

Cite as Det. No. 19-0016, 40 WTD 113 (2021)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 19-0016
)	
... )	Registration No. . . .
)	

WAC 458-61A-201; RCW 82.45.010: REAL ESTATE EXCISE TAX – CONSIDERATION. When an owner of real property transfers the property to another person who contributes to mortgage payments both before and after the transfer, there is no consideration for transfer and the transfer is exempt from real estate excise tax. Taxpayers must provide documentation to document the lack of 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.

Fisher, T.R.O. – An individual protests the imposition of Real Estate Excise Tax (“REET”) on two transfers of real property from the individual to a limited liability company owned in part by the individual. Because the limited liability company paid the mortgage debt from the origination of the mortgage and continued to do so after the individual transferred the real property to the limited liability company, there was no consideration for the transfer. The petition is granted.<sup>1</sup>

ISSUE

Under RCW 82.45.010(1) and WAC 458-61A-201(6), did the grantee provide the grantor consideration for the transfer of real property where the grantee paid for debts encumbering the property before the transfer, and continued to do so after the transfer?

FINDINGS OF FACT

On September 14, 2017, . . . (“Taxpayer”) executed two quitclaim deeds to transfer legal title of two pieces of real property in . . . Washington to . . . (“LLC”). The pieces of real property were located at [Property 1] and [Property 2] (collectively, “[Joint] Properties”). Two REET affidavits were submitted for the two quitclaim deeds. Both REET affidavits claimed an exemption from REET based on WAC 458-61A-211 for a mere change in identity (no change in beneficial interest).

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

The Department of Revenue audited the transfers. Taxpayer and LLC provided the Department with LLC's Operating Agreement. The Operating Agreement showed LLC's ownership split in three ways: one-third owned by Taxpayer, one-third owned by . . . , and one-third by . . . . The Department disallowed the claimed REET exemption, reasoning that Taxpayer previously owned 100% of the [Joint] Properties, and after the transfer of the [Joint] Properties to the LLC, owned only a third of the [Joint] Properties. The Department determined REET was due on two-thirds of the value listed in the . . . County Assessor's Office as of the date of the transfer: September 14, 2017.

The Department assessed Taxpayer \$ . . . in REET, \$ . . . in interest, and a substantial underpayment penalty of \$ . . . .

Taxpayer timely sought administrative review. On review, Taxpayer concedes that the transfers of the [Joint] Properties from Taxpayer to LLC are not exempt from REET as a mere change in identity. Taxpayer instead argues that there was no consideration for the transfers from Taxpayer to LLC.

According to Taxpayer, LLC's members decided to go into business to develop and manage rental properties in order to make a profit. The LLC was created for this purpose. The LLC Operating Agreement provides "Members shall not be personally liable for any debts, obligations or liabilities of the [LLC] beyond their respective Capital Contributions except as otherwise provided by law." Operating Agreement at 5.4. The LLC's Operating Agreement was executed on September 1, 2004, and the LLC began operations on October 6, 2004.

The [Joint] Properties were purchased in November 2004 and titled in Taxpayer's name. The properties were purchased with a loan secured by the [Joint] Properties. According to Taxpayer, the properties were purchased in Taxpayer's name in order to get the bank's approval for the loan. Years later, the LLC's members decided they wanted to dissolve the LLC. The LLC members insisted that Taxpayer transfer the [Joint] Properties to the LLC before selling the [Joint] Properties to ensure that all members of the LLC received their share of the sale. According to Taxpayer, LLC paid for the mortgages encumbering the [Joint] Properties from the purchase of the [Joint] Properties until the [Joint] Properties were sold to unrelated third parties.

Documents provided at the hearing support Taxpayer's claim that the LLC made the mortgage payments on the properties. Taxpayer provided all the mortgage statements for the [Joint] Properties and thirteen years of the LLC's bank statements, from November 2004 through November 2017. These bank statements include the LLC Members' original capital contributions. Beginning with the LLC's December 2004 bank statement, the bank statements show that the LLC paid for the mortgage payments on the [Joint] Properties from December 2004 through November 2017, including after the September 14, 2017, quitclaim deed was recorded.

The . . . County Assessor's Office website reflects that quitclaim deeds for [the Joint] Properties were filed on September 14, 2017. The . . . County Assessor's Office Website further reflects that on November 22, 2017, the LLC executed and recorded a statutory warranty deed for the [Property 1] in favor of . . . , and that REET was paid on the November 22, 2017, transfer. The . . . County Assessor's Office also indicates that on December 15, 2017, the LLC executed and recorded a

statutory warranty deed for the [Property 2] in favor of . . . , and that REET was paid on the December 15, 2017, transfer.

According to Taxpayer, the LLC is now dissolved and is no longer doing business.

#### ANALYSIS

Washington's REET is imposed on the "sale of real property" measured by its "selling price." RCW 82.45.060; Det. No. 17-0021, 36 WTD 563, 568 (2017). "Sale of real property," in the context of REET, "has its ordinary meaning and includes any conveyance . . . or transfer of the ownership of or title to real property . . . or any estate or interest therein for a valuable consideration. . . ." RCW 82.45.010(1). REET is due at the time the sale occurs, and is the obligation of the seller. RCW 82.45.080; WAC 458-61A-100(2)(a).

"Selling price" means "the true and fair value of the property conveyed. If property has been conveyed in an arm's length transaction between unrelated persons for a valuable consideration, a rebuttable presumption exists that the selling price is equal to the total consideration paid. . . ." RCW 82.45.030(1). WAC 458-61A-101(2)(c) defines "true and fair value" as "market value, which is the amount of money that a willing, but unobligated, buyer would pay a willing, but unobligated, owner for real property, taking into consideration all reasonable, possible uses of the property."

WAC 458-61A-201 provides additional clarification on what constitutes "consideration" for determining whether a transaction qualifies as a "sale of real property" for REET purposes, and includes the following example:

Bob conveys his residence valued at \$200,000 to himself and Jane as tenants in common. Bob has \$25,000 equity, and an underlying debt of \$175,000. Bob and Jane have contributed varying amounts to an existing joint bank account for many years prior to the conveyance. Mortgage payments have been made from the joint account both before and after the transfer. The conveyance is exempt from real estate excise tax, because Jane's contributions toward the joint account from which the payments are made is not deemed consideration in exchange for the transfer from Bob (because she made contributions for many years before the transfer as well as after the transfer, there is no evidence that her payments were consideration for the transfer).

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

Here, Taxpayer has provided evidence that LLC's members contributed varying amounts to an existing bank account, the LLC's, prior to the conveyance. Taxpayer has also provided documentation to show that mortgage payments were made from the LLC's account for thirteen years before the September 14, 2017, quitclaim deeds were executed and recorded. The mortgage payments continued to come from the LLC's account after the transfer. Under WAC 458-61A-201(6)(v), there is no evidence that the November 2004 contributions to the LLC's bank account were consideration for the September 14, 2017, transfer.

Accordingly, there was no consideration for the September 14, 2017, quitclaiming of the [Joint] Properties from Taxpayer to the LLC. Because there was no consideration, there was no “sale of real property” under RCW 82.45.010(1), and REET is not due.

DECISION AND DISPOSITION

Taxpayer’s petition is granted.

Dated this 17th day of January 2019.