

Cite as Det. No. 19-0152, 40 WTD 216 (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. 19-0152
)	
... )	Registration No. . . .
)	

RCW 82.45.030(1); WAC 458-61A-102: REAL ESTATE EXCISE TAX – LEASEBACK VALUATION. In a sale and leaseback transaction where the seller accepts a discounted amount of consideration for the sale, the seller must provide a method to value the leaseback, or the Department will assess real estate excise tax on the transaction based on the market value listed on the county property tax rolls at the time of sale.

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.

Sattelberg, T.R.O. – A former owner of real estate protests the Department’s assessment of real estate excise tax (“REET”). The former owner argues the Department did not properly value the long-term leaseback of the property, and therefore over-assessed REET. We deny the petition.<sup>1</sup>

ISSUE

Whether the Department properly assessed REET under RCW 82.45.030(1) and WAC 458-61A-102(19) on the difference between the county assessed value and the amount of consideration paid.

FINDINGS OF FACT

. . . (“Taxpayer”) owns several properties in . . . , Washington. One of those properties was at . . . (“Property”), which Taxpayer had owned since 2011. Like Taxpayer’s other properties in . . . , Taxpayer rented out Property on a short-term basis. Taxpayer estimates that he earned \$ . . . to \$ . . . per year from his short-term rentals of Property.

In late 2017, Taxpayer was in need of cash for business purposes. Taxpayer discussed the option of selling Property to . . . (“Buyer”) as an investment opportunity for Buyer. Taxpayer had known Buyer for over 30 years and was coordinating real estate investments in Florida with him at the

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

time.<sup>2</sup> The sale would be subject to a 20-year leaseback at \$ . . . rent per year. Buyer agreed to purchase Property for \$[300,000<sup>3</sup>], subject to the leaseback, with the sale commencing on December 15, 2017.

Taxpayer and Buyer submitted a REET Affidavit documenting the sale of Property. The parties listed the assessed value as \$[600,000], the amount on the . . . County property tax rolls at the time of the sale. The parties listed the gross selling price of the transaction as \$[300,000] . . . , and paid REET on that amount.

On February 27, 2018, the Department's Special Programs Division ("Special Programs") notified Taxpayer that it was auditing the sale. Special Programs requested documentation regarding the sale, and Taxpayer later provided the Statutory Warranty Deed and the Lease Agreement. The Lease Agreement is between Buyer and . . . , Taxpayer's property management company. After reviewing the documentation, Special Programs concluded that the sale was not at arm's length because of the leaseback. Special Programs assessed REET on the difference between the county assessed value at the time of sale and consideration paid, and on May 4, 2018, issued Taxpayer an assessment totaling \$ . . .<sup>4</sup>

Taxpayer timely petitioned for review of the assessment. Taxpayer argues that Special Programs did not properly account for the value of the long-term leaseback. Taxpayer states the amount of income Taxpayer would be able to make over that term with its short-term rentals offset the discount in the selling price. Taxpayer states that the sale price of \$[300,000] is reasonable considering the value of this potential rental income. Taxpayer did not provide any calculation valuing the long-term leaseback.

#### ANALYSIS

REET is imposed on each sale of real property in Washington. RCW 82.45.060. The amount of tax is computed by multiplying the state and local tax rates by the "selling price." *Id.* "Selling price" is defined as the "true and fair value of the property conveyed." RCW 82.45.030(1). "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 or contracted to be paid to the transferor, or to another for the transferor's benefit." *Id.*

"Total consideration paid or contracted to be paid" includes "money or anything of value, paid or delivered or contracted to be paid or delivered in return for the sale, and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale." RCW 82.45.030(3). Here, Taxpayer sold Property for \$ [300,000] and a 20-year lease-back agreement

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<sup>2</sup> Taxpayer represents that he was locating investment opportunities in Florida and making the purchases, and Buyer would subsequently make any needed repairs. Taxpayer represents that he and Buyer were not business partners in any entities, they were just working together informally.

<sup>3</sup> [The numbers used in this Washington Tax Decision were added in the publication process to improve readability and do not reflect the actual numbers at issue in this determination.]

<sup>4</sup> The assessment consists of \$ . . . in REET, an assessment penalty of \$ . . . , and \$ . . . in interest.

whereby Taxpayer contracted to pay \$ . . . per year in rent in exchange for the ability to continue to use Property for short term rentals. Taxpayer did not provide a value of the leaseback and simply stated that historical short term rental revenue from Property was \$ . . . to \$ . . . This limited information is insufficient to value the leaseback. Thus, while Taxpayer clearly received \$[300,000] in cash, we cannot determine the total consideration paid or contracted to be paid for Property because we have no information to value the leaseback.

In this case, Taxpayer acknowledges that the leaseback has some value and that he received more in return for Property than just the [\$300,000]. Therefore, it is reasonable to conclude that [\$300,000] alone would not represent the total consideration paid or contacted to be paid. Therefore, we decline to use this amount as the selling price upon which REET is due.

Where total consideration for the sale cannot be ascertained, RCW 82.45.030(4) instructs that the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price. In this case, Special Programs followed RCW 82.45.030(4) when it assessed REET based on a selling price of \$[600,000], which was the market value assessment of the property maintained on the county property tax rolls at the time of the sale. Because Taxpayer did not provide sufficient information for the Department to ascertain the value of the leaseback, the Department cannot ascertain the total consideration paid and contracted to be paid for Property, so the Department properly assessed REET based on a selling price equal to the market value in the county property tax rolls at the time of sale.

#### DECISION AND DISPOSITION

We deny Taxpayers' petition.

Dated this 11th day of June 2019.