Cite as Det. No. 05-0247, 25 WTD 85 (2006)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of	)	D E T E R M I N A T I O N
	)	No. 05-0247
	)	
. . .	)	Registration No.
	)	REET Refund
	)	Docket No.
	)	

RCW 82.45.010(2)(e): REAL ESTATE EXCISE TAX (REET) – MERETRICIOUS RELATIONSHIP – PROPERTY SETTLEMENT AGREEMENT. The REET exemption in RCW 82.45.010(2)(e) for sales of real property "from one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement" does not apply to a transfer of an interest in real property under the terms of a settlement agreement between former partners in a meretricious relationship.

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

Rosenbloom, A.L.J. – Taxpayer petitions for a refund of real estate excise tax (REET) paid on an assignment of an interest in real property pursuant to a property settlement agreement between former partners in a meretricious relationship. The petition is denied.[1]

ISSUES

1) Does the REET exemption in RCW 82.45.010(2)(e) for sales of real property "from one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement" apply to a transfer of an interest in real property under the terms of a settlement agreement between former partners in a meretricious relationship?

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

2) What is the appropriate measure of the REET when a former partner in a meretricious relationship quitclaims an interest in real property, and the underlying debt is assumed by the other former partner?

FINDINGS OF FACT

[The Taxpayer] was in a long-term domestic relationship with [Former Partner]. Early in their relationship, they bought a home in both their names; however, taxpayer paid the entire down payment and made all the monthly mortgage payments. They subsequently bought a second home, which is the subject of this action. The second home was also purchased in both their names, though taxpayer paid the entire down payment and made all the monthly mortgage payments.

Sometime later, the couple decided to end their relationship. Attorneys advised the taxpayer that the couple, now ex-couple, had established a meretricious relationship, so [Former Partner] could potentially make an equitable claim against the taxpayer's property, including his real property. The ex-couple engaged a professional mediator to facilitate a settlement agreement.

Under the terms of the settlement agreement, [Former Partner] moved into the couple's first home and took over the payments on the remaining mortgage. The taxpayer is required to execute a quit claim upon demand, giving [Former Partner] full title to the first home. The second home was awarded to the taxpayer, who decided to refinance it, and [Former Partner] signed a quit claim deed. The balance due on the mortgage on the second home was approximately $ . . . .

When taxpayer discovered that the county intended to impose REET on one-half of the debt on the second home, taxpayer delayed the closing, liquidated some of his own assets, and paid down the balance of the loan by about $. . . , leaving a balance of approximately $. . . . The county imposed a REET of $. . . , measured by one-half the remaining balance due on the mortgage at the time of the rescheduled closing. The taxpayer paid the assessment and requested a refund.

ANALYSIS

RCW 82.45.060 imposes an excise tax on every "sale of real estate" in Washington. The tax levied under Chapter 82.45 is the obligation of the seller. RCW 82.45.080. "Sale" is broadly and inclusively defined by RCW 82.45.010 as "any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, . . . or any estate or interest therein for a valuable consideration."

Under RCW 82.45.080, the REET is the obligation of the seller, which in this case is [Former Partner], not the taxpayer. However, we understand that the tax was paid with the taxpayer's funds, and thus the taxpayer may claim an equitable interest in any refund that might be due. We do not reach this issue, however, because we find the tax was properly due.

RCW 82.45.010(2)(e) provides an exemption for "[t]he assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement." The taxpayer argues that equity demands the same treatment for settlement agreements negotiated between partners in a meretricious relationship.

According to his petition for refund:

> I do not believe it is fair (the law specifically discriminates [against] non-married domestic partners, however your courts treat us the same as married couples with regard to property settlement when we separated – can't have it both ways!!).

The fact that Washington courts may treat partners in a meretricious relationship in the same manner as a married couple for purposes of a property settlement is not controlling here. "[T]he principles of RCW 26.09.080 [pertaining to disposition of property and liabilities upon dissolution of marriage] have plainly been incorporated into a common law rule applicable to the disposition of property following a meretricious relationship." *Connell v. Francisco***,** 74 Wash. App. 306, 313, 872 P.2d 1150 (1994). However, "our courts have consistently refused to extend certain statutory benefits to partners in a meretricious relationship." [2] *Id*., at 314.

The statute here at issue is clearly limited to transfers "from one spouse to the other." RCW 82.45.010(2)(e) (emphasis supplied.) By common definition, a spouse is a marriage partner or a wife or husband. *Peffley-Warner v. Bowen*, 113 Wn.2d 243, 778 P.2d 1022 (1989). The Department, as an administrative agency, has no authority to grant an exemption where none exists in the law. Only the legislature, through enactment of appropriate legislation, may do so. *See Budget Rent A Car v. State*, 81 Wn.2d 171, 500 P.2d 764 (1972).

With regard to the measure of the tax, the taxpayer's petition asserts:

> [T]he State's determination that the financial liability and debt was split equally . . . is not correct. I made the down payment and all of the subsequent mortgage payments, I took 100% of the Federal Tax deductions on the property. [Former Partner] was on the loan mainly as a surviving interest (in event I died), and since the loan company insisted on it, since we were living together at the time.

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[2] *See Davis v. Department of Empl. Security*, 108 Wn.2d 272, 279, 737 P.2d 1262 (1987) (unmarried cohabitant ineligible for benefits triggered by "marital status" under unemployment compensation statutes); *Western Comm'ty Bank v. Helmer*, 48 Wash. App. 694, 740 P.2d 359 (1987) (RCW 26.09.140, which permits an award of attorney fees and costs for maintaining or defending a proceeding under RCW 26.09, is inapplicable to property division between parties involved in a meretricious relationship); *Roe v. Ludtke Trucking, Inc.*, 46 Wash. App. 816, 732 P.2d 1021 (1987) (under wrongful death statute an unmarried cohabitant is not included within the statutory category of "wife").

However, the issue is not whether taxpayer made the down payment and all of the subsequent mortgage payments, nor what his motive was for putting the house in both their names. Rather, the issues are: 1) Whether [Former Partner] had an interest in the real property; and 2) whether she transferred that interest to the taxpayer for a valuable consideration.

First, [Former Partner] clearly had an interest in the real property, either because she received it as a gift from the taxpayer when he placed the property in both their names, or because she acquired it as an equitable right by virtue of their meretricious relationship. There would have been no need for the settlement agreement were this not the case.

Secondly, [Former Partner] conveyed her interest by way of a quit claim for a valuable consideration. Prior to the transaction, [Former Partner] was jointly liable on the underlying debt. After the transaction, she was free of the debt. Relief from a loan obligation is something of value.

WAC 458-61-030(3)[3] expressly defines "consideration" as follows:

> . . . money or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, or services performed or contracted to be performed in return for the sale and includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

(Emphasis added.)

Furthermore, WAC 458-61-225[4] provides in part:

> **Assumption of debt** (1) In addition to other circumstances where valuable consideration passes between the parties, the real estate excise tax applies to transfers of real property when an underlying debt on the property is assumed by the grantee.
>
> (2) The measure of the tax is the combined amount of the debt and any other additional consideration. . . .

(Emphasis added.)

At the hearing, the taxpayer raised an additional argument. The balance due on the mortgage when the settlement agreement was negotiated was about $136,000, one-half of which was about $68,000. When the taxpayer learned he was going to have to pay REET, he delayed the closing, liquidated other assets to come up with about $84,000 which he used to pay down the mortgage to about $52,000. The county then applied REET to one-half of this remaining balance. The

[3 New REET rules were adopted, effective December 17, 2005. *See* WAC 458-61A. WAC 458-61A-102 contains a similar definition of consideration.]
[4 *See* WAC 458-61A-201.]

taxpayer argued that county should have instead applied the entire $84,000 to [Former Partner's] share of the original balance, which would have reduced her obligation under the mortgage to less than $0.

We disagree. As a co-borrower, [Former Partner] would remain jointly and severally liable to the lender on the balance due on the loan at the time of a default, regardless of any claim by the taxpayer that he had previously paid "her share" of the loan.

DECISION AND DISPOSITION

The taxpayer's petition for refund is denied.

Dated this 21st day of October, 2005.