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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. 22-0196
)	
...)	Registration No. . . .
)	

WAC 458-61A-101(2)(c); WAC 458-61A-303(6)(b); RCW 82.45.030: REAL ESTATE EXCISE TAX (REET) – MEASURE OF THE TAX – TRUE AND FAIR VALUE – SELLING PRICE – NOMINAL SALE. The measure of REET is the true and fair value of the property conveyed, represented by the selling price. If property has been conveyed in an arm’s length transaction, a rebuttable presumption exists that the selling price is equal to the total consideration paid or contracted to be paid to the transferor. True and fair value should not be based on speculation, but instead should be based on the objective evidence.

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.

LaMarche, T.R.O. – A taxpayer disputes the assessment of Real Estate Excise Tax (REET) on its sale of a certain [real] property. The Department assessed REET on the grounds that the sale was a nominal sale and the sale price did not reflect the fair market value. We grant the petition.¹

ISSUE

Under RCW 82.45.030, RCW 82.45.100(4), WAC 458-61A-102(22), and WAC 458-61A-303(6), did the price for the sale of certain real property in Washington State constitute the selling price of that real property when the price was lower than the county assessed value of the real property, but the price was determined at arm’s length between two unrelated parties?

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

FINDINGS OF FACT

. . . (Taxpayer) is an [out-of-state] non-profit corporation that acts as the trust agency of [a religious] Convention and supports the ministries of the Convention, its member churches, and other affiliated ministries.

The issue in this case concerns two parcels, . . . parcel number . . . and parcel number . . . , located . . . [in City, Washington] (the Property). [City] is located in a rural area in . . . County in . . . Washington, and its population in 2020 was . . .² [City] is the largest city in . . . County.³ The county assessed value of the Property consists of parcel number . . . valued at \$. . . and parcel number . . . valued at \$. . . , for a total of \$. . .

On . . . , 2007, Taxpayer quitclaimed and conveyed the Property to the . . . (the “former church”), with a reversionary provision. The provision was that title to the property would revert to and vest in Taxpayer, its successors and assigns, in the event the Property was not used as [an affiliated] Church or for other [affiliated] Church purposes for a period of six months.

The former church was administratively dissolved by the Washington Secretary of State on . . . , 2014, however the former church continued to operate as [an affiliated] church. In mid-2016, the pastor was let go, but some members of the congregation continued to meet at the Property during 2016. An officer of the former church advised Taxpayer that the remaining congregation was small and intended to stop meeting at the Property.

On May 3, 2017, Taxpayer received a letter from the . . . City Treasurer that the Property was sitting vacant and unused, and had a sewer lien due to nonpayment of sewer/water bills. In December 2017, the . . . County Assessor’s Office sent a notice that the Property no longer was exempt from property tax. After many unsuccessful attempts to contact members of the former church, Taxpayer exercised its reversion rights on January 5, 2018, and thereafter held title to the Property.

In a letter dated April 13, 2022, Taxpayer stated that the former church had very little money for years, and was unable to support maintenance of the building, including roof repair. Taxpayer said the Property was in aged and poor condition in 2017, and stated: “[Taxpayer], a religious nonprofit organization, did not have the budget with which to repair and update the property or prevent even more deferred maintenance from accruing. Thus, we looked for a real estate professional in the area willing to handle an ‘as-is’ sale.” April 13 Letter at 1.

Taxpayer acquired the services of . . . (Realtor), a real estate agent operating out of . . . Taxpayer said that it acquired his services because of his knowledge of the area and his relationships in the local community. Realtor made notes about the Property dated December 28, 2017, which Taxpayer provided to the Department. The realtor notes indicated that the building was partially winterized and noted that some sinks were missing and mentioned the possibility that some water pipes may have been broken. Realtor indicated that the building had been built in 19. . . , and had the original . . . carpet, wood paneling, and low head clearance in the basement. Realtor stated that if Taxpayer decided to break the lot into parts, each lot would sell for about \$. . . - \$. . . and Taxpayer would be required to put a street through the middle at a cost of about \$. . . . In Realtor’s

² . . .

³ *Id.*

opinion, the best option would be to list the Property for sale at \$. . . , with the expectation that Taxpayer might have to go as low as \$

At the hearing on August 23, 2022, Taxpayer indicated that prior to listing the Property, Realtor reached out to local churches and other potential buyers that engaged in activities compatible with the building. Taxpayer said the building had only two exits and its design would not be appropriate for most business purposes.

Taxpayer entered into a listing agreement with Realtor, with a Multiple Listing Service (MLS) listing date of . . . , 2018, and an offering price of \$ Taxpayer indicated at the hearing that it received one offer in the first [two] days the Property was listed, from . . . (Buyer). Taxpayer entered into a purchase and sale agreement with Buyer in the amount of \$. . . on . . . , 2018 (Purchase and Sale Agreement).

The Department of Revenue's Audit Division (Audit) audited the transaction and made several unsuccessful attempts to reach Taxpayer. Audit determined that the sales price of \$. . . was nominal, and on February 16, 2022, a no-contact assessment was issued. Audit considered that the value of the Property maintained on the county tax rolls of \$. . .⁴ was the true and fair market value of the Property. Additional REET due was calculated on the difference between \$. . . less the previously reported amount of \$ The assessment, Document No. L00 . . . , was issued for the additional REET of \$. . . plus \$. . . interest, for a total due of \$ Taxpayer did not pay the assessment, but timely filed a petition for review.

On April 29, 2022, Audit emailed Taxpayer inquiring about a status update regarding the requested information. Taxpayer provided the purchase and sale agreement, listing agreement, listing input sheet, Realtor notes, and a written narrative discussed above. No independent market appraisal was provided.

ANALYSIS

Real estate excise tax (REET) is imposed upon the sale of real property in Washington. RCW 82.45.060. "Real property" means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity which itself owns land or anything affixed to land. RCW 82.45.032(1). REET is measured by the "selling price." RCW 82.45.060(1).

RCW 82.45.030 defines "selling price" as follows:

(1) As used in this chapter, the term "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 or contracted to be paid

(Emphasis added.) *See also* WAC 458-61A-101(4); [WAC 458-61A-102(22)]. Here, Taxpayer and Buyer were not related persons. The Property was placed on the market and listed at \$. . . based on the advice of Realtor, a third party whose best interests would be served by maximizing

⁴ The Property consists of two parcels, with parcel . . . valued by the county at \$. . . and parcel . . . valued at \$

his commission by selling the Property for as high a price as possible. Taxpayer, as a trust, had the fiduciary duty to maximize the sales price for the Property.

We cannot determine true and fair value based on speculation, but must look to the objective evidence. See *In re Westlake Ave.*, 40 Wash. 144, 150, 82 Pac. 279 (1905). As the court stated in *In re Westlake*, market value is not limited to the value of the property to the owner. Instead,

The market value of property is the price which it will bring when it is offered for sale by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it. In estimating its value, all the capabilities of the property, and all the uses to which it may be applied or for which it is adapted, are to be considered, and not merely the condition it is in at the time and the use to which it is then applied by the owner. It is not a question of the value of the property to the owner

Id. (internal quotations omitted). See also *Donaldson v. Greenwood*, 40 Wn.2d 238, 252, 242 P.2d 1038 (1952) (“Fair market value’ means neither a panic price, auction value, speculative value, nor a value fixed by depressed or inflated prices. We have defined it as the amount of money which a purchaser willing, but not obliged, to buy the property would pay an owner willing, but not obliged, to sell it.”)

The court’s analysis in *Westlake* is reflected in WAC 458-61A-101(2)(c), which states that “true and fair value” is defined as “market value, which is the amount of money that a willing, but unobliged, buyer would pay a willing, but unobligated, owner for real property, taking into consideration all reasonable, possible uses of the property.”

Here, Realtor’s recommended sales price of \$. . . was based on his knowledge of the real estate market in . . . , that, although it was the county seat and largest city in . . . County, had a population of only We find it credible that the number of potential buyers who would invest in the Property was small, as the population of . . . was very small and would most likely not be a favorable place to invest, the condition of the church was poor, and its uses were limited without substantial investment. We find that each party was willing and unobligated, and that they took into consideration all reasonable, possible uses of the property.

We conclude that the parties engaged in an arm’s-length transaction, and that Taxpayer is entitled to a rebuttable presumption that its “selling price” is equal to the total consideration paid. RCW 82.45.030(1).

RCW 82.45.100(4) addresses the Department’s requirement to assess REET and says:

If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department must assess against the taxpayer the additional amount found to be due plus interest and penalties.

WAC 458-61A-303, the Department’s administrative rule that addresses REET affidavits, requires that affidavits be “complete,” stating:

[A]n affidavit is incomplete if any required information is omitted or obviously incorrect, such as the use of a nominal selling price. A nominal selling price is an amount stated on the affidavit that is *so low in comparison with the fair market value assessment stated on the property tax rolls that it would cause disbelief by a reasonable person*. In the case of a nominal selling price, the county assessed value will be used as the selling price, unless there is an independent appraisal showing a greater value.

WAC 458-61A-303(6)(b) (emphasis added).

As the *Westlake* court has held, we cannot determine true and fair value based on speculation, but must look to the objective evidence. *In re Westlake Ave.*, 40 Wash. at 150.⁵

Here, although the county assessed value was \$. . . , and the sales price of \$. . . was approximately . . . % of that value, we find the objective evidence supports the lower price as reasonable, given the condition of the Property, the costs associated with developing it, its location in a very small town in a sparsely populated area, and the small number of potential buyers that would invest in a church property in that location. We conclude that the Department has not overcome the presumption in RCW 82.45.030(1) that the selling price is equal to the total consideration paid. Accordingly, we grant the petition.

DECISION AND DISPOSITION

Taxpayer's petition is granted.

Dated this 28th day of October 2022.

⁵ Compare Det. No. 20-0100, 41 WTD 73 (2022). In 41 WTD 73 we held that the Department overcame the presumption in RCW 82.45.030(1), and showed that the sales price did not reflect the fair market value. 41 WTD 73 is distinguishable from the case here because it involved a party who was under great pressure to sell the property quickly, and who did not list the property for sale—instead selling directly to the buyer. This was similar to the “panic price” discussed in *Donaldson v. Greenwood*, 40 Wn.2d at 252.