

Cite as Det. No. 15-0095, 35 WTD 213 (2016)

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. 15-0095
)	
...)	Registration No. . . .
)	

WAC 458-61A-214; RCW 82.45.010: REET – EXEMPTION – NOMINEE.
When the real estate excise tax (REET) is not paid on an initial acquisition and when the transferee business entity was formed after the date of the initial acquisition, the transferor is not a “nominee” under WAC 458-20-214, and the transfer from the transferor to the transferee is a REET taxable 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.

Weaver, A.L.J. – A limited liability company [(LLC)] protests the disallowance of a Real Estate Excise Tax (REET) exemption. Taxpayer argues the transaction met the requirements of the nominee exemption. We deny the petition.¹

ISSUE

Whether, under WAC 458-61A-214, a [LLC] acquired real property as a nominee, so that a subsequent transfer of the real property to a transferee was exempt from REET.

FINDINGS OF FACT

On March 14, 2012, [Taxpayer] purchased three parcels of real property located in . . . County.² Taxpayer is a [LLC], solely owned by [Taxpayer’s Owner]. No [REET] was paid on Taxpayer’s purchase of these three parcels.

On July 29, 2013, Taxpayer then transferred the three parcels of real property to another [LLC], [Transferee LLC]. Transferee LLC was formed on June 1, 2013, and, according to the [LLC] agreement, Transferee LLC listed two owners with a 50% interest in Transferee LLC, [Transferee LLC Owner A] and [Transferee LLC Owner B].

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

² Real property parcel numbers . . . , . . . , and

According to the . . . County property tax rolls, at the time of transfer from Taxpayer to Transferee LLC, the value of these parcels of property totaled \$ Taxpayer filed a REET Affidavit with the [County] on July 29, 2013, and indicated in the REET Affidavit that the transfer was exempt from REET and cited WAC 458-61A-211 as authority for this proposition. WAC 458-61A-211 is an REET exemption entitled “Mere Change in Identity or Form – Family Corporations and Partnerships.”

On February 13, 2014, the Special Programs Division of the Department of Revenue (Department) sent Taxpayer an inquiry letter related to the transfer, requesting documentation to support the “mere change” exemption identified by Taxpayer in its REET Affidavit. After receiving documents from Taxpayer, the Special Programs Division disallowed the “mere change” exemption in Taxpayer’s REET Affidavit, because there was a change in the “beneficial ownership of the property.” Specifically, the Special Programs Division found that Taxpayer’s Owner was the 100% beneficial owner of the subject property prior to the transfer, but was only a 50% beneficial owner in the subject property (with Transferee LLC Owner B) after the property was transferred to Transferee LLC. Because of this finding, on March 18, 2014, the Special Programs Division issued a REET assessment to Taxpayer.

The REET assessment totaled \$ The REET assessment was based on a sales price of \$. . . , which was 50% of the assessed value of the property at the time of the transfer. The REET assessment includes \$. . . in state and local tax, \$. . . in combined state and local delinquent interest, and a tax assessment penalty of \$ Taxpayer filed a timely appeal.

On appeal, Taxpayer is no longer arguing that the transfer is exempt under WAC 458-61A-211 as a “mere change” in identity. Instead, on appeal, Taxpayer is arguing that the transfer is exempt from REET taxation under WAC 458-61A-214, because Taxpayer was acting as a “nominee” of the Transferee LLC.

ANALYSIS

RCW 82.45.060 imposes REET upon the “sale” of real property.^[3] “Real property” means “any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity which itself owns land or anything affixed to land.” RCW 82.45.032(1). The term “sale” “has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, . . . for a valuable consideration” RCW 82.45.010(1) (emphasis added).

However, a subsequent transfer of property by a “nominee” to the third party purchaser is not considered as a sale of real property for a valuable consideration, as explained in WAC 458-61A-214, so long as certain criteria is met. A “nominee” is a person who acts as an agent on behalf of another person in the purchase of real property. WAC 458-61A-214(1). In order for the nominee exclusion to apply, all of the requirements of WAC 458-61A-214 must be met. That rule reads, in pertinent part, as follows:

³ [The tax is the obligation of the seller. RCW 82.45.080(1).]

(1) **Introduction.** This rule describes the application of the real estate excise tax in transfers involving a nominee. A “nominee” is a person who acts as an agent on behalf of another person in the purchase of real property.

(2) **Initial acquisition.** The initial acquisition of property by a nominee on behalf of a third party is subject to the real estate excise tax.

(3) **Subsequent transfer.** The later transfer of the property by the nominee to the third party purchaser is subject to real estate excise tax, unless each of the following requirements is met:

(a) The proper tax was paid on the initial purchase of the property by the nominee;

(b) The funds used by the nominee to acquire the property were provided by the third party;

(c) The third party legally existed at the time of the initial transaction; and

(d)(i) The subsequent transfer from the nominee to the third party is not for a greater consideration than that of the initial acquisition; . . .

WAC 458-61A-214(1) – (3) (emphasis added).

WAC 458-61A-214 provides further that in order to qualify for the REET exclusion for a transfer from a nominee to a third party purchaser, the parties must provide documentation that they have met all the requirements necessary to claim this exemption, including the following:

Acceptable documentation includes a notarized statement, dated on or before the date of the initial purchase, that the nominee acquired the property on behalf of the third party, *or* other documentation clearly demonstrating the requirements of subsection (3) of this section have been satisfied. Such documentation may include, but is not limited to, financial documentation evidencing the nominee/third-party relationship existed from the time of the original transfer, and confirming the source of the funds used to purchase the property.

WAC 458-61A-214(5) (emphasis added).

In this case, Taxpayer cannot show that the proper tax was paid on its initial purchase of the property. *See* 458-61A-214(3)(a). Furthermore, the facts show that Transferee LLC was formed on June 1, 2013; more than a year after Taxpayer initially purchased the property on March 14, 2012. Because REET was not paid on the initial acquisition and because the Transferee LLC was formed after the date of the initial acquisition, Taxpayer is not a “nominee” under 458-61A-214, and the transfer from Taxpayer to Transferee LLC is a REET taxable transfer. REET was properly assessed on the transfer.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 15th day of April, 2015.