

Cite as Det. No. 19-0037, 40 WTD 137 (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. 19-0037
)	
...)	Registration No. . . .
)	

WAC 458-61A-215; RCW 82.45.010(3)(i): REAL ESTATE EXCISE TAX – CLEARING TITLE. When a real estate owner gives consideration in exchange for a quitclaim deed transferring the remaining interest in the real estate, the clearing title exemption does not apply.

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.

Sattelberg, T.R.O. – A married couple protests the Department’s assessment of Real Estate Excise Tax (“REET”). The couple argues it is eligible for the clearing title exemption for a quitclaim deeded transfer to their son. We deny the petition.¹

ISSUE

Whether a married couple qualifies for the REET exemption for clearing title under RCW 82.45.010(3)(i) and WAC 458-61A-215 when the couple purchases a property for their son, all the parties go on title, and the son later obtains a mortgage and pays [the parents] back the amount of the mortgage in exchange for the parents quitclaiming their interest to the son.

FINDINGS OF FACT

. . . (“Taxpayers”), with their son . . . (“Son”), purchased real property at . . . Washington (“Property”), for \$. . . on April 24, 2016. Taxpayers provided all of the funds to purchase Property. According to Taxpayers, at the time of purchase, Son had a short work history and had not established the credit necessary to make an independent purchase. To help Son, Taxpayers provided the funds to purchase Property outright. Taxpayers and Son were all placed on the title to Property, although Taxpayers assert that they intended to remove themselves from title at a later date. Taxpayers also funded substantial improvements to Property after the purchase was consummated. Son, only, used Property as a residence.

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

About a year later, on May 27, 2017, Son obtained a mortgage on Property for \$. . . in his own name, encumbering Property with debt for the first time since the initial purchase. Son paid \$. . . of the mortgage proceeds to Taxpayers. Also on May 27, 2017, Taxpayers quitclaim deeded their interest in Property to Son. Taxpayers and Son signed a REET Affidavit that day, claiming exemption from REET under WAC 458-61A-215(2)(e) as a transfer solely for the purposes of clearing title. Son made the new mortgage payments.

On December 8, 2017, the Department's Special Programs Division ("Special Programs") sent Taxpayers a notice that it was auditing the May 27, 2017, transfer of Property. The notice requested Taxpayers submit certain additional documentation to substantiate the claimed clearing title exemption by December 22, 2017. Taxpayers timely supplied the requested documents. Special Programs examined the additional documentation but determined that Taxpayers did not substantiate the clearing title exemption as claimed because consideration passed between the parties. On December 14, 2017, Special Programs issued Taxpayers a REET assessment of \$. . . , using the county assessed value of \$. . . as the measure of REET.²

Taxpayers timely petitioned for review of the assessment, arguing that WAC 458-61A-215 should apply here because Taxpayers' intent was to purchase a house for Son. Taxpayers explained that Son repaid them a portion of the purchase price, \$. . . , because they did not want to gift the full amount of the purchase price to him, just a portion of the total.

ANALYSIS

REET is imposed on each sale of real property in this state. RCW 82.45.060. The term "sale" includes "any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property . . . for a valuable consideration." RCW 82.45.010(1). "Consideration" includes the following:

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. 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. . . .

WAC 458-61A-102(2); *see also* RCW 82.45.030(3). Certain exclusions exist from the definition of "sale," one of which is the transfer of an interest in real property merely to secure a debt. RCW 82.45.010(3)(i). WAC 458-61A-215(1), the Department's rule that administers this statutory provision, states:

The real estate excise tax does not apply to quitclaim deeds given for the sole purpose of clearing title *if no consideration passes otherwise*. This rule does not apply to deeds executed for the purpose of adding persons to title, except in cases of persons added to title for co-signing security purposes only.

(Emphasis added.)

² The assessment consisted of \$. . . in REET, \$. . . in penalties, and \$. . . in interest.

Here, the date of the transfer was May 27, 2017. On that date, Son paid Taxpayers \$. . . and Taxpayers quitclaimed their interest in Property to Son. The \$. . . Son paid Taxpayers was clearly consideration for the transfer. As such, the clearing title exemption in WAC 458-61A-215 does not apply because there must not be any consideration passing in order for the exemption to apply, and consideration passed here.

Taxpayers claimed WAC 458-61A-215(2)(e) on the REET Affidavit. That example states the following:

(e) The parents described in (d) of this subsection who have been on title with their child are now issuing a quitclaim deed to Joseph to exit title. Joseph has now paid off or refinanced the mortgage in his name only. The parents' intention was to go on title as "co-signors" only, not as co-purchasers of the property, and they have not made any payments toward the repayment of the loan. This transfer is exempt under this rule.³

This example is inapplicable for multiple reasons. First, in the example, the parents co-signed the loan, the mortgage proceeds were used to finance the original purchase of the property, and the parents quitclaimed their interest to exit title after Joseph made all the mortgage payments. Here, Property was already owned outright by Taxpayers and Son when Son obtained the subsequent loan on the property and paid the majority of the mortgage proceeds he received to Taxpayers in exchange for quitclaim of their interests. Second, the example states that "parents' intention was to go on title as 'co-signors' only, not as co-purchasers of the property." WAC 458-61A-215(2)(e). Here, Taxpayers (the parents) used their funds to purchase Property. This is different than co-signing on a loan so that Son could obtain the financing that he needed from a third party. Taxpayers actually purchased the property with Son and then sold that property to Son a year later. Therefore, this example from WAC 458-61A-215 does not apply. Accordingly, we deny Taxpayers' petition.

DECISION AND DISPOSITION

We deny Taxpayers' petition.

Dated this 15th day of February 2019.

³ The example in WAC 458-61A-215(2)(d) referenced in section (2)(e) states:

(d) Joseph owns a residence and goes to a bank to refinance. His credit is not good enough to obtain the new loan in his name only, but he can qualify if he obtains a co-signor/co-borrower. Joseph's parents agree to co-sign the loan. The bank requests that the parents also go on title with Joseph, and he quitclaims a half interest to his parents. Although the deed may be phrased as a gift to his parents, the deed acts as a security interest for his parents in the event Joseph defaults. The addition of Joseph's parents to the title is exempt under this rule, provided Joseph makes all the mortgage payments, and Joseph receives no consideration from his parents for the transfer.