Cite as Det. No. 05-0117, 24 WTD 474 (2005)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 05-0117
	)	
. . .	)	Registration No. . . .
	)	Docket No. . . .
	)	. . . County REET Assessment

[1] WAC 458-61-225: REET – QUITCLAIM DEED TO CO-PURCHASER – ASSUMPTION OF LOAN – CONSIDERATION. When indebtedness on a property has not been extinguished, and when one co-purchaser quitclaims her one-half interest to her co-purchaser, who also assumes her portion of the loan, this constitutes consideration and the REET applies.

[2] WAC 458-61-225: REET – QUITCLAIM DEED TO CO-PURCHASER – ASSUMPTION OF LOAN – When a person quitclaims her one-half interest to her co-purchaser, who assumes her half of the loan, the fact that she never made payments on the mortgage is irrelevant absent evidence that she was not legally obligated under the loan.

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.

STATEMENT OF THE CASE

Bauer, A.L.J. – An individual requests the refund of real estate excise tax (REET) paid on her transfer of her half interest in a house to her former fiancé, claiming the transfer was a gift absent any consideration. We deny the refund, holding that there was consideration. [1]

ISSUE

Is the transfer of an interest in real estate REET taxable when the transferor is simultaneously released from a loan obligation?

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

FINDINGS OF FACT

. . . (Taxpayer) and Mr. Q, an unmarried couple, together purchased a house ("the house") in June 2002. Mr. Q's mother provided the down payment on June 26, 2002,[2] which was deposited in Taxpayer's and Mr. Q's joint checking account. Taxpayer and Mr. Q were engaged to be married, and lived in the house together. A check drawn on their joint account on June 15, 2002 indicates that Taxpayer and Mr. Q lived together at another address prior to purchasing the house.[3]

Taxpayer and Mr. Q subsequently terminated their engagement, and Taxpayer agreed to leave and to relinquish her interest in the house. In November 2003, Mr. Q refinanced the underlying debt, but this time in his name only. Pursuant to this refinance, he needed to remove Taxpayer's name from the title. On November 15, 2003, Taxpayer submitted a quit claim deed to [County] for recording, which deed transferred full ownership of the house to Mr. Q. [County] refused to record the deed without payment of REET. On November 19, 2003, Taxpayer submitted a Real Estate Excise Tax Affidavit stating that she owed no REET for the following reasons:

- The transfer was a gift, and there was no consideration.
- The deed was the termination of a tenancy in common for which the grantor gave no consideration.
- The deed was intended only to clear title to the property.

The [County] Recorder's Office rejected the REET Affidavit's claim of exemption. On November 26, 2003, Taxpayer paid the REET in order to record the deed. Taxpayer requested a refund from the Miscellaneous Tax Section of the Department of Revenue (Department), which on March 23, 2004, concluded the tax had been properly paid. Taxpayer further appealed to this office on April 22, 2004, requesting a refund of the REET, plus any applicable interest.

ANALYSIS

Taxpayer argues that all she was trying to do was to remove her name from the title so that Mr. Q could refinance in his own name. Taxpayer argues that Example 3(c) of WAC 458-61-255 (Clearing Title) should control this case. The pertinent portions of WAC 458-61-255 provide:

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[2] Although Taxpayer claims that the down payment received from Mr. Q's parent was a loan, the documentation submitted indicates it was a gift. For purposes of resolving this case, it is a distinction without a difference.

[3] These particular findings of fact are based on certain loan documents provided by Taxpayer's representative on March 31, 2005. Those documents differ substantially from, and do not support, the alleged facts presented in the original appeal and in the teleconference, which were essentially as follows: In May 2002, Mr. Q originally purchased a single family residence (house) using a down payment received from his parents. Taxpayer and Mr. Q were engaged and living together when, in May 2003 Mr. Q refinanced the house. Mr. Q at that time transferred a one-half interest to Taxpayer using a quitclaim deed citing "love and affection." The financial institution refinancing the house required Taxpayer to be added to the promissory note, allegedly as an accommodation only. No REET was imposed. Mr. Q made all the necessary mortgage payments, and took the IRS interest deductions on his own federal tax return.

> (1) **In general**. The real estate excise tax does not apply to quitclaim deeds given for the purpose of clearing title only when no consideration passes otherwise. When any consideration is given for the clearance of title, the real estate excise tax applies to the transaction. A deed given to add a person to title for any purpose does not qualify for treatment under this section. . . .
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> (3) **Examples**. Real estate excise tax would not apply in the following situations:
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> . . . (c) Parents, who have been on title as co-signors for their child's loan, are now issuing a quitclaim deed to exit title. The narrative accompanying the affidavit for this transfer must state that the co-signor was not a co-purchaser of the property and did not make payments toward the repayment of the loan.

(Emphasis added.) While Example (3)(c) appears at first blush to allow a REET-free transfer of title to merely clear title, that example must be read in conjunction with the first part of the rule, which requires there to be no transfer of consideration. RCW 82.45.030(3) provides that "total consideration paid or contracted to be paid" includes money or anything of value, paid or delivered or contracted to be paid or delivered in return for the sale, and shall include the amount of any lien, mortgage, contract indebtedness, or other encumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

Similarly, WAC 458-61-225(1), which concerns the assumption of debt in conjunction with a transfer of real estate, provides that the REET applies to transfers of real property when an underlying debt on the property is assumed by the grantee.

In Det. No. 87-290, 4 WTD 71 (1987), we noted that a release of indebtedness is consideration to the grantor, and that where encumbered property is transferred, the amount realized by the grantor includes the amount of the encumbrances on the property plus any personal obligation of the grantor that is assumed by the grantee. *Crane v. Commissioner*, 331 US 1 (1947). *See also Commissioner v. Tufts*, 461 U.S. 300 (1983) (Transfer of property subject to a non-recourse note by a partnership resulted in gain in the amount of the note even though the amount of the note exceeded the fair market value of the property transferred.)

Also, in Det. No. 01-039, 20 WTD 520 (2001), we held that REET applies to transfers of real property when the grantee assumes an underlying debt on the property, such as where a co-purchaser quitclaims its interest to another co-purchaser who assumes the indebtedness balance. The measure of the tax is the combined amount of the debt and any additional consideration.

[1] In this case, the indebtedness on the property in question had not been extinguished. Taxpayer relinquished her one half interest in the property, and, in return, Mr. Q assumed her portion of the loan. This constituted consideration.

[2] Taxpayer has produced no evidence or legal authority to support her argument that she was never legally obligated under the loan because her signature was for "accommodation" purposes

only.[4] Further, the evidence submitted demonstrates that Taxpayer was more correctly characterized as a co-purchaser of the residence she resided in, rather than as a co-signer or guarantor with no beneficial interest in the property. For this reason, Taxpayer's argument that she made none of the payments on the mortgage is not relevant.

When Taxpayer and Mr. Q together purchased the house, they intended to live there together. They were co-owners and co-debtors, each with a beneficial interest. After their engagement terminated, Taxpayer deeded her interest back, and Mr. Q refinanced the entire mortgage in his own name. These actions constituted evidence that they no longer had the intention of sharing ownership of the house and its underlying debt. When Taxpayer quit-claimed the property back to Mr. Q, it was in exchange for being relieved of any liability for the underlying debt.

When divorcing couples terminate their shared ownership of property, RCW 82.45.010(3)(e) provides that REET will not be due if the property was assigned in accordance with a divorce decree or property settlement agreement.[5] Absent this exemption, REET would be owed by divorcing couples because real properties are generally awarded to divorcing parties "in exchange for" the relinquishment of other properties (which exchanges would constitute consideration). In this case, Taxpayer and Mr. Q were neither married nor divorced, and the RCW 82.32.010(3)(e) REET exemption does not apply. We conclude that Mr. Q's assumption of Taxpayer's liability under the mortgage, and Taxpayer's resultant release from that liability, constituted consideration for the transfer of her one-half interest in the house to him.

DECISION AND DISPOSITION

Taxpayer's petition for refund is denied.

Dated this 25th day of May, 2005.

[4] Taxpayer's argument was that she was added to the mortgage "for accommodation purposes" only, thus incurring no liability; and therefore removal of her name from the loan in the course of the November 2003 refinancing did not constitute consideration. Although Taxpayer was given until March 30, 2005 to submit documentation supporting this assertion, no documentation has been submitted.

[5] RCW 82.45.010 provides:

> (3) The term "sale" shall not include:
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> . . . (e) The assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement.