

Cite as Det. No. 19-0211, 40 WTD 252 (2021)

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

In the Matter of the Petition for Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 19-0211
)	
...)	Registration No. ...
)	

WAC 458-61A-213; RCW Ch. 82.45: REAL ESTATE EXCISE TAX -- EXEMPTIONS -- 26 U.S.C. § 1031 EXCHANGES. The real estate excise tax exemption allowed for a second transaction in a 26 U.S.C. § 1031 tax deferred exchange through a facilitator does not apply when the facilitator does not conduct both transactions.

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.

NATURE OF THE CASE

Gabriella Herkert, T.R.O. – An owner of real estate protests the imposition of real estate excise tax (REET) on the disposition of property by an “exchange facilitator” after having paid REET on a separate transfer of its property to the “exchange facilitator” as part of an integrated transaction treated as deferred under 26 U.S.C. § 1031. We deny Taxpayer’s petition.¹

ISSUE

Under RCW 82.45.060 and WAC 458-61A-61A-213(3), is Taxpayer entitled to a refund of REET it paid on its transfer of property to an exchange facilitator, when the transfer was part of a “like-kind exchange” under 26 U.S.C. §1031, in which an exchange facilitator was used to sell Taxpayer’s relinquished property, but was not used to acquire Taxpayer’s replacement property?

FINDINGS OF FACT

... (Taxpayer), owned ... real estate ... (Relinquished Property). On [date], Taxpayer transferred the Relinquished Property to ... , a 1031 exchange facilitator (Facilitator). Taxpayer filed a REET affidavit listing the assessed value of the property (\$. . .) as the selling price, because the transfer to the Facilitator did not include an exchange of funds. Taxpayer paid \$. . . in REET on the transfer, which consisted of \$. . . in tax and \$. . . for the technology fee. Taxpayer provided a copy of the

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

Statutory Warranty Deed for the transfer, as well as a copy of its accommodation agreement with Facilitator. The Statutory Warranty Deed lists the Facilitator as the Grantee and Taxpayer as the Grantor.

On [date], Taxpayer purchased . . . real estate at . . . (Replacement Property) for \$. . . from . . . (Seller). With additional amounts for taxes, closing fees and other costs, plus an additional credit for earnest money, Taxpayer paid Seller \$. . . total for the Replacement Property. Taxpayer did not acquire the Replacement Property through the Facilitator.

On [date], the Facilitator sold the Relinquished Property to . . . (Buyers) for \$ [The Facilitator paid REET on this sale.] Taxpayer provided a copy of the settlement statement for the sale of the Relinquished Property to the Buyers. Taxpayer has not yet filed its federal income tax return and, therefore, did not provide a copy [of it] with either its refund request or during [the review process].

Taxpayer filed a refund request for \$. . . in REET paid on the transfer of Relinquished Property to Facilitator, which was denied by the Department's Special Programs Division (Special Programs) in Letter No. . . . Special Programs cited both the absence of a supplemental statement attached to the refund request and a lack of documentation establishing that the Taxpayer provided the funds for the purchase of the Replacement Property as a basis for the denial. Taxpayer timely requested review of the denial of refund. Taxpayer subsequently provided a copy of its supplemental statement, promissory notes and bank statements showing the funding source for the acquisition, as described above.

ANALYSIS

All sales of real property in Washington are subject to REET unless specifically exempted by chapter 82.45 RCW[, as further explained in rules found in WAC 458-61A]. *See* RCW 82.45.060 and WAC 458-61A-100. REET is the seller's obligation. RCW 82.45.080. Taxpayer, in this case, seeks a refund of REET it paid on the transfer of the Relinquished Property to Facilitator.

The Department of Revenue (Department) may issue a refund of real estate excise [taxes] when there has been a double payment of tax. WAC 458-61A-301(12)(d)(vii). The Department may also issue a refund of REET if REET was paid when the taxpayer was entitled to a valid exemption from tax but failed to [claim] the exemption at the time of the transfer. WAC 458-61A-301(12)(d)(ix). Taxpayer claims that, under WAC 458-61A-213, it is entitled to an exemption from REET because it sold the Relinquished Property and purchased the Replacement Property through a deferred exchange of like-kind real property under 26 U.S.C. § 1031. Taxpayer submitted a copy of its supplemental statement claiming both the Relinquished Property and the Replacement property were like-kind real property and that the properties were exchanged in accordance with the provisions of 26 U.S.C. § 1031.

Taxpayer sold the Relinquished Property through an agent, Facilitator. Taxpayer purchased the Replacement Property directly from the seller and without Facilitator's assistance. The Department addressed the imposition of REET on deferred like-kind exchanges of business property subject to 26 U.S.C. § 1031 through an exchange facilitator in WAC 458-61A-213. "An 'exchange facilitator' is a person who acts as an agent on behalf of another person in connection with an

exchange of real property under section 1031 of the Internal Revenue Code of 1986 (section 1031 tax deferred exchange).” WAC 458-61A-213(1). Taxpayer provided a copy of its accommodation agreement naming Facilitator its agent for the sale of the Relinquished Property. Taxpayer transferred its Relinquished Property to Facilitator, which the Facilitator subsequently sold to a third-party buyer, in accordance with the terms of the accommodation agreement.

Acquisition of property by an exchange facilitator in connection with a 26 U.S.C. § 1031 tax deferred exchange is subject to REET. WAC 458-61A-213(2). Under WAC 458-61A-213(3), the later transfer of property by the facilitator in completion of the exchange is subject to REET, unless the following requirements are met:

- (a) The proper tax was paid on the initial transaction;
- (b) A supplemental statement signed by the exchange facilitator, as provided by WAC 458-61A-304, is attached to the real estate excise tax affidavit indicating that the facilitator originally took title to the property for the sole purpose of effecting a section 1031 tax deferred exchange; and
- (c) The funds used by the exchange facilitator to acquire the property were provided by the grantee and/or received from the proceeds of the sale of real property owned by the grantee.

WAC 458-61A-213(3).

In this case, Taxpayer is seeking a refund of REET paid on the transfer of the Relinquished Property to Facilitator. WAC 458-61A-213(2) clearly indicates that the initial transfer from a seller to an exchange facilitator is subject to REET. The exemption in WAC 458-61A-213(3) is only available to an “exchange facilitator” on the “later transfer of property in completion of the exchange.” *Id.* Taxpayer is not an “exchange facilitator” and the transfer at issue in this case is the initial transfer of the Relinquished Property, not the “later transfer.” Facilitator paid REET on its subsequent transfer to the Buyers. . . . The exemption of WAC 458-61A-213(3) is available to “exchange facilitators.” Because Taxpayer is not an “exchange facilitator,” Taxpayer is not eligible for the exemption in WAC 458-61A-213(3).

Special Programs denied Taxpayer’s refund request on the basis that it failed to provide copies of its supplemental statement showing the exchange occurred under 26 U.S.C. §1031 or documentation establishing that the Taxpayer provided funding for the Replacement Property. We agree with Special Programs’ conclusion but for the reasons described above. We therefore deny Taxpayer’s request for refund.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 21st day of August 2019.