

Cite as Det. No. 19-0060, 40 WTD 154 (2021)

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

In the Matter of the Petition for Refund	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 19-0060
	)	
...	)	Registration No. ...
	)	

RCW 82.45.010; RCW 82.45.060; WAC 458-61A-102: REET – SALE – SUBSEQUENT RESCISSION. In the context of a rescinded real estate transaction, the transfer of the real property back to the seller is an independent transaction and the rescission does not alter the fact that the initial sale to the buyer was subject to real estate excise tax.

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.

Farquhar, T.R.O. – A real estate development company protests the Department’s denial of its request for a refund of real estate excise tax paid on the sale of real property from the company to purchasers. The parties later rescinded the sale and the purchasers returned the property to the company in return for a refund of all consideration the purchasers had paid. We find that the transfer of the property back to the company following the rescission is an independent transaction and a rescission does not alter the fact that the initial sale to the buyers was subject to real estate excise tax. Taxpayer’s petition is denied.<sup>1</sup>

ISSUE

Whether, under RCW 82.45.010 and WAC 458-61A-102, the initial sale of real property constitutes a taxable event for real estate excise tax (“REET”) purposes if the sale is later rescinded by the parties.

FINDINGS OF FACT

... (“Taxpayer”) is a Washington development company. Taxpayer primarily builds new homes in ... County and sells them to individual buyers. On May 4, 2016, Taxpayer sold real property commonly known as ... (“Property”) to ... (“Buyers”) for the selling price of \$ ... (“Sale”). The Buyers provided a down payment of an unknown amount and financed the remainder of the selling

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

price with a loan from a third-party lender. On May 12, 2016, the parties submitted a REET Affidavit documenting the Sale and Taxpayer paid REET in the amount of \$ . . . .

The Buyers later alleged the Property contained defects and sought to rescind the Sale. Taxpayer contested the defect allegations, but decided to resolve the dispute by agreeing to a rescission. On February 12, 2018, the Buyers conveyed the Property back to Taxpayer via quitclaim deed (“Rescission”). Concurrently, Taxpayer refunded the Buyer’s down payment and loan payments. Taxpayer also relieved the Buyers of the remaining balance on the loan. On February 13, 2018, the parties submitted another REET Affidavit documenting the Rescission and claimed the REET exemption found in WAC 458-61A-209(1).<sup>2</sup> Neither party paid REET on the Rescission.

On February 15, 2018, Taxpayer submitted a refund request to the Department for the REET it paid on the Sale. Taxpayer stated that “[REET] was paid on the transfer back to the seller in a transaction that is completely rescinded.” The Department’s Special Programs division (“Special Programs”) denied Taxpayer’s request on March 23, 2018, noting that Taxpayer paid REET on the Sale, not the Rescission as Taxpayer had claimed and the Sale remained taxable regardless of the Rescission.

On May 15, 2018, Taxpayer submitted a timely petition for review. Taxpayer argues that it qualifies for a refund because its situation satisfies the elements of the REET exemption for rescinded sales found in WAC 458-61A-209. Taxpayer also argues that it is entitled to a refund under WAC 458-61A-301(12)(d)(1), which authorizes refunds when REET is “paid on the transfer back to the seller in a transaction that is completely rescinded.”

## ANALYSIS

RCW 82.45.060 imposes REET upon the “sale” of real property in this state. RCW 82.45.010(1) defines the term “sale” to mean:

As used in this chapter, the term “sale” has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration . . .

WAC 458-61A-102(2) defines “consideration” as:

[M]oney or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property. The term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale.

When Taxpayer sold the Property to the Buyers on May 4, 2016, for \$ . . . , it triggered REET because Taxpayer conveyed real property for a valuable consideration. The Buyers’ down payment alone is sufficient to conclude that the parties exchanged valuable consideration and, therefore, a

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<sup>2</sup> “The reconveyance of property due to a rescission of sale is not subject to [REET].” WAC 458-61A-209(1).

sale occurred for REET purposes. Accordingly, under RCW 82.45.060, REET was due and Taxpayer's REET payment on the Sale was proper.

Although the Rescission transferred the Property back to Taxpayer, it does not negate the taxability of the Sale under RCW 82.45.060. In *Perkins v. King County*, 51 Wn.2d 761, 321 P.2d 903 (1958), the court explained that:

The actions of the parties in rescinding the real estate contract certainly altered their legal relationships and, fictionally, may have vitiated the sale as far as their legal responsibilities were concerned. *However, taxwise, their actions did not alter the facts of life: a sale, as defined by RCW 82.45.010, had been consummated, and a so-called taxable event or incident had occurred within the contemplation of the statute. The tax accrued.* It was paid by the real-estate vendor to the proper county official. That should be—and as far as we are concerned it is—the end of the matter, because the legislature made no provision in the tax statute for a refund of the excise imposed and collected under the circumstances involved in the instant case.

*Perkins*, 51 Wn.2d at 762–63, 321 P.2d 903 (emphasis added).

Further, two previously published determinations support this conclusion. *See* Det. No. 05-0121, 24 WTD 478 (2005); Det. No. 05-0064, 24 WTD 447 (2005). In both cases, the taxpayer requested a refund of REET paid for an original sale of real property that was later rescinded. In each case, the Department denied the taxpayer's request for refund, concluding that rescission of the original sale does not erase the fact that a real estate sale had already occurred and, consequently, triggered a taxable event under RCW 82.45.060. 24 WTD 478; 24 WTD 447.

Taxpayer has not distinguished the facts of this case from those in *Perkins* or the two published determinations. Taxpayer entered into a real estate sale. Accordingly, tax accrued. *See Perkins*, 51 Wn.2d at 763. Moreover, the tax exemption provision for rescission of sale under WAC 458-61A-209 does not provide for a refund of REET paid on the original sale of real property. WAC 458-61A-209 only exempts payment of REET on the reconveyance of the property back to its original owner in a rescission. *See* WAC 458-61A-209(3)(a). Taxpayer's argument that it is entitled to a refund under WAC 458-61A-301(12)(d)(1) is also unpersuasive. WAC 458-61A-301(12)(d)(1) authorizes a refund where a party pays REET on the transaction back to the buyer in connection with a rescission. That did not occur here. Neither party paid REET on the Rescission.

Therefore, we hold that Taxpayer properly paid REET on the Sale and Special Programs properly denied Taxpayer's refund request.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 28th day of February 2019.