

Cite as 9 WTD 286-75

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 Refund of)	No. 90-176
)	
)	
. . .)	Real Estate Excise Tax
)	Unregistered Taxpayers
)	
)	

[1] **REAL ESTATE EXCISE TAX, RCW 82.45.120 AND WAC 458-61-100(4):** REFUND -- FORFEITURE UNDER REAL ESTATE CONTRACT -- NONPAYMENT OF VALUABLE CONSIDERATION BY GRANTEE. A vendee's forfeiture of real estate contract is not grounds for refund of real estate excise tax where the vendor-taxpayer retains downpayment. The vendor-taxpayer received valuable consideration in the form of the downpayment.

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:

Petition for refund of real estate excise taxes paid on contract sale where the property was forfeited to taxpayer on purchaser's default.

FACTS AND ISSUES:

Heller, A.L.J. -- On . . . , the taxpayers entered into a real estate contract to sell their interests in certain real property located in . . . , Washington. The purchase price for the property was \$ The purchaser agreed to pay \$. .

. at closing and the balance in monthly installments according to the terms of the contract. At closing, the taxpayers paid \$. . . in real estate excise tax.

Shortly after entering into possession, the purchasers defaulted on the contract. A forfeiture action was commenced sometime after default and the property was recovered on or about The taxpayers received no payments of principal on the contract following closing. To make matters worse, the taxpayers took the property back subject to an unpaid property tax lien in the amount of \$

On or around . . . , the taxpayers filed a petition for refund of the real estate excise taxes paid in the . . . closing. The Department of Revenue ("Department") denied the taxpayers' petition in a letter dated The taxpayers appeal this denial of their petition for refund.

TAXPAYERS' EXCEPTIONS:

The taxpayers argue they are entitled to a refund because they have not received any valuable consideration from the purchaser. In support of their claim, the taxpayers cite WAC 458-61-100, the Department's regulation which governs refunds of real estate excise tax.

DISCUSSION:

Chapter 82.45 RCW imposes the real estate excise tax upon each sale of real property within the state of Washington. The tax is paid by the seller at the time of sale. RCW 82.45.100. In the case of an installment contract, the sale occurs on delivery of possession of the property to the contract vendee. RCW 82.45.010.

[1] RCW 82.45.120 authorizes the Department to administer the collection of the real estate excise tax. Pursuant to this authority, the Department has adopted regulations pertaining to applications for refund. According to WAC 458-61-100, the Department will issue a refund of real estate excise tax under limited circumstances. These are:

(a) Transactions that are completely rescinded as defined in WAC 458-61-030(19);

(b) Sales rescinded by court order. In such case a copy of the court decision must be attached to the department's affidavit copy by the

county treasurer (see also WAC 458-61-330 -
Court order--Transfer pursuant to);

(c) Double payment of the tax;

(d) Overpayment of the tax through error of
computation;

(e) Failure of a taxpayer to claim tax exemption for
a transfer which was properly exempt;

(f) Nonpayment of valuable consideration by grantee.

WAC 458-61-100(4).

The taxpayers assert that since no principal payments were made on the contract following closing, there was no consideration for the initial transfer. According to the taxpayers, these facts satisfy situation (f). We disagree. The taxpayers overlook the fact that they received \$. . . of the purchase price at closing. The term consideration includes "money or anything of value, paid or delivered or contracted to be paid or delivered in return for the transfer of real property." RCW 82.45.030.

Similarly, the taxpayers cannot sustain a claim that the return of the property pursuant to court order constitutes a rescission which satisfies the requirements of situations (a) or (b). In order for a rescission to occur, the parties must be returned to the same position they were in prior to entering into the contract. This has not occurred where the taxpayers have retained a portion of the purchase price. Unfortunately, the fact that the taxpayers may have lost money on the transaction does not bring them within the requirements of the regulation.

We note that the transfer of the property back to the taxpayers is not subject to the real estate sales tax, provided no consideration passes to the taxpayers. WAC 450-61-210(1)(a).

DECISION AND DISPOSITION:

Taxpayers' petition for refund is denied.

DATED this 25th day of April, 1990.