

Cite as Det. No. 15-0252, 35 WTD 236 (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. 15-0252
)	
...)	Registration No. . . .
)	

RCW 82.45.010(1); WAC 458-61A-201(2) – REET – CONSIDERATION – RELIEF OF DEBT – A grantor who transferred her 50% interest in real property to the other co-owner is subject to REET, when the grantee agreed that he would assume full financial responsibility for the subject property that relieved the grantor of her monthly mortgage payments, which constitutes consideration.

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.

Callahan, A.L.J. – A grantor of a 50% interest in real property (“Taxpayer”) protests the Real Estate Excise Tax (REET) assessed on a quit claim transfer where the grantee had paid 100% of the mortgage payments on the property for a period of ten months prior to the transfer. We deny the petition.¹

ISSUE

Whether, under RCW 82.45.010(3)(a) and WAC 458-61A-201, Taxpayer who transferred her 50% interest in real property to the other co-owner is subject to REET, when Taxpayer had not paid anything towards the underlying mortgage for a period of ten months before the transfer, and the grantee continues to make 100% of the mortgage payments after the transfer?

FINDINGS OF FACT

[Taxpayer] and [Grantee] purchased real property located at . . . , Washington on July 5, 2012 and owned the real property as tenants in common.² The real property consists of two parcels (Parcel Nos. . . . & . . .). On November 13, 2013, Taxpayer quitclaimed her 50% interest in the subject property to Grantee. Taxpayer filed two REET affidavits and claimed on the affidavits that the transfer of the property was excluded from REET as a gift transfer under WAC 458-61A-201.³

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

² . . . County Department of Assessments.

³ Taxpayer filed two REET affidavits with the Department because Taxpayer transferred both parcels to Grantee.

The Department of Revenue's ("Department") Special Programs Division ("Special Programs") reviewed the November 13, 2013 transfer and asked Taxpayer to provide documentations to support the gift REET exclusion on the transfer of the property. Taxpayer provided a narrative dated July 2, 2014, copies of the requested bank statements, and a copy of the promissory note.

Taxpayer and Grantee lived in the property until January 2013 as an unmarried couple after they purchased the property in July 2012.⁴ In January 2013, Taxpayer and Grantee terminated their intimate relationship. Taxpayer moved out from the subject property and Grantee became the sole resident on the property.

The real property is encumbered with a mortgage. Taxpayer and Grantee were listed as the borrowers of funds used to purchase the subject property.⁵ Grantee's bank records show that Taxpayer and Grantee contributed to the monthly mortgage payments in equal share until January 2013.⁶ Grantee has been making the full monthly payments to the mortgage since February 2013.⁷ There is no evidence that Taxpayer and Grantee refinanced the mortgage after Taxpayer conveyed her interest in the subject property to Grantee. Taxpayer remains the co-borrower of the funds used to purchase the property.

Taxpayer argued in [her] July 2, 2014 narrative that the transfer is excluded from REET under WAC 458-61A-201 as a gift transfer because she did not receive any consideration at the time of the transfer. The narrative in relevant part, provided:

[Taxpayer and Grantee] agreed that it would be best if [Taxpayer] moved out and that [Grantee] would assume full financial responsibility for the subject property, which [Grantee] did as of February 2013. The evidence of the assumption of full payment is detailed in [Grantee's] included checking account history ...

[Grantee] assumed full responsibility for the mortgage payment in 2/13 and continue to pay the entire amount solely, to date.

Special Programs rejected Taxpayer's argument and concluded that the transfer of the property is subject to REET based on the documents Taxpayer provided. Special Programs determined that when Taxpayer quitclaimed her 50% interest in the subject property to Grantee, . . . Grantee's [agreement to pay] her portion of the loan constitutes consideration received in exchange for the transfer, which is a REET taxable sale.

On July 9, 2014, Special Programs issued a REET assessment against Taxpayer in the amount of \$. . . including interest and penalties. Taxpayer did not pay the assessment and petitioned the Department's Appeals Division for correction of the assessment.

On appeal, Taxpayer relies on the example provided in WAC 458-61A-201(6)(c)(vii) and argues that similar to the grantee in the example, she did not receive any consideration at the time of the

⁴ Taxpayer July 2, 2014 narrative.

⁵ Promissory note to [Title Company].

⁶ Grantee's bank statement for the period of December 18, 2012 through January 17, 2013.

⁷ *Id.*

transfer because 100% of the mortgage payments were made by Grantee for ten months prior to the transfer.

ANALYSIS

Washington imposes REET on “each sale of real property” in this state. RCW 82.45.060. RCW 82.45.010(1) defines “sale” as “any conveyance, grant, assignment, quitclaim, or transfer of ownership of or title to real property . . . for a valuable consideration” Under this statutory framework, there are two requirements for a taxpayer to be liable for REET: (1) the transfer of an interest in real property; and (2) consideration paid or contracted to be paid in exchange for the transfer. . . . If both of these requirements are met, the Department assesses REET unless “specifically exempted by chapter 82.45 RCW and [chapter 458-61A WAC].” WAC 458-61A-100(1).

RCW 82.45.030(3) defines “total consideration paid” as including “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.” WAC 458-61A-102(2) defines “consideration” as “money or anything of value” and also includes “the assumption of an underlying debt.” WAC 458-61A-201(3) provides further guidance on “assumption of debt”:

If the grantee agrees to assume payment of the grantor's debt on the property in return for the transfer, there is consideration, and the transfer is not exempt from tax. Real estate excise tax is due on the amount of debt assumed, in addition to any other form of payment made by the grantee to the grantor in return for the transfer. However, equity in the property can be gifted.

WAC 458-61A-201(3) (emphasis added).

In determining the proper amount of tax in real estate transfers where the grantee relieves the grantor from an underlying debt, WAC 458-61A-103(1) provides:

The real estate excise tax applies to transfers of real property when the grantee relieves the grantor from an underlying debt on the property or makes payments on the grantor's debt. The measure of the tax is the combined amount of the underlying debt on the property and any other consideration.

WAC 458-61A-103(1) (emphasis added).

Here, Taxpayer transferred her interest in the subject property by a quit claim deed. Thus, the first requirement for REET is satisfied. As to the second requirement of consideration, consideration includes “assumption of debt.” WAC 458-61A-102(2). Taxpayer conceded that she and Grantee agreed that Grantee would assume full financial responsibility for the subject property under the condition that Taxpayer moved out from the property. Grantee’s [agreement] relieved Taxpayer of her monthly mortgage payments, which constitutes consideration. WAC 458-61A-201(3); WAC 458-61A-103(1). Even if Taxpayer did not make mortgage payments for

ten months before her transfer of her interest in the subject property to Grantee, Taxpayer nonetheless relinquished her interest in the subject property in exchange for her relief of indebtedness. *See* Det. No. 07-0354, 27 WTD 131 (2008).

Taxpayer argues that she did not receive any consideration from Grantee at the time of the transfer because Grantee has already made 100% of the monthly mortgage payments ten months before the transfer. In support of her argument, Taxpayer cites the example in WAC 458-61A-201(6)(c)(vii):

(vii) Casey and Erin, as joint owners, convey their residence to Erin. There is an underlying debt of \$170,000 in both their names. For the three years prior to the transfer, Erin made 100% of the payments on the debt. After the transfer, Erin continues to make 100% of the payments. The transfer is exempt from the real estate excise tax because Erin made all the payments on the property before the transfer as well as after the transfer; there is no evidence that her payments were consideration for the transfer.

In contrast, WAC 458-61A-201(6)(c) provides an example of a taxable transaction:

(vi) Bill and Melanie, as joint owners, convey their residence valued at \$200,000 to Melanie, as her sole property. There is an underlying debt of \$170,000. Prior to the transfer, both Bill and Melanie had contributed to the monthly payments on the debt. After the transfer, Melanie begins to make 100% of the payments, with Bill contributing nothing toward the debt. Bill's equity (\$15,000) is a gift, but Melanie's taking over the payments on the mortgage is consideration received by Bill. Real estate excise tax is due on \$85,000 (Bill's fractional interest in the property multiplied by the outstanding debt at the time of transfer: 50% x \$170,000).

WAC 458-61A-201(6)(c)(vi).

. . . Here the facts are . . . similar to the taxable example in WAC 458-61A-201(6)(c)(vi), in that the grantee [agrees to pay] the grantor's debt.

There is a distinction in this case as compared to Example (vii), in that here, there is evidence that Taxpayer and Grantee agreed that Grantee would [pay the joint] debt, which is a consideration for Taxpayer's transfer. Example (vii) is silent as to whether the grantee and the grantor have an agreement that the grantee will assume [grantor's] debt, and it appears an assumption was made due to the course of conduct over multiple years. The grantee in the example made 100% payments for three years prior to the transfer and continued to make payments after the transfer. . . .

Here, Grantee [agreed to] the full financial responsibility of Taxpayer's debt as stated in the July 2, 2014 narrative, as he is now paying 100% of the mortgage without any assistance from Taxpayer. As illustrated in Example (vi) listed above, this arrangement is subject to tax on the amount of debt relived by Grantee. We addressed a similar issue in Det. No. 14-0257, 33 WTD 632 (2014), which we concluded that:

Taxpayer transferred his interest in the subject property to Grantee and, in return, he was relieved of a monthly mortgage payment, as Grantee began paying 100% of the mortgage after the transfer. Under these circumstances, REET is due on Taxpayer's fractional interest in the property multiplied by the outstanding debt at the time of transfer. *See* WAC 458-61A-201(6)(d)(vi).

Taxpayer transferred her interest in the subject property to Grantee and, in return, she was relieved [by him] of her liability on the mortgage payments, which constitutes consideration. WAC 458-61A-201(3); WAC 458-61A-103(1). Therefore, Taxpayer's transfer is a taxable event and the gift REET exclusion under WAC 458-61A-201 does not apply. We deny the petition.

DECISION AND DISPOSITION

We deny Taxpayer's petition.

Dated this 16th day of September, 2015.