

Cite as Det. No. 14-0143, 33 WTD 490 (2014)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of ) Assessment of ) ) . . . ) ) )	<u>D E T E R M I N A T I O N</u>  No. 14-0143  Registration No. . . .
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[1] RULE 458-61A-102, RULE 458-61A-103, RULE 458-61A-201; RCW 82.45.010, RCW 82.45.060, RCW 82.45.150, RCW 82.32.070, RCW 82.32.110: REAL ESTATE EXCISE TAX (REET) – SALE – CONSIDERATION – GIFT EXEMPTION – RECORDS – ADMINISTRATION: The Department denied the taxpayer’s request for a REET gift exemption because the taxpayer provided insufficient records that she qualified for the exemption. The taxpayer claimed no consideration was given for the transfer of ownership in residential real property, but failed to provide sufficient records showing that the taxpayer and grantee jointly paid joint mortgage debt both before and after the transfer of ownership interest.

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.

Valentine, A.L.J. – [Taxpayer] appeals the assessment of real estate excise tax (REET) on the quitclaim transfer of a partial interest in real property. Taxpayer contends the transfer qualifies for the gift exemption. Taxpayer’s petition is denied.<sup>1</sup>

ISSUE

Under Chapter 82.45 RCW (Excise Tax on Real Estate Sales) and Chapter 458-61A WAC (Real Estate Excise Tax), was a mother’s transfer of mortgaged real property to her son a gift without consideration, when mother and son had joint liability for the debt before and after the transfer, and mother provided no documentation to show joint payments on the debt?

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

## FINDINGS OF FACT

Taxpayer purchased the real property at issue in 1998. In April 2005, she refinanced the property with her son (Grantee) as a co-borrower. Also in 2005, Taxpayer executed a quitclaim deed wherein she gave Grantee an ownership interest in the property, after which she and Grantee owned the property as tenants in common. Thus, as of April 2005, Taxpayer and Grantee were joint owners of the property and jointly liable for the mortgage debt. Taxpayer paid REET on the 2005 quitclaim transfer noting that the consideration received was Grantee's assumption of shared mortgage liability as a co-borrower.

In August 2012, Taxpayer quitclaimed her remaining interest in the property to Grantee, after which he was the sole owner. Taxpayer and Grantee, however, remained jointly liable for the mortgage debt. Taxpayer did not pay REET on the August 2012 transfer. Taxpayer completed a REET Affidavit and claimed the gift exemption pursuant to WAC 458-61A-201. Taxpayer also completed the required REET Supplemental Statement and checked "Gifts without consideration" as the appropriate gift classification.

Specifically, Taxpayer checked box number four under the "Gifts without consideration" section of the supplemental statement. The statement attached to box number four reads as follows:

Grantor (seller) and grantee (buyer) have made and will continue to make payments from joint account on total debt before and after the transfer. Grantee (buyer) has not paid grantor (seller) any consideration towards equity. No tax is due.

The Department of Revenue's (Department's) Special Programs Division (Special Programs) reviewed the August 2012 quitclaim transaction and requested additional documentation from Taxpayer in support of the claimed gift exemption. Special Programs requested copies of approximately one year's worth of bank statements, from the payment account, showing that Taxpayer and Grantee paid the monthly mortgage payment from a joint bank account both before and after the quitclaim transfer.<sup>2</sup>

Taxpayer provided documentation regarding both the 2005 and the 2012 quitclaim transactions, including a copy of the 2005 refinance loan documents. Taxpayer did not, however, provide copies of the requested bank statements. As a result, Special Programs denied the exemption and assessed REET of \$. . . and interest of \$. . . , for a total amount due of \$. . . .

Taxpayer contends documentation showing that Taxpayer and Grantee had joint mortgage liability, both before and after the August 2012 quitclaim transfer, is sufficient to prove there was no consideration from Grantee to Taxpayer in exchange for Taxpayer's remaining ownership interest in the property. Taxpayer asserts that consideration in the form of debt relief in this case is impossible because she remained liable for the entire mortgage debt, as a co-borrower, even after the August 2012 quitclaim transfer.

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<sup>2</sup> Special Programs requested copies of bank statements for the time-period of February 2012 through February 2013.

In addition, Taxpayer contends that the administrative rules cited by Special Programs in its explanation of the assessment are not legal authority for a tax assessment.

### ANALYSIS

Because this case deals primarily with whether a taxpayer meets the requirements for qualification for a specific tax exemption, it is important to note that, in Washington, exemption statutes are narrowly construed against taxpayers in favor of application of the tax, and taxpayers have the burden of establishing eligibility for an exemption.<sup>3</sup>

We also note that RCW 82.45.150 instructs the Department to promulgate rules for the “effective administration” of Chapter 82.45 RCW.<sup>4</sup> Thus, the Washington Legislature requires the Department to create rules for the administration of Washington’s REET statutes. Chapter 458-61A WAC encompasses the Department’s rules for the administration of REET.

Every sale of real property located within Washington is subject to REET unless the sale is specifically exempted from the tax.<sup>5</sup> The term “sale,” for REET purposes, “shall have its ordinary meaning and shall include any conveyance, grant, assignment, *quitclaim*, or transfer of the ownership of or title to real property . . . *for a valuable consideration*.”<sup>6</sup> (Emphasis added). The term “sale” does not include a “transfer by *gift*, devise, or inheritance.”<sup>7</sup> (Emphasis added).

WAC 458-61A-102 is the Department’s administrative rule that defines terms applicable to REET. Section 2 defines “consideration” as “*money or anything of value*, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property.” (Emphasis added.) The term “consideration” also includes “the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of the sale.”<sup>8</sup> For example, “consideration” includes “the assumption of an underlying debt on the property by the buyer at the time of the transfer.”<sup>9</sup>

Relief from total liability for debt, however, is not the only means by which consideration can be offered when a transfer of real property involves underlying debt. WAC 458-61A-103 states that “real estate excise tax applies to transfers of real property when the grantee relieves the grantor from

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<sup>3</sup> *Sacred Heart Medical Center v. Dep’t of Revenue*, 88 Wn. App. 632, 637, 946 P.2d 409 (1997); *Budget Rent-a-Car, Inc. v. Dep’t of Revenue*, 81 Wn.2d 171, 500 P.2d 764 (1972); *Yakima Fruit Growers Ass’n v. Henneford*, 187 Wash. 252, 258, 60 P.2d 62 (1936); *All-State Constr. Co. v. Gordon*, 70 Wn.2d 657, 425 P.2d 16 (1967).

<sup>4</sup> “The department of revenue shall by rule provide for the effective administration of this chapter.”

<sup>5</sup> RCW 82.45.060; WAC 458-61A-100.

<sup>6</sup> RCW 82.45.010(1); WAC 458-61A-102(17)(a).

<sup>7</sup> RCW 82.45.010(3)(a).

<sup>8</sup> WAC 458-61A-102(2).

<sup>9</sup> WAC 458-61A-102(2)(b).

an underlying debt on the property *or makes payments on the grantor's debt*. (Emphasis added.) Thus, a grantee making payments on the grantor's debt also constitutes consideration.<sup>10</sup>

WAC 458-61A-201 describes the type of real property transfer that constitutes a gift:

- (1) **Introduction.** Generally, a gift of real property is not a sale, and is not subject to the real estate excise tax. A gift of real property is a transfer for which there is no consideration given in return for granting an interest in the property.

WAC 458-61A-201(5) describes the documentation required for a taxpayer to show qualification for the gift exemption:

- (a) A completed real estate excise tax affidavit is required for transfers by gift. A supplemental statement approved by the department must be completed and attached to the affidavit. The supplemental statement will attest to the existence or absence of underlying debt on the property, whether the grantee has or will in the future make any payments on the debt and whether a refinance of debt has occurred or is planned to occur. The statement must be signed by both the grantor and the grantee.
- (b) The grantor must retain financial records providing proof that grantor is entitled to this exemption in case of audit by the department. Failure to provide records upon request will result in subsequent denial of the exemption.
- (c) Examples – Existing Debt.

(v) Bob conveys his residence valued at \$200,000 to himself and Jane as tenants in common. Bob has \$25,000 equity and an underlying debt of \$175,000. Bob and Jane have contributed varying amounts to an existing joint bank account for many years prior to the conveyance. Mortgage payments have been made from the joint account both before and after the transfer. The conveyance is exempt from real estate excise tax, because Jane's contributions toward the joint account from which the payments are made is not deemed consideration in exchange for the transfer from Bob (because she made contributions for many years before the transfer as well as after the transfer, there is no evidence that her payments were consideration for the transfer).

Although the transfer at issue in this appeal is not identical to the one in the example outlined above, the analysis is similar. In the present case, there was underlying debt at the time of the transfer of real estate. Taxpayer and Grantee filed the required REET affidavit and the supplemental statement wherein they each attested that mortgage payments had been paid from a joint bank account prior to the transfer and payment would likewise continue after the transfer. Special Programs asked for copies of bank statements to verify the payment history. Taxpayer, however, did not provide copies of the requested bank statements showing the before and after payment history, which could

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<sup>10</sup> See also Det. No. 11-0026, 31 WTD 78 (2012).

establish that Taxpayer received no consideration for the transfer of real property to Grantee. Thus, Special Programs denied Taxpayer's claim for the REET gift exemption.

We sustain Special Program's decision. RCW 82.45.150 incorporates certain provisions of Chapter 82.32 RCW into the REET statutes of Chapter 82.45 RCW, including RCW 82.32.110, which authorizes the Department to "examine any books, papers, records, or other data . . . bearing upon the amount of any tax payable." RCW 82.32.070, which also is incorporated into the REET statutes by RCW 82.45.150, requires taxpayers to "keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he or she may be liable." In addition, as outlined in WAC 458-61A-201, Taxpayer has the burden of proving that she qualifies for the gift exemption. We also note that RCW 82.45.100(4) imposes a tax assessment, including interest and penalties, if applicable, against a taxpayer "[if] upon examination of any affidavits or from other information obtained by the department . . . it appears that all or a portion of the tax is unpaid."

In the present case, Taxpayer did not provide copies of bank statements showing that she and Grantee paid the mortgage, both before and after the August 2012 transfer, from a joint resource, such as a joint bank account. Taxpayer, therefore, has not established that Grantee did not receive Taxpayer's remaining ownership interest in the property at issue in exchange for Grantee making sole payments on the joint debt. As stated in WAC 458-61A-103, REET "applies to transfers of real property when the grantee relieves the grantor from an underlying debt on the property *or makes payments on the grantor's debt.*" (Emphasis added.)

Thus, the administrative rule provides for a scenario in which a grantor retains liability for the debt, as Taxpayer does in this case. The rule also clearly differentiates between relieving the grantor from underlying debt and making payments on a grantor's debt. Outright debt elimination is not required for consideration to exist. Any sole mortgage payments made by Grantee would qualify as making payments on Taxpayer's debt and would constitute consideration under WAC 458-61A-103.

As a practical matter, any sole payments made by Grantee toward the joint mortgage liability would relieve Taxpayer from underlying debt; as the amount owed decreases, Taxpayer's overall debt liability decreases. The fact that Grantee is also liable for the overall debt does not change the fact that Taxpayer's liability also decreases with each payment. Also as a practical matter, any sole payments on the joint debt made by Grantee would increase Taxpayer's cash flow on a monthly basis. If Taxpayer no longer contributed to the mortgage payments after the August 2012 quitclaim transfer, Taxpayer would have a greater availability of funds at her disposal on a monthly basis. Thus, in order to determine whether consideration was a factor in the August 2012 quitclaim transfer, Special Programs needed to verify that Taxpayer and Grantee continued to make mortgage payments from a joint bank account to which both parties contributed. Without such verification, Special Programs was unable to determine whether the transfer at issue was a gift without consideration.

In summary, Taxpayer did not provide Special Programs with the documentation necessary to prove that Grantee did not take over sole payment of the underlying joint debt. Taxpayer attested that the

mortgage payment was paid out of the joint account of Taxpayer and Grantee before and after the quitclaim transfer, but Taxpayer provides no documentation, as requested by Special Programs, to verify the claim. Thus, Taxpayer does not meet her burden to show that she is entitled to the exemption, and Special Programs was within its scope of authority, pursuant to statute and rule, to deny her claim for exemption and to issue the assessment.

#### **DECISION AND DISPOSITION**

Taxpayer's petition is denied.

Dated this 29th day of April 2014.