transfer" as

a real property transfer wherein both grantor and grantee have been restored to their original positions. In such case, title to the real property has been reconveyed to the grantor and all valuable consideration paid toward the sales price principal has been returned to the grantee.

The word "rescind" is a legal term, which means:

To abrogate, annul, avoid, or cancel a contract; particularly, nullifying a contract by the act of a party. . . . To declare a contract void in its inception and to put an end to it as though it never were. . . . Not merely to terminate it and release parties from further obligations to each other but to abrogate it from the beginning and restore parties to relative positions, which they would have occupied, had no contract ever been made. . . . (Citations omitted.) (Black's Law Dictionary 1471 (4th edition 1968))

Under Washington law, a rescission can occur when there is a mutual consent to rescind the contract. Woodruff v. McClellan, 95 Wn.2d 394, 397 (1980).

In this case, we do not find the original contract was rescinded. The seller did not refund all of the \$15,000 downpayment and principal paid. In fact, the Agreement between the sellers and purchasers stated that the purchasers had some time to try to sell or refinance the property "to pay out [seller] and protect the additional equity which the [buyers] feel they have in the property."

Even if we treat the buyer's abandonment of the contract as completion of the "mutual consent" requirement, there has been no showing that the seller refunded all of the downpayment and principal paid by the buyer until he abandoned the property.

There being no authority to refund the tax, we must deny the petition.

DECISION AND DISPOSITION:

The petition for refund is denied.

Dated this 30th day of July 1999.