

Cite as Det. No. 19-0009, 40 WTD 105 (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>
Assessment of )	
)	No. 19-0009
)	
... )	Registration No. . . .
)	

RCW 82.010(1); RCW 82.45.060; WAC 458-61A-214 – REAL ESTATE EXCISE TAX – TRANSFERS OF PROPERTY INVOLVING A NOMINEE. A transfer of real property from a nominee to a third party is subject to real estate excise tax when the nominee’s own funds were used to originally acquire 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.

McBryde, T.R.O. – Taxpayer requests a refund for the assessment of real estate excise tax (REET) paid on his transfer of interest in real property, by quitclaim deed, to his two sons. Taxpayer asserts that the transfer is not subject to REET because he purchased the property as his sons’ nominee. The Department denies the petition.<sup>1</sup>

ISSUE

Did the Taxpayer establish that he acquired real property as his two sons’ nominee and that the subsequent transfer of the real property to his sons was not subject to REET under WAC 458-61A-214?

FINDINGS OF FACT

On January 29, 2016, . . . (Taxpayer) along with his brother, . . . (brother), purchased real property located at . . . WA . . . for \$ . . . . The real property at issue is a parcel of land with several individual apartments attached. Taxpayer and his brother each acquired a fifty-percent interest in the property. Taxpayer and his brother made a \$ . . . down payment, including closing costs, and financed the remaining balance of the purchase price. The loan was secured by a deed of trust signed by both Taxpayer and his brother.

Taxpayer executed a statutory warranty deed transferring his fifty percent interest to his two sons, [Son 1] and [Son 2] on February 18, 2017. The deed and Real Estate Excise Tax Affidavit were

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

filed on March 2, 2017. An exemption from REET was claimed under WAC 458-61A-214. This transfer was selected by the Washington Department of Revenue Special Programs Division (Special Programs) for review.

On October 16, 2017, Special Programs issued a letter to Taxpayer, requesting documentation to support the claimed exemption. Taxpayer provided additional records and explained that he purchased his interest in the property solely for his sons as an investment property. He claims that his sons were unable to qualify for financing on their own so he purchased the property with the agreement that eventually the property would be transferred to his sons.

Taxpayer asserts that \$ . . . of the down payment made to purchase the property was initially considered a gift to his sons from him and his wife. However, the sons insisted on paying their parents back for a portion of the gift. In support, Taxpayer submitted copies of the carbon copies of the checks written by [Son 1] to Taxpayer and corresponding bank statements, and copies of actual checks written by [Son 2] to Taxpayer. Taxpayer also stated that the rent monies paid by the tenants of the apartments were sufficient to pay the mortgage payments and the agreement between him and his sons was that if anything else was needed, his sons would be responsible for one-half of the expense with Taxpayer's brother responsible for the other half.

To meet the requirements under WAC 458-61A-214, Taxpayer submitted a signed affidavit executed by Taxpayer, [Son 1,] and [Son 2] (Affidavit) asserting the following: terms of the initial purchase, the Taxpayer's and sons' intent in Taxpayer purchasing the property, the intent that Taxpayer was acting as the nominee for his sons at the time of purchase, the payment of the REET due on the initial purchase, the statement that the property in question has and will be for the foreseeable future occupied by tenants, and whose rents cover the mortgage. The Affidavit also states the nature of the \$ . . . down payment and the sons' obligation to reimburse Taxpayer for Taxpayer's portion of the down payment. Taxpayer also submitted [Son 1's] and [Son 2's] Driver Licenses showing their dates of birth and the mortgage closing disclosure statement for the original purchase.

Special Programs reviewed this information and determined Taxpayer did not qualify for the REET exemption. Special Programs issued an assessment against Taxpayer on November 15, 2017, for \$ . . . including tax, interest and penalties. Special Programs used 50% of the January 29, 2016, purchase price, or \$ . . . as the tax basis of the assessment. Taxpayer filed a petition for review.

In support of Taxpayer's petition for review, Taxpayer submitted various emails written contemporaneously between the Taxpayer, his brother, and their realtor. The different email strings are regarding the actual property and purchasing it as an investment property. Signed declarations by [realtor], [Taxpayer], and Taxpayer's brother were also submitted. Each of the signed declarations states that it was Taxpayer's intent when purchasing the property to purchase the property for his sons and not for his individual gain nor with the intent to resell the property to his sons.

Taxpayer also asserts that if REET is due, then the proper measure of the tax should be the amount of underlying mortgage at the time of transfer, \$ . . . . Taxpayer provided a mortgage statement dated February 13, 2017, as evidence for this amount.

### ANALYSIS

Washington imposes REET on “each sale of real property” in this state. RCW 82.45.060. RCW 82.45.010(1) defines “sale” as “any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property . . . for a valuable consideration . . . .” REET is the obligation of the seller. RCW 82.45.080(1). [Taxpayer does not dispute the existence of valuable consideration.]

WAC 458-61A-214 explains the application of REET to transfers of property involving a “nominee.” A “nominee” is a person who acts as an agent on behalf of another person in the purchase of real property. WAC 458-61A-214(1). The initial acquisition by a nominee on behalf of the third party is subject to REET. WAC 458-61A-214(2). The rule explains that REET applies to the later transfer by the nominee to the third party unless each of the following requirements is met: (a) The proper tax was paid on the initial purchase of the property by the nominee; (b) The funds used by the nominee to acquire the property were provided by the third party; (c) The third party legally existed at the time of the initial transaction; and (d) The subsequent transfer from the nominee to the third party is not for a greater consideration than that of the initial acquisition; . . . WAC 458-61A-214(3); *see also* Det. No. 15-0095, 35 WTD 213, 214 (2016). [Under RCW 82.45.010(1), if the subsequent transfer meets the requirements of WAC 458-61A-214(2), it is not subject to REET as it is not deemed a sale since it is simply a transfer from the nominee to the third party.]

To meet the requirements under WAC 458-61A-214, a party must provide acceptable documentation of each requirement, described as follows:

Acceptable documentation includes a notarized statement, dated on or before the date of the initial purchase, that the nominee acquired the property on behalf of the third party, *or* other documentation clearly demonstrating the requirements of subsection (3) of this section have been satisfied. Such documentation may include, but is not limited to, financial documentation evidencing the nominee/third-party relationship existed from the time of the original transfer, and confirming the source of the funds used to purchase the property.

WAC 458-61A-214(5).

Here, Taxpayer has met requirements under subsections (a) and (d) under WAC 458-61A-214. However, Taxpayer has not met requirement (b) of showing that the funds used by the nominee to acquire the property were provided by the third party. Indeed, the Taxpayer admits that his own funds (along with a loan acquired in his name) were used to acquire the 50% interest in the property. Taxpayer claims that the down payment to purchase the property was a combination of a gift and loan. Even if this were the case, the residual amount of the mortgage was a loan acquired by Taxpayer. Taxpayer has provided no evidence or documentation to show that the sons obtained

a loan for the property when the transfer to them occurred or have ever been added to the deed of trust. The deed of trust obtained at the original transfer in Taxpayer's name is still on the property. . . . Therefore, Taxpayer has not met [requirement (b)] of WAC 458-61A-214(3).

After determining that WAC 458-61A-214(3) has not been met, the next question is what amount is subject to tax. REET is imposed on the "selling price," which 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 to the transferor . . . ." RCW 82.45.030(1). "Total consideration paid or contracted to be paid" means:

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 encumbrance, 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); *see also* WAC 458-61A-102(2). In this case, Special Programs imposed REET on 50% of the amount of the purchase price made one year earlier. There are two problems with this amount. First, it represents the "selling price" of the property one year prior to the transfer. Second, it is not the amount of money paid in the second transfer. There are various payments from Taxpayer's sons to Taxpayer and it is difficult to determine the amount of consideration that the sons paid Taxpayer for the property. This later point is ultimately moot because the transfer of real property at issue was not at arm's length as Taxpayer is related to his two sons. Therefore, the presumption in RCW 82.45.030(1) does not apply. Ultimately, this means that the "selling price" equals the "true and fair value of the property conveyed." RCW 82.45.030(1).

RCW 82.45.030(4) clarifies what to do in such situations:

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.

In this case, the property tax assessed value for the property at the time of the transfer was \$ . . . . [Fifty percent of this value is \$ . . . .] As this is so close to the value used by Special Programs to determine the amount of REET due on the second transfer from Taxpayer to his sons, we decline to disturb the assessment.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 10th day of January 2019.