

Cite as Det. No. 05-0121, 24 WTD 478 (2005)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 05-0121
)	
...)	Registration No. ...
)	Real Estate Tax Affidavit No. ...
)	Docket No. ...
)	

WAC 458-61-100; RCW 82.45.010, RCW 82.45.060: REET – SALE –
SUBSEQUENT RECISSION. When parties sell real property and subsequently
rescind the sale, the rescission does not undo the REET taxable event.

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 CASE

M. Pree, A.L.J. – A married couple sold real estate and paid real estate excise tax (REET) on the sale. When the sale was later rescinded, they requested a refund of REET. We lack statutory authority to refund REET on the original transfer, a taxable event.¹

ISSUE

May REET paid on an original sale be refunded if the sale is later rescinded?

FINDINGS OF FACT

... (taxpayers) owned real estate (“the property”) in Washington. In 2002, the taxpayers sold the property to an individual, who signed a \$. . . promissory note payable to the taxpayers with no down payment or other consideration. The note was secured by a deed of trust. They recorded a warranty deed and paid \$. . . REET.

In 2004, they (the parties) completely rescinded the sale, restoring title in the taxpayers’ name. The taxpayers retained no consideration. They never received any payment. No payment of

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

principal or interest was due, and the promissory note was cancelled. No improvements were made to the property. REET was not paid on the reconveyance to the taxpayers under WAC 458-61-590.

The taxpayers requested a refund of the \$. . . REET paid on the original transfer under WAC 458-61-100. The Special Programs Division of the Department of Revenue denied the taxpayer's refund request. The taxpayers appealed the refund denial.

ANALYSIS

RCW 82.45.060 imposes the real estate excise tax (REET) upon the "sale" of real property. RCW 82.45.010(1) defines the term "sale" to mean:

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, including standing timber, or any estate or interest therein for a valuable consideration

The taxpayers sold the property in 2002. A taxable sale occurred. A subsequent rescission did not undo this taxable event as explained by the Washington Supreme Court in *Perkins v. King County*, 51 Wn.2d 761, 762-63, 321 P.2d 903 (1958):

The actions of the parties in rescinding the real estate contract certainly altered their legal relationships and, fictionally, may have vitiated the sale as far as their legal responsibilities were concerned. However, taxwise, their actions did not alter the facts of life: a sale, as defined by RCW 82.45.010, had been consummated, and a so-called taxable event or incident had occurred within the contemplation of the statute. The tax accrued. It was paid by the real-estate vendor to the proper county official. That should be--and as far as we are concerned it is-- the end of the matter, because the legislature made no provision in the tax statute for a refund of the excise imposed and collected under the circumstances involved in the instant case.

The taxpayers have not distinguished their situation from *Perkins*, and understand the *Perkins* holding, but contend by subsequently "enacting" WAC 458-61-100 in 1958, (which was amended in 2003) the Department of Revenue exempted the rescinded transactions found taxable by the Supreme Court. Specifically, the taxpayers consider WAC 458-61-100(5)(a), which read prior to its amendment in 2003:

- (5) The authority to issue tax refunds under this chapter is limited to:
 - (a) Transactions that are completely rescinded as defined in WAC 458-61-590;

Since their transaction was completely rescinded as defined in WAC 458-61-590,² the taxpayers interpret WAC 458-61-100(5)(a) to not only exempt the reconveyance of the property to them, but also their initial conveyance of the property. The taxpayers contend that because WAC 458-61-590 exempts REET on reconveyances of rescinded transfers to the grantors, WAC 458-61-100(5)(a) would merely be superfluous if it applied to reconveyances only. We disagree with the taxpayers' interpretation and find support for our position in the Department of Revenue's amended rule, WAC 458-61-100 in which no ambiguity exists under the current language:

(5) Circumstances under which a refund of tax is authorized. The authority to issue tax refunds under this chapter is limited to: (a) The conveyance back to the grantor for transactions that are completely rescinded as defined in WAC 458-61-590; (b) The conveyance back to the grantor for 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: Foreclosure -- Deeds in lieu of foreclosure); (c) The initial conveyance recorded in error by an escrow agent before the closing date, provided the property is conveyed back to the grantor; (d) The conveyance back to the grantor in (c) above; (e) The initial conveyance recorded before a purchaser assumes an outstanding loan that represents the only consideration to be paid for the property, provided (i) the purchaser is unable to assume the loan and (ii) the property is conveyed back to the grantor. The refund is allowed because the transaction lacked valuable consideration; (f) The conveyance back to the grantor in (e) above; (g) Double payment of the tax; (h) Overpayment of the tax through error of computation; and (i) Failure of a taxpayer to claim tax exemption for a transfer which was properly exempt.

Rules must be written within the framework and policy of the applicable statutes. *Kitsap-Mason Dairymen's Ass'n v. State Tax Comm'n*, 77 Wn.2d 812, 815, 467 P.2d 312 (1970). Administrative rules cannot exceed or conflict with the scope of the statutes they interpret. *Duncan Crane v. Department of Rev.*, 44 Wn. App 684, 723 P.2d 480 (1986); *Tacoma v. Smith*, 50 Wn. App 717, 750 P.2d 647 (1988). We are not authorized to refund REET in the taxpayers' circumstance. The taxpayers' initial transfer to the grantee was properly recorded in 2002, when the taxpayers received consideration, the \$. . . promissory note. We will not interpret WAC 458-61-100³ to provide an exemption for rescinded transactions where there is no statutory

² WAC 458-61-590 Rescission of sale. (1) The real estate excise tax does not apply to a reconveyance of property pursuant to a rescission.

(2) In order to qualify for exemption under this section, all consideration paid toward the selling price must be returned by the grantor to the grantee.

(a) A grantor may retain interest paid by the grantee without disqualifying the rescission.

(b) The payment of a reasonable reimbursement for site improvements will not disqualify the rescission.

³ By its terms, WAC 458-61-100 is not an exemption provision; it merely establishes the procedure for requesting a REET refund. In particular, subsection (5) of former WAC 458-61-100 limits the authority to grant REET refunds, but it does not affirmatively establish any exemptions, except as provided by the statute or other applicable administrative rules. Even if we assume that former Rule WAC 458-61-100 applies to the transaction at issue, we still lack statutory authority to exempt the original transaction if it is subsequently rescinded.

authorization to do so and where the Supreme Court has specifically determined the original transaction was a taxable event. *Perkins*, 51 Wn.2d at 762-63.

The taxpayers also argue under common law, rescission abrogates and annuls. It requires the transaction be undone, as though the initial transaction never existed. *Busch v. Nervik*, 38 Wn. App. 541, 547, 687 P.2d 872 (1984). In fashioning an appropriate remedy for rescission, the parties are placed in the relative positions they would have been in as if the transaction had never occurred. *Willener v. Sweeting*, 107 Wn.2d 388, 393, 730 P.2d 45 (1986).

The taxpayers' reliance on these cases is misplaced. Under those decisions the grantor and grantee must, "determine what is necessary for one party to do in order to place the other in status quo." *Nervik*, 38 Wn. App. at 547-48. As recognized in *Perkins*, while rescission alters the legal responsibilities between the parties, it does not change the facts. A sale occurred, which was a taxable event. The taxpayers properly paid REET on the 2002 sale. We lack authority to refund it under these circumstances.

DECISION AND DISPOSITION

We deny your refund request.

Dated this 26th day of May, 2005.