

Cite as Det. No. 19-0042, 40 WTD 140 (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. 19-0042
)	
...)	Registration No. . . .
)	

[1] WAC 458-61A-102; RCW 82.45.030: REAL ESTATE EXCISE TAX – SELLING PRICE – TRUE AND FAIR VALUE. The true and fair value of a partial interest sold to a family member can reasonably be determined from a nearly contemporaneous offer from an unrelated third party.

[2] WAC 458-61A-102; RCW 82.45.030: REAL ESTATE EXCISE TAX – TOTAL CONSIDERATION PAID. The total consideration paid for real property does not include amounts allocated from the total contract price to that portion of the real estate owned by a taxpayer prior to transfer.

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.

Gabriella Herkert, T.R.O. – A property owner claims that the amount listed as the sale price on a sales agreement and a real estate excise tax affidavit is not the true and fair value of property conveyed for the purpose of imposing real estate excise tax because he already owned a portion of the property and did not pay for the portion he already owned. We grant Taxpayer’s petition.¹

ISSUE

Has a taxpayer shown that the amount listed as a selling price on real estate transfer documents and a real estate excise tax affidavit are not the true and fair value of property conveyed under RCW 82.45.030 and WAC 458-61A-102 where he only paid for the portions he did not already own?

FINDINGS OF FACT

. . . (Taxpayer), in his individual capacity, owned real property as a tenant in common with [Individual 1], [Individual 2], [Individual 3], and [Company 1]. [Company 1] was owned by [Individual 4] and [Individual 1]. The property was located at . . . Washington. Taxpayer owned

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

32% of the property. [Individual 1] owned 5% of the property. [Individual 2] owned 9% of the property. [Individual 3] owned 19% of the property. [Company 1] owned 35% of the property.

On November 27, 2013, . . . (Taxpayer) received three offers for the entire property from [Bidder 1], an unrelated third party, in the amount of \$. . . [(Offer Bid)]. Taxpayer did not want to sell, and [Individual 3] informed Taxpayer that Taxpayer could buy out the remaining tenants in common, as long as he offered an equal or superior bid. Taxpayer wished to buy out the other tenants in common and offered a competing bid of \$. . . for the entire property (of which Taxpayer already owned 32%). Taxpayer’s offer was accepted by the other tenants in common. All the tenants in common executed a purchase and sale agreement listing the selling price as \$ The closing escrow instructions listed the sales price as \$ Taxpayer filed a real estate tax affidavit listing the gross selling price as \$ The other tenants in common transferred their combined interest in the property to Taxpayer, in his individual capacity, via quit claim deed on December 30, 2013. Taxpayer paid \$. . . in real estate excise tax with its real estate excise tax affidavit. In these records, it was not clear whether Taxpayer paid the full \$. . . to acquire the other interests in the property or whether he paid only 68% of the value of the property, the portion he did not already own.

On December 29, 2017, Taxpayer filed a request for refund of \$. . . in real estate excise tax on the transfer of the property. Taxpayer contended that the purchase and sale agreement, closing escrow instructions, and real estate excise tax affidavit overstated the value of the property conveyed because they included the portion of the property already owned by Taxpayer on the date of transfer. Taxpayer’s request for refund was denied by the Department of Revenue’s Special Programs (Special Programs) Division on February 28, 2018. Taxpayer timely requested review of its refund denial.

During its request for review, Taxpayer provided a copy of the [Offer Bid]. Taxpayer also provided affidavits from [Individual 3], [Individual 2], [Individual 4] and [Individual 1] in support of Taxpayer’s contention that the sales price listed in the documentation included value assigned to Taxpayer’s personal interest in the property prior to transfer. The affidavits consistently reflect that the total value of the property was \$. . . at the time of transfer with a 32% interest owned by Taxpayer and 68% owned by others. 32% of the total value of the property is \$ 68% of the total value of the property is \$[Value X].

These records confirm that while Taxpayer’s offer valued the total property at \$. . . , he did not pay this full amount for the remaining interest because he already owned 32% of the property. Therefore, when paying the other owners, Taxpayer only paid the owners a total of \$. . . , as follows:

[Individual 1] (5%)	\$. . .
[Individual 2] (9%)	\$. . .
[Individual 3] (19%)	\$. . .
[Company 1] (35%)	\$. . .
Total Paid by Taxpayer	\$[Value X]

ANALYSIS

Real estate excise tax (REET) is imposed upon the sale of real property in Washington. RCW 82.45.060. A “sale” is broadly and inclusively defined by RCW 82.45.010 as “any conveyance, grant, assignment, quitclaim, 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) (emphasis added); *see also* WAC 458-61A-102(17). The tax is the seller’s obligation and payable at the time of the sale. RCW 82.45.080; RCW 82.45.100.

The measure of REET is the selling price. RCW 82.45.060; WAC 458-61A-101(4). “Selling price” means:

[T]he true and fair value of the property conveyed. 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, or to another for the transferor’s benefit.

RCW 82.45.030(1).

Here, the interest in the property acquired by Taxpayer was not conveyed in an arm’s length transaction. Various family members owned the Property together as tenants in common. However, Taxpayer’s offer to his family members was based on an arm’s length offer made for the purchase of the entire property a month prior to the Transfer. In fact, the family member owners would only accept an offer of purchase from Taxpayer on the proviso that Taxpayer’s offer met or exceeded the offer made by the unrelated third party.

“Total consideration paid or contracted to be paid” includes:

[M]oney 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). (Emphasis added).

Here, the confusion was created because the REET affidavit listed a total selling price of \$. . . for the property. Based on this document and the transfer documents, Special Programs determined that Taxpayer paid \$. . . for the transfer at issue. However, on review, Taxpayer has shown that while he paid the other tenants in common based on a total value of the property of \$. . . , he actually only paid \$[Value X] for the property transferred because he already owned 32% of the property.² Taxpayer only delivered the total consideration in return for the sale which did not

² In this transfer, the “property conveyed” to Taxpayer was the 68% interest in the real property owned by the other tenants in common. *See* RCW 82.45.030(1). This conveyance was **not** a transfer of a “controlling interest in an entity with an interest in real property,” as that term is used in RCW 82.45.030(2). Had this been a transfer of a controlling interest, REET would be owed on the “true and fair value of the real property owned by the entity.” *Id.* However, because the transaction in question was one tenant in common buying out the interests of the other tenants in common,

include paying himself for the 32% interest he already owned at the time of the transaction. In fact, Taxpayer only conveyed \$[Value X] to the other tenants in common, despite filing a real estate excise tax affidavit stating the “Gross Selling Price” of the property was \$ Under RCW 82.45.030(1), the selling price for the actual “property conveyed” is, therefore, \$[Value X]. We grant Taxpayer’s petition.

DECISION AND DISPOSITION

Taxpayer's petition is granted.

Dated this 15th day of February 2019.

the “selling price” of the property conveyed was the amount Taxpayer paid for the 68% interest owned by the other tenants in common.