

Cite as 9 WTD 292-5

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O</u>
<u>N</u>		
For Determination of Tax)	
Liability of)	No. 90-213
)	
)	Unregistered Taxpayer
. . .)	
)	Real Estate Excise Tax
)	
)	

[1] REAL ESTATE EXCISE TAX, RCW 82.45.010 AND WAC 458-61-560:
FAMILY PARTNERSHIP -- PERSONAL REPRESENTATIVE AS
"TRANSFEROR." Conveyance by decedent's personal
representative into a partnership wholly owned by the
sole heir and his children is exempt from real estate
excise tax under family partnership exemption where
personal representative is also sole heir.

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:

Taxpayer seeks a determination pursuant to WAC 458-20-100(18)
of tax liability arising out of the conveyance of real
property by an estate to a family partnership where the
taxpayer is the personal representative and sole beneficiary
of the estate.

FACTS:

Heller, A.L.J. -- The taxpayer's petition sets forth the
pertinent facts as follows:

[The taxpayer] is the sole beneficiary of the Estate. The Estate currently holds a one-half undivided interest in certain real property. The other one-half undivided interest in such real property is held in equal parts by [the taxpayer's] three children. The Estate remains open due to the deferment of federal estate taxes under Section 6166 of the Internal Revenue Code of 1986.

[The taxpayer's] family desires to form a general partnership to hold the family's real property. [The taxpayer], as personal representative and sole beneficiary of the Estate, will cause the Estate to transfer the interest it holds to the partnership. [The taxpayer's] three children will transfer their interest in the real property to the partnership as well. The partnership will be wholly owned by [the taxpayer], through his interest in the Estate, and his three children.

According to the taxpayer, a current distribution of the real property directly to him will result in a loss of the federal estate tax deferment.

TAXPAYER'S ARGUMENTS:

The taxpayer claims that the transfer of the one-half undivided interest in the property held by the Estate to the partnership is exempt from the real estate excise tax. In support of this claim, the taxpayer's petition sets forth the following argument:

Under RCW 82.45.060, the term sale does not include "a transfer to a corporation or partnership wholly owned by the transferor and/or the transferor's spouse or children" WAC 458-61-560 repeats in substance the language quoted above.

The exemptions from real estate excise tax for transfers to a partnership wholly owned by the transferor and/or the transferor's spouse or children does not apply if the transferor is not a natural person. 2 WTD 75 (1986). Accordingly, if the Estate is deemed to be the "transferor", the transfer may not meet the requirements of the exemption for transfers to family partnerships described in WAC 458-61-560. If [the taxpayer] is

deemed to be the "transferor", then the partnership formation would come squarely within the family partnership exemption.

Under Washington law, when a person dies holding land, his title vests immediately in his heirs or devisees. RCW 11.04.250. Title to a one-half interest in the subject real property vested in [the taxpayer] at the date of his father's death. Therefore, he is the "transferor" under RCW 82.45.010. After formation, the partnership will be wholly owned by the transferor and the transferor's children. Under the family partnership exemption, no real estate excise tax would be due as a result of these transfers.

DISCUSSION:

RCW 82.45.060 imposes an excise tax upon each sale of real property located within this state. For this purpose, the term "sale" includes "any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property" RCW 82.45.010. However, the term sale does not include a transfer to a "partnership which is wholly owned by the transferor and/or the transferor's spouse or children." RCW 82.45.010.

Here, the taxpayer proposes executing a deed in favor of a newly formed partnership in his capacity as personal representative. We must decide whether a personal representative, who is also the sole heir, can be considered the "transferor" for purposes of the family partnership exemption.

Under Washington law, title to real property vests in a decedent's heirs or devisees immediately upon death, subject only to the unpaid debts of the decedent. RCW 11.04.250, See also Estate of Binge, 5 Wn.2d 446 (1940). As owner, an heir or devisee has the immediate right to receive the rents and profits from the real property. Although the real property is subject to claims against the estate, an heir or devisee may freely convey their interest in the property prior to the completion of estate administration. National Bank of Commerce v. Peterson, 179 Wn. 638 (1938). Thus, for all purposes, the heir or devisee is considered to be the owner of the property.

The extent of a personal representative's interest in a decedent's real property is not entirely clear under Washington law. Other jurisdictions with statutes similar to RCW 11.040.250 have concluded that a personal representative has a very limited interest in real property. According to American Jurisprudence 2nd:

The common definition of an estate as including in general all property owned by the decedent at the time of his death is, by and large, subject to an exception to the effect that unless an estate is declared insolvent, real estate is not subject to administration by the estate's representatives, but title passes by operation of law to the devisees or heirs upon the death of the owner.

Thus, neither legal or equitable title to real estate passes to an executor under a will. Rather, title to real estate becomes vested upon the death of the owner in his heirs or devisees subject only to the right of the personal representative, when authorized by the court, to use it to pay creditors in case the personal estate is insufficient to pay the debts of the estate and expenses of administration. (Citations omitted.)

31 Am Jur 2d, Executors and Administrators § 490, pp. 247-248.

It is clear from the foregoing that a personal representative stands in a unique relationship to a decedent's real property. This is particularly true in a case such as this where an estate is solvent. Without title, a personal representative has no authority to convey real property independent of the consent of the heirs. However, where the personal representative also holds an interest in real property as heir, a deed will convey any interest the personal representative may have in his individual capacity. 23 Am Jur 2d, Deeds § 356, p. 313 (Citations omitted.)

Here, the taxpayer is both personal representative and sole heir. The taxpayer's ability to convey the real property to the partnership derives from his ownership as sole heir and not from his powers as personal representative. In reality, the taxpayer is conveying the property in his own right. We conclude that under these circumstances, the taxpayer is the "transferor" for purposes of the family partnership exemption of RCW 82.45.010.

CONCLUSION:

It is our opinion that the transfer of real property by the personal representative and sole heir of an estate into a partnership which is wholly owned by the spouse and/or children of the heir is exempt from the real estate excise tax under the family partnership provisions of RCW 82.45.010.

DATED this 25th day of May 1990.