

Cite as Det. No. 17-0196, 37 WTD 053 (2018)

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. 17-0196
)	
...)	Registration No. . . .
)	

[1] RULE 458-61-102; RCW 82.45.030: REAL ESTATE EXCISE TAX – SELLING PRICE. The sale of property at a substantial discount is sufficient to rebut the presumption that the selling price reflects the true and fair value of the property. So the market value assessment for the property maintained on the county property tax rolls at the time of the sale was properly used to determine the tax due.

[2] Rule 458-61A-102; RCW 82.45030: REAL ESTATE EXCISE TAX – MARKET PRICE. Explanation of reasons why a seller was willing to accept a purchase offer from the tenants of the property at 34% of the assessed value, does not substantiate this discounted price as the taxable market value of the property.

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.

Kreger, T.R.O. – Taxpayer protests the assessment of additional real estate excise tax (REET), based on the assessed value of the property, and contends that REET was correctly paid on the total consideration received. We conclude that the sale at a 66% discount was not at the true and fair value and affirm REET assessed on the assessed value of the property. The Taxpayer’s refund petition is denied.¹

ISSUE

Does the presumption that the total consideration received for the sale of a building was its true and fair value set forth under RCW 82.45.030(1), apply when a building is sold to tenants at a substantial discount and there is no appraisal to support the discounted price as the true and fair value of the property?

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

FINDINGS OF FACT

. . . (Taxpayer) owned commercial real property located at . . . Washington. [Prior Trustee/Owner], as the Trustee of the Trust, entered into a Purchase and Sale Agreement with [Purchaser A] and [Purchaser B] and sold the property to them on July 20, 2015, for \$ The Taxpayer filed and paid REET of \$. . . on the purchase price amount when the sale closed. The property is a commercial warehouse like building located in an industrial area. One of the purchasers, [Purchaser A,] had been leasing the property and using it as a location to legally grow and process marijuana. The lease was set to run through March 21, 2017, but with the sale the remainder of the lease was cancelled without any specific consideration or credit being provided to the tenant.

At the time of sale, the value of the property on the county assessor's tax rolls was \$. . . and, accordingly, the \$. . . sale price was 34% of its assessed value. Upon reviewing the transaction, the Department of Revenue [(Department)] determined that Taxpayer should have paid REET on the assessed value. On January 15, 2016, the Department issued an assessment for an additional \$. . . , which the Taxpayer paid on January 19, 2016. [Prior Trustee/Owner] died on [Trustee/Owner] subsequently became the Trustee of the Trust/Taxpayer, and in that capacity, filed a refund petition for the additional REET on May 2, 2016. The Special Programs Division of the Department reviewed the refund petition and denied the refund request on July 14, 2016, asserting that the sale was not an arms-length transaction. The Taxpayer timely sought review of that denial.

The Taxpayer asserts the fact that one of the purchasers was a tenant of property prior to its sale is not sufficient to characterize the parties as related, and accordingly, the presumption of the sales price being the "true and fair" value of the property . . . [is the proper amount] to which REET should be applied.

The Taxpayer notes that the prior trustee/owner was in the process of liquidating his holdings at the time of the sale and died less than 7 months later. The use of the property by the tenants to grow marijuana had impacted the use of the building, and the high humidity associated with this activity would have likely required substantial remediation to render the building suitable for other uses. One of the tenants and the other purchaser made the trustee/owner an all cash offer of \$ While the tenant and the trustee/owner had a business relationship of landlord and tenant, they were otherwise unrelated. . . .

ANALYSIS

Washington's REET is imposed on the "sale of real property" measured by its "selling price." RCW 82.45.060. RCW 82.45.010 defines the term "sale" for REET, as follows:

As used in this [REET] chapter, the term "sale" 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). RCW 82.45.030(1) defines “selling price,” for purposes of REET, as follows:

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

RCW 82.45.030(4) details a hierarchy for determining taxable selling price:

If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, 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.

WAC 458-61A-101(2)(c) defines true and fair value as:

[M]arket 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

WAC 458-61A-102(19) also addresses selling price and provides:

There is a rebuttable presumption that the true and fair value is equal to the total consideration paid or contracted to be paid to the seller or to another person for the seller's benefit.

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

- (i) A fair market appraisal of the property; or
- (ii) An allocation of assets by the seller and the buyer made under section 1060 of the Internal Revenue Code of 1986, as amended.

(b) When the true and fair value of the property at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained in the county property tax rolls at the time of sale will be used as the selling price. RCW 82.45.030.

Here we have the sale of a commercial property at a substantial discount from its appraised value. The Taxpayer asserts the transaction was an arms-length transaction between unrelated parties, and that accordingly, the presumption that the selling price reflects the true and fair value of the property should apply. While we agree that the existence of the landlord-tenant relationship between the Taxpayer and one of purchasers does not support characterizing the parties as related parties, we nevertheless find that substantial discount at issue does rebut the

presumption that the selling price reflects the true and fair or market value of the property at the time of sale.

The Taxpayer has offered an explanation for why the discounted sale price was acceptable to the prior trustee/owner. [Taxpayer states that the prior trustee/owner] . . . was in the process of liquidating assets, found the all-cash offer attractive, and accepting this offer allowed him to avoid the complications, effort, and time to list the property. The Taxpayer also asserts that use of the building as a location for growing and processing marijuana would have likely required substantial remediation to render it suitable for other uses and increase its marketability. . . . However, this explanation for why the discounted price was acceptable to the prior trustee/owner is not the same thing as establishing that this discounted price was a market price that reflected the true and fair value of the property that a willing, but unobligated seller, would have accepted at the time of sale. *See* WAC 458-61A-101(2)(c). Accordingly, we conclude that the substantial discount from the property's assessed value is itself an indication that the selling price did not reflect the true and fair value of the property and is sufficient to rebut the presumption that the measure of the tax should be the selling price.

We also note that the Taxpayer has not provided neither a fair market appraisal nor an allocation of assets, which are detailed in WAC 458-61A-101(19)(a) as acceptable methods to determine true and fair value. Contrary to the Taxpayer's assertion, we find nothing in WAC 458-20-101(19) requiring the Department to appraise the property "at its sole direction and expense" prior to using the county assessed valuation as the selling price. There are instances where we have found a discount applicable in determining the true and fair value of real property subject to tax. *See* Det No. 10-0175, 30 WTD 54 (2011) (An appraisal factoring in a lack of marketability discount was found to be an acceptable method of determining the true and fair value of real property.) However, here there is no information establishing that the discounted price presented the market value of the property.

While it is possible that the factors identified by the Taxpayer might support a discount, there is nothing to corroborate or substantiate that the market value of the property was actually influenced by these factors. Accordingly, we conclude that the use of the assessed value of the property as the tax measure was proper and supported here, and affirm the denial of the Taxpayer's refund request. . . .

...

DECISION AND DISPOSITION

Taxpayer's petition for refund is denied.

Dated this 2nd day of August 2017.