

Cite as Det. No. 14-0048, 33 WTD 192 (2014)

BEFORE THE APPEALS 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. 14-0048
...	)	
	)	Registration No. . . .
	)	
	)	
	)	

[1] WAC 458-61A-202; RCW 82.45.010: REAL ESTATE EXCISE TAX (REET) – EXEMPTIONS – DEVISE OR INHERITANCE. The REET exemption for transfers by devise or inheritance is limited to the distribution of real property from the estate to the devisee or heir and does not apply to subsequent transfers.

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.

Anderson, A.L.J. – A personal representative requests a refund of real estate excise tax (“REET”) paid with respect to the estate’s sale of the deceased’s residence to an unrelated third party because the net proceeds from the sale were distributed to beneficiaries pursuant to the deceased’s will. Petition denied<sup>1</sup>.

ISSUE

Is an estate entitled to a refund of REET pursuant to WAC 458-61A-202 (“Rule 202”) where the personal representative sold property belonging to the estate to an unrelated third party and then distributed the proceeds pursuant to the deceased’s last will and testament?

FINDINGS OF FACT

[Decedents], husband and wife, had two children, [Beneficiary A] and [Beneficiary B], and owned property located at . . . Washington (the “Property”). [Decedent A] died intestate in May, 2009. [Decedent B] died testate November 4, 2010.

On December 10, 2010, [Beneficiary A] petitioned and opened a probate in . . . County Superior Court to probate the Last Will and Testament of [Decedent B], and the Court appointed [Beneficiary A] to serve as personal representative. As relevant here, the Last Will and

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

Testament of [Decedent B] provides that in the event her husband did not survive her, she devised and bequeathed her estate, in equal shares, to her surviving children.

On August 7, 2012, [Beneficiary A] executed REET Affidavit Number 211611 that [stated the Property was] transferred [ . . . ] from “[Beneficiary A], Personal Representative of the Estate of [Decedent B], deceased” to “[Purchasers], husband and wife” via statutory warranty deed dated August 2, 2012, and reported and paid REET due of \$ . . .

Taxpayer requests a refund of \$ . . . in REET paid with respect to REET Affidavit Number 211611. It asserts that because the net proceeds of the sale of the Property to an unrelated purchaser were distributed by the estate to the named beneficiaries pursuant to the Last Will and Testament of [Decedent B], that the sale is exempt from REET pursuant to WAC 458-61A-202.

### ANALYSIS

RCW 82.45.060 imposes REET upon the “sale” of real property. RCW 82.45.010(1) defines “sale” as having “its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property . . .”

However, RCW 82.45.010(3) goes on to state, “The term ‘sale’ does not include: (a) A transfer by gift, devise, or inheritance.” “Devise” is “the act of giving or disposing of property by will.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 619 (1993); see also Chapter 11.12 RCW.

Rule 202 is titled “Inheritance or devise.” and it applies the inheritance/devise exclusion from “sale” contained in RCW 82.45.010(3). “Transfers of real property by inheritance or devise are not subject to the real estate excise tax.” Rule 202(1). But any subsequent transfers (after property is distributed by the estate to heirs/devisees) of such property are subject to REET. Rule 202(3). Similarly, a transfer of property from an estate to someone other than an heir or devisee is not excluded from the definition of “sale” and would be subject to REET (in the absence of any other potentially applicable exclusion). RCW 82.45.060.

Here, Taxpayer is requesting a refund of REET paid in transferring the Property to an unrelated third party – not the devisees. This transfer is plainly not excluded from the definition of “sale” pursuant to RCW 82.45.010(3). Taxpayer asserts that it is entitled to an exemption from REET because the proceeds from the sale of the Property were distributed according to the Last Will and Testament of [Decedent B]. However, the distribution of the sale proceeds has no bearing on whether the transfer is considered a “sale” and subject to REET. Accordingly, Taxpayer’s transfer of the Property to an unrelated third party does not meet the inheritance/devise exclusion criteria, it is a “sale”, and Taxpayer properly paid REET on such sale. Petition denied.

DECISION AND DISPOSITION

[Taxpayer's petition is denied.]

Dated this 11th day of February.