Cite as Det. No. 18-0224, 38 WTD 248 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 18-0224
. . .	)	Registration No. . . .

[1] RCW 82.45.060; WAC 458-61A-102; WAC 458-61A-215: REAL ESTATE EXCISE TAX – TRANSFER OF PROPERTY FOR VALUABLE CONSIDERATION – CLEARING TITLE EXEMPTION. A grantor is liable for real estate excise tax when it transfers the property to a grantee in exchange for money that grantor uses for the down payment on the property. The transfer is not exempt from REET under the clearing title exemption, because the transfer of the property is not merely to secure a debt.

[2] WAC 458-61A-103: REAL ESTATE EXCISE TAX – MEASURE OF TAX. The measure of REET is the combined amount of the underlying debt on the property and the funds contributed by Grantee towards the down payment.

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.

Casselman, T.R.O. – An individual (Grantor) protests real estate excise tax (REET) assessed on the transfer of property to her son (Grantee), claiming the transfer was exempt from REET as a mere clearing of title or addition of co-signor. We deny the petition in part and grant it in part.[1]

ISSUES

1. Under RCW 82.45.060, WAC 458-61A-102, and 458-61A-215, is a transfer of property from Grantor to Grantee exempt from REET when Grantor receives $ . . . from Grantee shortly before refinancing the property, and uses the funds in the refinancing of the property?

2. Under WAC 458-61A-103, did the Department err in arriving at the measure of tax?

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

FINDINGS OF FACT

In January 2016, . . . (Grantor) and her partner, . . . [(Partner)], purchased a parcel of land located at . . . Washington . . . . [Partner] agreed to be the general contractor and build a home on the lot. Although Grantor did not intend to co-own the property with [Partner], she needed [Partner] on the deed to qualify for a construction loan.[2] Grantor paid the entire . . . down payment from a sale of her previous residence, her investments, and her 401K account. Grantor and [Partner] agreed that [Partner] would transfer his interest in the property to Grantor when she was able to secure conventional financing. A deed of trust dated February 4, 2016, and secured by the subject real estate named Grantor and [Partner] as the borrowers.

[Partner] began building in the summer of 2016 and completed the project in May 2017. Grantor used her credit card to pay for the construction expenses, totaling approximately $ . . . . In January 2017, in anticipation of completion of the project, Grantor began the process of refinancing to obtain a conventional loan.

On April 25, 2017, [Partner] signed a quitclaim deed conveying title in the subject real estate to Grantor. Also on April 25, 2017, Grantor added her son, ... (Grantee), to the deed and refinanced the property into a conventional loan totaling $ . . . . These two transactions occurred at the same time and as part of the refinance.[3] Grantor and Grantee were named as co-borrowers on the deed of trust dated April 25, 2017. Grantee contributed $ . . . to the down payment.[4] As part of the transfer from Grantor to Grantee, Grantor completed a REET Affidavit and indicated the transfer was exempt from REET under WAC 458-61A-215(2)(d), as a mere clearing of title or addition of co-signor. Grantor indicated on the REET Affidavit Narrative that, "Grantor . . . is currently in title and will remain in title and will make all payments on the Refinanced debt. [Grantee] is coming into title for Co-Borrowing purposes only."

Following the April 25, 2017, transfer of property from Grantor to Grantee, the Department of Revenue's Special Programs Division (Special Programs) audited the transfer and asked Grantor to provide documentation substantiating the claimed REET exemption. Grantor responded that she added Grantee to the title for co-signing security purposes only and that Grantee did not make any of the mortgage payments. Grantor also contended that Grantee had not contributed to the down payment related to the refinance. Rather, they had intended that Grantee's funds be used to pay down Grantor's credit card debt and only on the lender's advice, did they include the credit card debt into the refinanced loan amount.

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[2] Grantor received funds through a "hard money loan." Grantor explained at the hearing that she did not qualify for a conventional construction loan issued by a bank. Instead, she applied for a hard money loan that had higher interest and took less time to close than a traditional loan. A private financing firm, . . . [(Financing Firm)], issued the hard money loan for construction of a home on the lot. [Financing Firm] would not grant the loan unless . . . , a contractor that was responsible for the building the home, was on the deed.

[3] Grantor paid REET of $ . . . on the first transaction (quitclaim deed transfer from [Partner] to Grantor) and did not pay REET on the second transaction (quitclaim deed transfer from Grantor to Grantee). [The first transaction is not at issue in this determination].

[4] Grantor and Grantee initially agreed that the Grantee would pay $ . . . towards Grantor's credit card debt. On advice from the lender, Grantor chose to roll her credit card debt into the mortgage and used Grantee's funds to pay for closing costs. The total amount of the down payment as itemized in the loan "Closing Disclosure" on the refinanced loan was $ . . . . Grantee contributed $ . . . towards that down payment as evidenced by [Bank] statements provided by Taxpayer.

At the hearing, Grantor argued that while she recognized she owed money on the transfer, it was unfair that she would have to pay now for an error on the part of the Escrow Company. She explained that had the Escrow Company advised her of the REET obligation at the time of closing on the refinance, she could have had the cost included in her mortgage. At this time, Grantor argues it will be difficult for her to pay the REET and she requests a payment plan. Currently, Grantor, Grantee, and [Partner] all live in the home at the subject property.

Special Programs determined that Grantor had not established the transfer was exempt from REET and on November 17, 2017, issued a REET assessment against Grantor in the amount of $ . . . . Special Programs arrived at $ . . . as the measure of tax. Special Programs determined Grantee gave Grantor $ . . . in cash to pay towards the down payment on the refinanced loan. To that amount, Special Programs added half of the refinanced debt of $ . . .[5] for a total of $ . . . . Grantor filed a petition for review and asserted the transfer was exempt from REET under WAC 458-61A-215(2)(d).

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 the ownership of or title to real property . . . for a valuable consideration . . . ." For purposes of REET, the term "consideration" includes the following:

> 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 term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale. . . .

WAC 458-61A-102(2); *see also* RCW 82.45.030(3).

1. The transfer of property from Grantor to Grantee is not exempt from REET.

A transfer is exempt from REET under the clearing title exemption, when a mortgage or other transfer of an interest in real property is merely to secure a debt. RCW 82.45.010(3)(i). The rule that administers this statute provides:

> The real estate excise tax does not apply to quitclaim deeds given for the sole purpose of clearing title <u>if no consideration passes otherwise</u>. This rule does not apply to deeds executed for the purpose of adding persons to title, except in cases of persons added to title for co-signing security purposes only.

WAC 458-61A-215(1) (emphasis added). WAC 458-61A-215(1) makes clear that the clearing title exemption does not apply if any consideration passes.

[5] Special Programs determined the refinanced debt totaled $ . . . . The loan Closing Disclosure states the total mortgage as $ . . . .

Grantor explained that she added Grantee to the title for co-signing security purposes only. Grantor asserts that she added Grantee to the title solely to qualify for the loan and that she received no consideration in return. Grantor's affidavit states, "[Grantee] is coming into title for Co-Borrowing purposes only." A relevant example is found in WAC 458-61A-215(2)(d) which provides:

> (d) Joseph owns a residence and goes to a bank to refinance. His credit is not good enough to obtain the new loan in his name only, but he can qualify if he obtains a co-signor/co-borrower. Joseph's parents agree to co-sign the loan. The bank requests that the parents also go on title with Joseph, and he quitclaims a half interest to his parents. Although the deed may be phrased as a gift to his parents, the deed acts as a security interest for his parents in the event Joseph defaults. The addition of Joseph's parents to the title is exempt under this rule, provided Joseph makes all the mortgage payments, *and Joseph receives no consideration from his parents for the transfer*.

WAC 458-61A-215(2)(d) (emphasis added).

The facts in the example above are different from the facts presented by Grantor in this case. Grantor has not shown that she received no consideration from Grantee for the transfer. Grantor received $ . . . from Grantee one month prior to closing on the refinancing of the property. Grantor used Grantee's funds to pay off construction debt that was included in the new mortgage on which both Grantor and Grantee are listed as borrowers. We recognize that Grantor intended to add Grantee to the title to secure a refinanced loan. While Grantor indicated that she alone would make all payments on the refinanced debt, she nevertheless used Grantee's funds in the closing of the refinanced mortgage. This action of accepting money and using it for purposes of paying down the closing costs (down payment) constitutes receiving consideration and triggers a REET obligation. WAC 458-61A-102(2); *see also* RCW 82.45.030(3). Grantor's transfer in the property to Grantee constituted a sale, as defined by RCW 82.45.010, subject to REET under RCW 82.45.060.

2. The correct measure of REET is the combined amount of the underlying debt on the property and the funds contributed by Grantee towards the down payment.

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, because the Grantor and Grantee are named on the deed as co-borrowers and owners of the property, the measure of tax is half of the underlying debt ($ . . .) combined with the consideration

Grantee gave to Grantor ($ . . .). Accordingly, the measure of tax is less than assessed by the Department and should be half of $ . . . plus $ . . . , for a total of $ . . . . We grant the petition on this issue.

DECISION AND DISPOSITION

Taxpayer's petition is denied in part and granted in part. We deny the petition with respect to the issue of whether Grantor's addition of Grantee to the deed at the time of refinance is subject to REET. We find that it is. We grant the petition with respect to the measure of tax used by Department. We find the consideration provided by Grantee was $ . . . and half of the underlying debt. We remand this case to Special Programs for adjustment consistent with this determination.

Dated this 16th day of August 2018.