

Cite as 5 WTD 339 (1988)

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

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| In the Matter of the Petition) | <u>D E T E R M I N A T I O N</u> |
| for Correction of Assessment of) | |
|) | No. 88-190 |
|) | |
|) | REAL ESTATE EXCISE TAX |
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| and) | |
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[1] **REET:** TRANSFER - TO PARTNERSHIP - BY PARTNERS - ABSENCE OF CONSIDERATION. Transfer to an existing partnership by partners held exempt from tax when (1) transfer was not in exchange for a partnership interest, and (2) partnership did not relieve partners of the existing debt.

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: . . .

DATE OF HEARINGS: August 7, 1986
March 25, 1988

NATURE OF ACTION

Appeal of real estate excise tax assessment on transfer of property from individuals to a partnership wherein the transferors were the partners.

FACTS:

Burroughs, A.L.J.-- On November 7, 1985, the taxpayers, two married couples, tranfered title of real property which they already owned

as tenants in common by quit claim deed to a general partnership. The taxpayers were the only partners. Exemption was claimed on the Real Estate Excise Tax Affidavit as follows:

Transfer of title from individuals to a partnership
wherein transferors are the partners.

The parties originally formed their partnership on January 1, 1982. There has never been a written partnership agreement. The couples share partnership income and liabilities equally.

The property whose 1985 transfer triggered the assessment at issue is a gas station which was acquired by the taxpayers via a real estate contract - in their individual names - in December 1983. While the property has been carried on the partnership books since its acquisition, and while the monthly payments have always been made by that entity, the original contract debt was in the partners' individual names.

The 1985 transfer was accomplished upon the advice of the taxpayers' accountant who wished to see the partnership name on the property. The debt was not at that time - and has never been - formally assumed by the partnership. Federal and state taxes have always been filed in the partnership name.

TAXPAYERS' EXCEPTIONS AND ISSUES:

The taxpayers offer three alternate arguments for exemption from tax:

1. That the transfer was not really a transfer "for valuable consideration." The interest in the property is essentially what it was before the transfer - one - half is owned by each couple. No consideration was bargained for or exchanged, and nothing has essentially altered as a result of the transfer except the name on the title.
2. That the transfer is wholly exempt under RCW 82.45.010, which concerns family partnerships, and that it was clearly the intent of the legislature to exempt transfers of this kind.
3. That the transfer is exempt as a gift without consideration.

DISCUSSION:

[1] We agree that the transfer was a gift absent consideration. RCW 82.45.010 defines a taxable "sale" as follows:

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, . . . for a valuable consideration

RCW 82.45.010 further provides

The term [sale] shall not include a transfer by gift . .

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The taxpayers, as equal partners, have operated as a partnership since 1982. The 1985 transfer of the property was not in consideration of a partnership interest, since the taxpayers' already possessed their respective 50% interests. Further, because the partnership did not become liable for the outstanding balance due on the property as a result of the 1985 transfer, the taxpayers were not relieved of their obligations as a result of the transfer.

DECISION AND DISPOSITION:

Thus, we hold that the transfer was a gift to the partnership without consideration, and thus exempt from the real estate excise tax. We need not consider the taxpayers' "family partnership" argument.

DATED this 13th day of April 1988.