

Cite as Det. No. 18-0330, 40 WTD 083 (2021)

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

In the Matter of the Petition for Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 18-0330
)	
...)	Registration No. . . .
)	

RCW 82.45.060; RCW 82.45.030; WAC 458-61A-102(19); WAC 458-61A-204(5): REAL ESTATE EXCISE TAX – SELLING PRICE – FRACTIONAL INTEREST: The sale of an interest in real property from one tenant to the remaining tenants is subject to real estate excise tax. The taxable amount of the sale is the total of (1) any consideration given, and (2) any consideration promised to be given, including the amount of any debt remaining unpaid on the property at the time of sale multiplied by that fraction of interest in the real property being sold.

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.

Roberts, T.R.O. – A taxpayer protests the Department’s use of the county’s assessed market value to determine the “selling price” for real estate excise purposes. The taxpayer argues that the selling price should be the price paid for the property. We grant the petition in part, deny it in part, and remand for adjustment.¹

ISSUE

Whether the county assessor’s valuation of real property should be used as the “true and fair value” pursuant to RCW 82.45.030 and WAC 458-61A-102(19) in assessing real estate excise tax (“REET”) on a property interest transfer.

FINDINGS OF FACT

On September 5, 2017, . . . (“Taxpayer”) quitclaimed her interest in the real property located at . . . (“Residence”) to [Buyer 1 and Buyer 2]. Buyer 2 is Taxpayer’s sister. On September 11, 2017, the Quit Claim Deed was filed with the . . . County Treasurer, together with a Real Estate Excise Tax Affidavit (“REET Affidavit”), which reported a selling price of \$. . . , and the submission of the requisite excise tax payment in the amount of \$ The REET Affidavit did not indicate whether

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

the transfer of the Residence was a partial sale, or the respective ownership interests acquired by [Buyer 1 and Buyer 2].

In May 2018, the Department of Revenue's Special Programs Division ("Special Programs") conducted a review of the REET Affidavit, and determined that the selling price of the Residence was substantially lower than the \$. . . market value assessment set forth in the county property tax rolls. To validate the sale, Special Programs requested from Taxpayer further information as to why the Residence sold for less than the assessed value.

Taxpayer provided to Special Programs a copy of the March 19, 2016 Statutory Warranty Deed, which originally conveyed the Residence to "[Taxpayer], an unmarried person, and [Buyer 1] and [Buyer 2], a married couple," in consideration for \$ The deed was recorded on March 23, 2016. The accompanying REET Affidavit, signed by Taxpayer on March 20, 2016, failed to set forth the respective ownership interests acquired by Taxpayer and [Buyer 1 and Buyer 2]. However, it was undisputed between the parties that Taxpayer held a 50% interest in the Residence while [Buyer 1 and Buyer 2] jointly held the remaining 50% interest.

Taxpayer and [Buyer 1] had jointly purchased the Residence with borrowed funds; [Buyer 2] was a non-borrowing spouse listed on the property title. During the present administrative review, Taxpayer provided a copy of an August 24, 2017 Payoff Statement from . . . and addressed to Taxpayer and [Buyer 1]. The Payoff Statement provided that, as of the September 11, 2017 closing date, the total unpaid principal balance would be \$. . . , together with \$. . . in interest, a \$. . . convenience fee, and a \$. . . recording fee, for a total amount due of \$

Taxpayer explained that [Buyer 1 and Buyer 2] had resolved to buy out Taxpayer of her interest in Residence, threatening legal action if she refused. . . . Taxpayer finally agreed to sell her ownership interest to [Buyer 1 and Buyer 2] in exchange for her equity in the Residence. The parties calculated their equity in the Residence by acquiring three valuation estimates from local real estate agents, averaging the estimates, and subtracting the value of the mortgage. Taxpayer's 50% interest in the equity was thus calculated to be \$ As part of the property transfer agreement, [Buyer 1 and Buyer 2] refinanced the Residence into their own names and paid Taxpayer \$. . . for her equity in the Residence.

Special Programs decided, that based on the information provided by Taxpayer, the property transfer did not constitute an arm's length transaction because the parties were family members. Special Programs additionally noted that Taxpayer failed to provide payment history information showing who was making the mortgage payments. On this basis, Special Programs determined that the true and fair value of the property was the market value assessment set forth in the county property tax rolls at the time of sale. Thus, Special Programs assessed the REET based on a sales price of \$. . . , which was the county assessed value at the time of transfer (\$. . .) minus the taxable amount already paid by Taxpayer (\$. . .).

On September 6, 2018, Special Programs issued a Real Estate Excise Tax Assessment in the amount of \$. . . , with a due date of October 8, 2018. The amount comprised \$. . . in tax, \$. . . in interest, and a \$. . . assessment penalty.

On October 5, 2018, Taxpayer submitted a Review Petition with the Department, disputing the amount due. Taxpayer argues that the assessment was unfair and inequitable in light of the extenuating circumstances surrounding the ownership transfer. Taxpayer asserts that, at the most, as she only held a 50% interest in the Residence, she should only be required to pay the REET on half of the property's value.

ANALYSIS

REET is imposed upon each sale of real property in Washington. RCW 82.45.060. The REET is the obligation of the seller. RCW 82.45.080. The term "sale" includes any conveyance, grant, assignment, quitclaim, or transfer of ownership of or title to real property for a valuable consideration. RCW 82.45.010(1).

RCW 82.45.030(1) provides that the term "selling price" means the "true and fair value of the property conveyed." A rebuttable presumption exists that the selling price is equal to the total consideration paid, or contracted to be paid, to the seller or to another person for the seller's benefit. WAC 458-61A-102(19).

The Department utilizes the market value property assessment set forth on the county property tax rolls as the selling price only where "the total consideration cannot be ascertained or true and fair value of the property . . . cannot be reasonably determined . . ." RCW 82.45.030(4); WAC 458-61A-102(19)(b).

"Consideration," for the purposes of REET, is defined to mean "money 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." WAC 458-61A-102(2). The term "consideration" also 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." *Id.* For example, consideration includes "the assumption of an underlying debt on the property by the buyer at the time of transfer." WAC 458-61A-102(2)(b).²

WAC 458-61A-204 is the administrative rule regarding tenants in common and joint tenants. It explains the measure of tax as follows:

The sale of an interest in real property from one or more joint tenants or tenants in common to remaining tenants or to a third party is a taxable transaction. The taxable amount of the sale is the total of the following:

- (a) Any consideration given; and
- (b) Any consideration promised to be given, including the amount of any debt remaining unpaid on the property at the time of sale multiplied by that fraction of interest in the real property being sold.

² WAC 458-61A-103(1) additionally states that REET "applies to transfers of real property when the grantee relieves the grantor from an underlying debt on the property or makes payments on the grantor's debt." *See also* WAC 458-61A-201(3); Det. No. 11-0026, 31 WTD 78 (2012).

WAC 458-61A-204(5).³

The present case involves the sale of a partial interest in real property from one tenant (Taxpayer) to the remaining tenants ([Buyer 1 and Buyer 2]) for a valuable consideration. Taxpayer was provided with more than \$. . . in exchange for her interest in the Residence. Prior to the transfer, Taxpayer and [Buyer 1] were joint mortgagors, and had contributed to the monthly payments on the mortgage. As a result of [Buyer 1 and Buyer 2's] refinancing, Taxpayer was relieved of that debt. As such, it is to be included in the selling price of the Residence.

The selling price of the 50% ownership interest in the Residence is the total of (1) the \$. . . in monetary consideration given, and (2) the relief of the \$. . . mortgage remaining on the Residence at the time of sale multiplied by Taxpayer's 50% interest. WAC 458-61A-204(5); WAC 458-61A-102(19)(c). Taxpayer has already paid REET on the \$ However, Taxpayer was also relieved of her portion of the \$. . . mortgage, upon which she still owes REET.

The measure of the additionally owed REET is \$. . . , which represents Taxpayer's fractional interest in the Residence (50%) multiplied by the outstanding debt at the time of the transfer (\$. . .).

DECISION AND DISPOSITION

Taxpayer's petition is denied in part, granted in part, and remanded for adjustment. We deny the petition with respect to Taxpayer's argument that the selling price should be the price paid for the Residence. We grant the petition with respect to Taxpayer's request that the assessment be reduced to reflect Taxpayer's partial ownership in the Residence. We remand this case to Special Programs for adjustment consistent with this determination.

Dated this 2nd day of January 2019.

³ See also WAC 458-61A-102(19)(c), which provides: "When the sale is of a partial interest in real property, the principal balance of any debt remaining unpaid at the time of sale will be multiplied by the percentage of ownership transferred, and that amount added to any other consideration to determine the selling price."