

Cite as Det. No. 18-0100, 38 WTD 220 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of )	<u>D E T E R M I N A T I O N</u>
Assessment of )	
) )	No. 18-0100
) )	
. . . )	Registration No. . . .
) )	

WAC 458-61A-211; RCW 82.45.010: REAL ESTATE EXCISE TAX – SALE – EXCLUSIONS – MERE CHANGE IN IDENTITY OR FORM. A transfer of real property from an S corporation to a former shareholder is not exempt from real estate excise tax as a mere change in identity or form where the transfer occurred after the former shareholder surrendered his share in the S corporation.

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.

Anderson, T.R.O. – An S corporation disputes an assessment of real estate excise tax (“REET”) on property transferred to one of its shareholders and asserts the transfer is exempt from REET under RCW 82.45.010(3)(p) (and WAC 458-61A-211) as a mere change in identity or form. Petition denied.<sup>1</sup>

### ISSUE

Whether an S corporation’s transfer of real property to one of its shareholders constitutes a mere change in identity or form that is exempt from REET under RCW 82.45.010(3)(p) (and WAC 458-61A-211).

### FINDINGS OF FACT

. . . (“Taxpayer”) is an S corporation that provides real estate management services. On November 18, 2014, Taxpayer transferred real property located at . . . WA, (the “Property”) to [Shareholder 1], one of its shareholders. Taxpayer claimed the transfer of the Property was exempt from REET because it was a mere change in identity or form.

On October 27, 2016, and again on November 14, 2016, the Department’s Special Programs Division (“Special Programs”) requested additional information about the transfer and claimed

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

REET exemption. Taxpayer did not respond. On November 30, 2016, Special Programs issued a \$ . . . assessment for REET on 100% of the assessed value of the Property (\$ . . . ).

Taxpayer responded to the assessment and provided additional information. Special Programs reviewed the information and concluded that it showed Taxpayer had two 50% shareholders: [Shareholder 1] and [Shareholder 2]. Special Programs went on to conclude that, “The property has gone from two owners to one owner, so the beneficial ownership of the property has changed, and the Mere Change exemption is invalid.” Real Estate Excise Tax Assessment dated February 3, 2017. As a result, on February 3, 2017, Special Programs issued an adjusted REET assessment for \$ . . . , based on 50% of the assessed value of the Property (\$ . . . ).

Taxpayer responded to the adjusted assessment and provided additional information. Special Programs reviewed the information and concluded that it showed that Taxpayer transferred the Property to [Shareholder 1] after he had surrendered his interest (in Taxpayer), and, at the time of the transfer, Taxpayer had one shareholder: [Shareholder 2]. Special Programs went on to conclude, “Transferring the property to [Shareholder 1] therefore results in a 100% change in the beneficial ownership of the property. Exemption is not valid for REET.” Real Estate Excise Tax Assessment dated March 15, 2017. As a result, on March 15, 2017, Special Programs issued an adjusted REET assessment for \$ . . . , based on 100% of the assessed value of the Property (\$ . . . ).

On April 13, 2017, Taxpayer timely petitioned for review of this assessment. Taxpayer states in its petition:

The company [Taxpayer] owned two properties of equal value. The two officers ([Shareholder 2] and [Shareholder 1]) each had a 50% ownership in two companies . . . Properties and . . . Management. In the division of the partnership each 50% owner took possession of one company and one property each[.] [Shareholder 1] took the management company and the Washington property. It was not a sale or a gain, just a division of assets. The corp paperwork was executed prior to the property deeds but the corp minutes outlined the agreement prior to the release of the stock equity.

It seems like the issue is the date of the stock transfer and the deed transfer. We have shown that we were 50/50 owners of the company and the property and then 100% company owner for [Shareholder 2] and 100% owner of the property for [Shareholder 1]. The same process took place with the management corp and [out-of-state] property. It was a fair and equal division of assets not a sale or exchange for value.

Taxpayer’s Petition for Review dated April 13, 2017.

Taxpayer provided corporate minutes that read:

Discussion: [Shareholder 1] and [Shareholder 2] to discuss the change of ownership and officers of . . . .

Conclusions: It is decided that [Shareholder 2] will be the CEO and sole officer of the Corporation. [Shareholder 1] will be removed from ownership of the Corporation and resign as an officer of the Corporation.

#### Action Items

Create new State of Information and submit to Sec. of State

Remove [Shareholder 1] from business bank account.

Minutes title “Change of Officers – . . . Properties, Inc.” dated 9AM, May 21, 2014. The corporate minutes do not mention a transfer of the Property. A Bureau of Real Estate “Corporate Change Application” shows that Taxpayer removed [Shareholder 1] as its designated officer and added [Shareholder 2] as its designated officer, effective June 3, 2014.

A 2014 Federal income tax return (Form 1120S – U.S. Income Tax Return for an S Corporation) for a related entity, . . . Management Inc., shows that, on June 1, 2014, [Shareholder 2] transferred his entire interest in Taxpayer (100 shares) to [Shareholder 1], and [Shareholder 1] became the sole shareholder of . . . Management Inc., as of June 1, 2014. Taxpayer did not provide its 2014 Federal income tax return. Taxpayer's 2015 Federal income tax return (Form 1120S – U.S. Income Tax Return for an S Corporation) shows that [Shareholder 2] was the sole shareholder throughout the year.

### ANALYSIS

A sale of real property is subject to REET. RCW 82.45.060. “Sale” is broadly defined by statute and “has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, . . . [for a valuable consideration . . .]” RCW 82.45.010(1). However, certain transfers of real property are excluded from the definition of “sale.” See RCW 82.45.010(3).

Here, Taxpayer transferred the Property to [Shareholder 1]. Under RCW 82.45.010(1), this transfer constitutes a “sale,” unless a specific exclusion applies. Taxpayer asserts that the transfer of real property to [Shareholder 1] is not a “sale” (and not subject to REET) because it is a transfer that is a mere change in identity and excluded from the definition of “sale” (and REET) by RCW 82.45.010(3)(p).

RCW 82.45.010(3) reads as follows: “The term “sale” does not include: . . . (p) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership.” WAC 458-61A-211 explains the mere change in identity or form exemption further and reads:

A transfer of real property is exempt from the real estate excise tax if it consists of a mere change in identity or form of ownership of an entity. This exemption is not limited to transfers involving corporations and partnership, and includes transfers of trusts, estates, associations, limited liability companies and other entities. *If the transfer of real property results in the grantor(s) having a different proportional interest in the property after the transfer, real estate excise tax applies.*

WAC 458-61A-211(1) (emphasis added). WAC 458-61A-211 goes on to provide examples of qualified transfers. As relevant here, WAC 458-61A-211 reads as follows:

(2) **Qualified transactions.** A mere change in form or identity where no change in beneficial ownership has occurred includes, but is not limited to:

...

(b) The transfer by a corporation, partnership, or other entity of its interest in real property to its shareholders or partners, who will hold the real property either as individuals or as tenants in common in the same pro rata share as they owned the corporation, partnership, or other entity. To the extent that a distribution of real property is disproportionate to the interest the grantee partner has in the partnership, it will be subject to the real estate excise tax.

WAC 458-61A-211 (emphasis in original). WAC 458-61A-211 goes on to provide the following, relevant and illustrative example:

Fred and Steve are equal partners in Jazzy Partnership. They decide to transfer real property from the partnership to themselves as individuals. Based on its true and fair value, the partnership transfers 60% of the real property to Fred and 40% to Steve. This distribution is not in proportion to their ownership interest in Jazzy Partnership, and the transfer is not exempt because there has been a change in the beneficial ownership interest. To the extent that the transfer of property results in the grantor having a different proportional interest in the property after the transfer, it is taxable. (Note, however, that Fred and Steve may qualify for an exemption under WAC 458-61A-212.)

WAC 458-61A-211(3)(g).

Here, Taxpayer transferred the Property to [Shareholder 1] on November 18, 2014. At that time (and since June 1, 2014), Taxpayer's only shareholder was [Shareholder 2]. Therefore, the transfer of the Property to [Shareholder 1] was not in proportion to his ownership interest in Taxpayer, because he had no ownership interest in Taxpayer at the time of the transfer. Accordingly, we conclude the transfer did not meet the criteria to be exempt from REET as a mere change in form under RCW 82.45.010(3)(p).

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 12th day of April 2018.