

Cite as Det. No. 15-0007, 34 WTD 364 (2015)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

|   |                                  |
|---|----------------------------------|
| In the Matter of the Petition for Correction of ) | <u>D E T E R M I N A T I O N</u> |
| Assessment of )                                   |                                  |
| )   | No. 15-0007                      |
| ... )   |                                  |
| )   | Registration No. . . .           |
| )   |                                  |

[1] RCW 82.45.030(3); WAC 458-61A-201; WAC 458-61A-103: REET – CONSIDERATION – ASSUMPTION OF DEBT. If a transferee makes payments on the transferor’s debt on property or otherwise assumes the debt in return for the transfer of the property, there is consideration in the form of debt relief, therefore the transfer is not a tax-exempt gift. The transfer is subject to real estate excise tax (REET), usually based on the amount of debt relief and any other consideration given for the transfer.

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.

LaMarche, A.L.J. – [Taxpayers] appeal a real estate excise tax (REET) assessment, claiming they transferred their interest in the subject real property as a tax-exempt gift. The Department of Revenue (the Department) assessed REET based on the value of Taxpayers’ relief of debt following the transfer. We uphold the assessment.<sup>1</sup>

ISSUE

Was transfer of Taxpayers’ interest in mortgaged real property to their daughter a gift, exempt from REET under WAC 458-61A-201, where the daughter paid off Taxpayers’ mortgage loan arrears, made payments toward the mortgage loan for nine months, occupied the property after the transfer, and made contractual payments on the property to Taxpayers, which Taxpayers used to pay the mortgage loan?

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

## FINDINGS OF FACT

Taxpayers, sole owners of real property located [in] Washington (the Property),<sup>2</sup> transferred their entire interest in the Property to their daughter, [Grantee], with a signed and notarized quitclaim deed dated October 15, 2013.<sup>3</sup> Taxpayers filed two documents, on October 16, 2013, in conjunction with the transfer, comprised of a REET affidavit signed on October 15, 2013 by [Taxpayer and Grantee], and a REET Supplemental Statement signed by [Taxpayer and Grantee].<sup>4</sup> The REET affidavit shows that no REET was paid on the transfer, and Box 7 on the REET affidavit lists WAC 458-61A-201(B)(3) as the basis for exemption from tax, and the reason for the exemption as “gift.” The REET supplemental statement shows the box under 2(A)(3) is checked off, and a handwritten amount of \$. . . is written in, indicating that “Grantee (buyer) has made and will continue to make 100% of the payments on total debt of \$. . . and has not paid grantor (seller) any consideration towards equity. No tax is due.”<sup>5</sup>

The Department’s Special Programs Division (Special Programs) reviewed the October 15, 2013 transfer and concluded that Taxpayers were ineligible for the gift exclusion from REET contained in WAC 458-61A-201. On June 17, 2014, Special Programs issued a REET assessment against Taxpayers in the amount of \$. . .<sup>6</sup> The REET assessment was premised on relief of debt as consideration, and based on \$. . . , the amount of debt on the property that Taxpayers wrote on the REET Supplemental Statement accompanying the REET affidavit and quitclaim deed Taxpayers signed on October 15, 2013. Taxpayers did not pay the assessment, and timely filed an appeal.

. . . County, Washington records show a deed of trust recorded against the Property, with Taxpayers listed as grantors and [Bank] listed as grantee, Instrument No. . . . , recorded on September 27, 2002. There are no deeds of trust or other encumbrances recorded against the Property after that date in the county records, nor are there any indications that the loan on the property has been satisfied.<sup>7</sup>

Taxpayers assert the following history and intent behind their transfer to Grantee:<sup>8</sup>

1. Taxpayers fell behind approximately one year in their mortgage payments on the Property, a condominium, and ran the risk of losing the Property in foreclosure.
2. Taxpayers entered into a short sale agreement early in 2013, and in reliance on the pending closure of that sale, entered into a one-year lease on a new apartment on June 2, 2013.<sup>9</sup>

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<sup>2</sup> . . .

<sup>3</sup> The quit claim deed was recorded on October 16, 2013, with . . . County, Washington, Recording No. . . .

<sup>4</sup> Both documents were recorded on October 16, 2013, with . . . County, Washington, Recording No. . . .

<sup>5</sup> REET Supplemental Statement. *Id.*

<sup>6</sup> The \$. . . assessment consisted of \$. . . state REET, \$. . . local REET, \$. . . combined state and local delinquent interest, and an \$. . . assessment penalty.

<sup>7</sup> See . . . County [Washington] Recorder’s Office webpage at <http://www. . .> (last accessed on January 13, 2015).

<sup>8</sup> Unless otherwise noted, factual representations are based on [Taxpayer’s] testimony in the telephonic conference held on October 16, 2014.

3. The short sale fell through, so Taxpayers were facing foreclosure on the Property while committed to a one-year lease on another property.
4. Taxpayers' daughter and Grantee, [Grantee], provided Taxpayers enough money to catch up on the mortgage payments.
5. Taxpayers and Grantee agreed that Grantee would move into the Property and commence paying rent to Taxpayers.<sup>10</sup>
6. [Homeowners Association], upon learning that a non-owner was occupying the Property—which was subject to the rules and regulations of the [Association]—sent a letter to Taxpayers, dated October 8, 2013,<sup>11</sup> stating that Taxpayers would be fined \$1,000.00 per month for violation of [Association's] Rules and Regulations,<sup>12</sup> and that Taxpayers had seven days to submit proof of ownership or correct the violation.
7. Taxpayers prepared a quit claim, REET affidavit, and REET Supplemental Statement with the aid of a clerk, and filed the documents with . . . County, Washington on October 16, 2013. [Taxpayer] contends that due to language difficulties, the paperwork inadvertently transferred their entire interest in the property to their daughter, but that Taxpayers had only intended to add her to title for purposes of making her an owner, in order to avoid the \$1,000.00 fine from [Association].
8. Because Taxpayers were unable to make mortgage payments, Grantee made nine payments on the Property, one prior to the transfer, and eight after the transfer.<sup>13</sup>
9. After Grantee began making payments to Taxpayers pursuant to their earlier agreement, Taxpayers resumed making payments on their mortgage loan, commencing July, 2014.<sup>14</sup>
10. Taxpayers do not currently live in the Property, and still reside in their apartment.

#### ANALYSIS

Washington imposes REET on “each sale of real property” in this state. RCW 82.45.060.<sup>15</sup> RCW 82.45.010(1) defines “sale” as “any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property . . . for a valuable consideration . . . .” The statute then provides certain exclusions from the definition of “sale,” including “a transfer by gift.” RCW 82.45.010(3)(a).

The Department promulgated WAC 458-61A-201 (REET Rule 201) to further explain the REET exclusion for gifts of real property. REET Rule 201 explains that “[a] gift of real property is a transfer for which there is no consideration given in return for granting an interest in the property.” REET Rule 201(1). REET Rule 201 refers to WAC 458-61A-102 (REET Rule 102) for the definition of “consideration.”

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<sup>9</sup> [Apartment] rental application dated June 2, 2013. See supplemental attachments to Taxpayer e-mail, dated October 18, 2014 4:06 PM, at 8.

<sup>10</sup> . . . ., Rental Application dated September 16, 2013. See *Id.*, at 1.

<sup>11</sup> [Association], letter dated October 8, 2013. See *Id.*, at 2.

<sup>12</sup> Excerpt from [Association] Rules and Regulations. See *Id.*, at 3.

<sup>13</sup> Special Programs records show that Grantee made payments of \$. . . per month, commencing October 11, 2013, with payments each month thereafter through April 2014. There is no documented payment history for May through June 2014 in the record; however, Taxpayer stated during the telephonic hearing that Grantee made payments from October 2013 through June 2014, due to Taxpayers' inability to make payments.

<sup>14</sup> Checks numbered 243, 250, 259, and 268,

<sup>15</sup> REET “is the obligation of the seller.” RCW 82.45.080(1).

REET Rule 102(2) explains that “consideration” includes “money or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property.” The rule further explains that “[c]onsideration’ includes the assumption of an underlying debt on the property by the buyer at the time of transfer.” WAC 458-61A-102(2)(b); *see also* WAC 458-61A-201(3). If a transferee agrees to assume payment of the transferor’s debt on the property in return for the transfer, there is consideration, and the transfer is not exempt from REET. RCW 82.45.030(3); WAC 458-61A-201(2)(b); WAC 458-61A-201(3); WAC 458-61A-103(1); Det. No. 13-0292, 33 WTD 81 (2014); Det. No. 05-0117, 24 WTD 474, 476 (2005); Det. No. 01-039, 20 WTD 520, 523-524 (2001). REET is due on the amount of debt assumed, in addition to any other form of payment made by the transferee to the transferor in return for the transfer. *Id.*

Here, Taxpayers argue that they intended to gift only a portion of interest in the Property to Grantee. However, Taxpayers in fact by deed transferred their entire interest in the Property, and no correcting deed has been filed. Taxpayers also received consideration for the transfer. Grantee gave money to Taxpayers to catch up on the mortgage loan to stave off a foreclosure, and made nine payments on the mortgage loan thereafter to keep the loan current. After Taxpayers entered into a contract<sup>16</sup> with Grantee in September 2013, Grantee occupied the Property and made ongoing payments to Taxpayers, which Taxpayers used to make payments on the mortgage loan.<sup>17</sup>

Taxpayers received consideration in exchange for the transfer of real property in the form of debt relief. Here, Taxpayers and Grantee entered into agreements where Grantee made payments on Taxpayers’ debt, both before and after the transfer. Taxpayers’ transfer to Grantee was followed contemporaneously with Grantee’s occupancy of the Property, and the commencement of Grantee’s contractual payments to Taxpayers, which have continued through the present, and which Taxpayers use to make payments on the mortgage loan. Moreover, Taxpayers and Grantee indicated on the REET Supplemental Statement accompanying the transfer that “Grantee (buyer) has made and will continue to make 100% of the payments on total debt of \$. . . and has not paid grantor (seller) any consideration towards equity. No tax is due.”<sup>18</sup> While the parties incorrectly stated that Grantee had always made the payments on the debt and that no tax was due, the REET Supplemental Statement does show that the parties contemplated Grantee assuming \$. . . in debt in relation to the transfer of the Property. The balance of the evidence, therefore, leads us to conclude that Taxpayers received consideration in exchange for the transfer, in the form of relief of debt. RCW 82.45.030(3).

Under REET Rule 201(1), the gift exemption from REET only applies to transfers of real property for which there is no consideration given in return for granting an interest in the

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<sup>16</sup> Whether the agreement between Taxpayers and Grantee for Grantee’s occupancy of the property is a rental contract, as Taxpayers assert, is a moot issue. Although the Taxpayers and Grantee entered into a rental agreement for the Property in September 2013, Taxpayers transferred all interest in the Property to Grantee in October 2013, and therefore, had no interest in the Property to convey to Grantee after that date, including rights of tenancy. However, Taxpayers continue to this day to receive payments from Grantee.

<sup>17</sup> Checks numbered 243, 250, 259, and 268, supplemental attachments to Taxpayer e-mail dated October 18, 2014, *supra*, at 4-7.

<sup>18</sup> *Supra*, see note 4.

property. Here, Taxpayers received consideration in the form of relief of debt in exchange for the transfer of the Property; therefore, the transfer does not qualify for the gift exemption from REET. RCW 82.45.030(3); REET Rule 201(2)(b); REET Rule 201(3); REET Rule 103(1); 33 WTD 81; 24 WTD 474; and 20 WTD 520. *supra*

Because the transfer of the Property does not qualify for the gift exemption, following RCW 82.45.030(2), REET is properly due on the amount of debt assumed by Grantee. Therefore, we conclude that Special Programs correctly calculated the amount of REET due, based on the parties' own representation on their REET Supplemental Statement that the loan debt encumbering the Property at the time of transfer was \$98,442. *Id.* Accordingly, we uphold the assessment, and deny the petition.

#### DECISION AND DISPOSITION

We deny the taxpayer's petition.

Dated this 15th day of January, 2015.