

Cite as 5 WTD 299 (1988)

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition )	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
<u>N</u>	
For Ruling of Tax Liability of)	
)	No. 88-178
)	
. . . )	Real Estate Excise Tax
)	
)	
)	

[1] **REAL ESTATE EXCISE TAX:** SALE -- CONVEYANCE BY PARTNERSHIP TO CORPORATION -- Christensen v. Skagit County, cited. The real estate excise tax applies when real property is conveyed by members of a partnership to a corporation in return for the issuance of corporate stock. If no stock or other thing of value is given, the transfer is not taxable. Accord: Det. 87-212, 3 WTD 259 (1987), AGO 63-64, No. 44 & AGLO 1977, No. 6.

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

The taxpayer requests a written ruling, as provided by Section 18 of WAC 458-20-100, that no real estate excise tax will be due on a contemplated transfer of real property from . . . , a general partnership, to . . . Incorporated.

FACTS AND ISSUES:

The taxpayer presented the following recitation of the facts as the basis for its request:

. . . , a general partnership of four individuals and spouses, purchased a mobile home park located in . . . , Washington, on December 28, 1987. (Legal Attached) Prior to closing, which was on and off and on again several times, the general partners had discussed purchasing the property as a corporation. Incorporation was discussed with our attorney prior to purchase but was put on hold due to the uncertainty of the purchase.

During the first week of January the general partners recontacted the attorney regarding incorporation only to learn that the law required payment of the real estate excise tax upon our contemplated transfer.

I have discussed the above facts with . . . of your office who recited the WAC section that covers our contemplated transfer. Although the law in this area is very explicit, it seems unfair since the general partners would prefer to hold ownership inside a corporate entity instead of individually and have erred in making the decision to incorporate by only a few days.

#### DISCUSSION:

RCW 82.45.060 imposes the Real Estate Excise tax "upon each sale of real property." The word "sale" is defined by RCW 82.45.010 as follows:

. . . 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. (Emphasis supplied.)

Thus, the real estate excise tax applies to any (1) transfer of real property (2) for a valuable consideration.

In Christensen v. Skagit County, 66 Wn.2d 95 (1965), the Court found the real estate excise tax applied when real property is conveyed by members of a partnership to a corporation in return for the issuance of corporate stock. The real estate excise tax will be due, therefore, if the partnership transfers the property to the corporation and receives stock in return.

In cases where property has been transferred to a corporation, but no stock or other thing of value is given, the transfer has not been subject to the real estate excise tax. (Det. 87-212, 3 WTD 259 (1987) citing AGO 63-64 No. 44 and AGLO 1977 No. 6).

For example, the Department did not assess real estate excise on the following transfer proposed by a taxpayer:

1. The parties will organize a corporation of which they will be the sole shareholders and in which their respective interests will be identical with their respective interests in the partnership. The stock that will be issued to the shareholders will be paid for in cash.

2. The partnership will then transfer the property in question to the corporation, but will receive nothing (neither stock nor any other consideration) in exchange. (The property is subject to the lien of a Deed of Trust, and the conveyance to the corporation will, therefore, be "subject to" that lien. However, the corporation will not assume the obligation that is secured by that lien.) (Letter of June 29, 1981 to a taxpayer's attorney.)

#### DECISION AND DISPOSITION:

Accordingly, the real estate excise tax consequences in this case will be determined by how the transfer is accomplished. If the transfer is without consideration, it will not be subject to the real estate excise tax.

DATED this 6th day of April 1988.