

Cite as Det. No. 19-0187, 40 WTD 236 (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>
	)	
	)	No. 19-0187
	)	
...	)	Registration No. ...
	)	

[1] RCW 82.45.010; WAC 458-61A-301(12): REET – REFUND REQUESTS – GIFTS. A grantor is only entitled to a refund of REET erroneously paid on a gift of real estate if the grantor was entitled to claim the gift exemption at the time of transfer, but failed to do so.

[2] RCW 82.45.010; WAC 458-61A-301(12): REET – REFUND REQUESTS – GRANTEE’S FAILURE TO OBTAIN FINANCING – RETURN OF OWNERSHIP TO SELLER. A grantor is not entitled to a refund of REET paid on a transfer where the grantee is unable to secure financing and seeks to void the real estate transfer if ownership of the property is not first restored to the grantor.

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 taxpayer protests the Department’s denial of his request for a refund of real estate excise tax paid on two transfers of real property. The taxpayer argues that the transfers were not subject to real estate excise tax because no consideration passed, and they should be treated as gifts. Taxpayer’s petition is denied.<sup>1</sup>

ISSUE

Whether under RCW 82.45.010 and WAC 458-61A-301(12)(d) a taxpayer is eligible for a refund of real estate excise tax paid on transfers of real property where the grantee failed to refinance the loan secured by the real property and no other consideration passed.

FINDINGS OF FACT

... Taxpayer and ... Member are co-members of [LLC], a Washington real estate company involved in the business of purchasing foreclosure properties. In March of 2017, Taxpayer

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

purchased certain real property located at . . . the Property.<sup>2</sup> Taxpayer purchased the Property using a “hard money” loan it obtained from [Lender] (“the Loan”). The Loan was secured by the Property.

### First Transfer

[In September of 2017,] Taxpayer quitclaimed his interest in the Property to . . . Grantee. The Quit Claim Deed provides that the consideration for the transaction was the “release” of the “security interest only as reflected in the Trustee’s Deed recorded prior hereto.”<sup>3</sup> [A] 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 real estate excise tax (“REET”) payment in the amount of \$ . . . . It is unclear how the parties established the selling price.

Taxpayer alleges that no consideration actually passed in this transaction. Rather, Grantee agreed to secure the financing necessary to pay off the Loan. Taxpayer remained on the Loan and alleges that he was the individual who continued to make the payments on the Loan. Notably, during this period of time, the Property was being rented out “on and off” to third parties. Taxpayer has not indicated who was in receipt of the rent payments.

According to a . . . Borrower Statement of Account from [Lender], and addressed to Taxpayer, payments were made on the Loan through November 2018. Taxpayer provided copies of . . . checks written out to [Lender] from [LLC] between March 2017 and October 2018. The amounts on the checks . . . did not correspond with the monthly payments to [Lender] of \$ . . . generally indicated on the Borrower Statement of Account. Taxpayer stated that the checks included “bundled” payments for other loans.

During the course of the present administrative review, Taxpayer also provided copies of [LLC]’s bank statements from June, July, and August 2018. Throughout that three-month period, it does not appear that LLC received funds from Grantee or that any deposits were made into the account in amounts similar to the payments made on the Loan.

. . .

### Second Transfer

Ultimately, it became apparent that Grantee would be unable to secure financing and the parties agreed to re-convey the Property. In August of 2018, Grantee quitclaimed his interest in the Property to Member – not Taxpayer. The Quit Claim Deed again provided that the only consideration was the “release” of the security interest “as reflected in the Trustee’s Deed.”<sup>4</sup> . . .

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<sup>2</sup> Taxpayer has submitted [an] Agreement for Real Estate, signed by both Taxpayer and Member, stating that Member was a 50% owner of the Property [when Taxpayer purchased it].

<sup>3</sup> The Trustee’s Deed transferring the Property to Taxpayer identifies the security interest holder as [Third Party], whose registered agent is [Lender].

<sup>4</sup> In a . . . letter from the Grantee, the Grantee confirms that he quitclaimed the Property to Member when he was unable to obtain financing and that no consideration passed during either transfer of the Property.

the Quit Claim Deed was filed with the . . . County Treasurer, together with a REET Affidavit, which reported a selling price of \$ . . . and the submission of the requisite [REET] payment in the amount of \$ . . . . As with the first transfer, it is unclear how the parties established the selling price.

### Refund Request

. . . Taxpayer submitted a refund request to the Department for the REET paid on the . . . the first transfer [of the Property]. Taxpayer argued that the transfers to and from Grantee qualified as tax-exempt gifts under WAC 458-61A-201 and that he had paid REET in error. On January 7, 2019, the Department denied the refund request. The Department’s denial letter read, in pertinent part, as follows:

[The Department is] denying your refund request as your claim is that this is a gift based solely on your paying of the debt. Per your own narrative this was a sale to [Grantee] not a gift.

. . . Taxpayer submitted a petition for review. Taxpayer again argues that no consideration passed during either transfer of the Property, thus both transactions qualify for gift exemptions and no REET should be due.

### ANALYSIS

Washington imposes REET on “each sale of real property” in this state unless an exemption or exclusion applies. RCW 82.45.060. The REET is the obligation of the seller. RCW 82.45.080; WAC 458-61A-301(1)(b). 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).

“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).

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). In other words, “if a transferee agrees to assume payment of the transferor’s debt on the property in return for the transfer, there is consideration, and the transfer is not exempt from REET.” Det. No. 15-0007, 34 WTD 364 (2015).<sup>5</sup>

However, a gift of real property is not considered a sale and, therefore, is not subject to REET. RCW 82.45.010(3)(a); WAC 458-61A-201(1). A gift, for the purposes of REET, is “a transfer for

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<sup>5</sup> WAC 458-61A-201(3) further notes, “However, equity in the property can be gifted.”

which there is no consideration given in return for granting an interest in the property.” WAC 458-61A-201(1). If consideration does pass, the transfer is a sale subject to REET to the extent of the consideration received. *Id.*

WAC 458-61A-301(12)(d) provides that the circumstances under which the Department is authorized to issue refunds are limited to the following:

(i) Real estate excise tax was paid on the transfer back to the seller in a transaction that is completely rescinded (as defined in WAC 458-61A-209);

(ii) Real estate excise tax was paid on the transfer back to the seller on a sale rescinded by court order. The county treasurer must attach a copy of the court decision to the department's affidavit copy (see also WAC 458-61A-208, Deeds in lieu of foreclosure);

(iii) Real estate excise tax was paid on the initial transfer recorded in error by an escrow agent before the closing date, provided that the property is conveyed back to the seller;

(iv) Real estate excise tax was paid on the transfer back to the seller in accordance with (d)(iii) of this subsection;

(v) Real estate excise tax was paid on the initial transfer recorded before a purchaser assumes an outstanding loan that represents the only consideration paid for the property, provided:

(A) The purchaser is unable to assume the loan; and

(B) The property is conveyed back to the seller. The refund is allowed because there is a failure of the consideration;

(vi) The transfer back to the seller in (d)(v) of this subsection;

(vii) Double payment of the tax;

(viii) Overpayment of the tax through error of computation; or

(ix) Real estate excise tax paid when the taxpayer was entitled to claim a valid exemption from the tax but failed to do so at the time of transfer.

Here, Taxpayer requests a refund of REET paid with regard to the transfer of the Property to and from Grantee. Taxpayer claims that he is eligible for a refund of REET under certain portions of WAC 458-61A-301(12)(d) on the basis that no consideration was received or given during either transfer of the Property.

First, Taxpayer argues that he is eligible for a refund under WAC 458-61A-301(12)(d)(ix), because the transfer of the Property to Grantee constituted a tax-exempt gift. However, Subsection (12)(d)(ix) only applies where the taxpayer was entitled to claim a valid exemption *at the time of transfer*. Taxpayer argues that he received nothing of value in exchange for quitclaiming his interest in the Property. However, *at the time of transfer*, it was agreed that Grantee would obtain refinancing in order to obtain a release of the security interest (i.e., the Loan) on the Property. The agreed assumption of this underlying debt constituted consideration subject to REET. WAC 458-61A-103(1). Thus, at the time of transfer, Taxpayer was not entitled to claim that the transaction constituted a tax-exempt gift.

Second, Taxpayer argues that he is eligible for a refund under WAC 458-61A-301(12)(d)(v), because the Property was re-conveyed after Grantee was unable to obtain refinancing. However, Subsection (12)(d)(v) is only satisfied where the seller is restored his ownership in the property. Here, this did not occur. Rather, Grantee conveyed the Property to Member, who was not the original owner and seller of the Property.<sup>6</sup>

Furthermore, regardless of whether Taxpayer claims eligibility for a refund under Section (12)(d)(ix) or Section (12)(d)(v), Taxpayer has provided insufficient evidence that he did not receive any form of consideration for the transfer. A transfer of property is a sale subject to REET to the extent of the consideration received. WAC 458-61A-201(1). Taxpayer alleges that, over the course of the year that Grantee sought financing, he made Loan payments amounting to over \$. . . with regard to the Property to which he no longer had any legal ownership. In support, Taxpayer provided copies of checks from . . . LLC and only three . . . LLC monthly bank statements. Although Taxpayer sold the Property in an individual capacity, Taxpayer did not provide any bank statements from his personal bank account. Additionally, the Property was being rented out to third parties during the period of time that it was under Grantee's ownership, but Taxpayer did not provide any information as to who was receiving the rental payments and in what amount. In light of these facts, Taxpayer has not provided the documentation necessary to establish that he received no consideration, directly or indirectly, from Grantee.

Finally, Taxpayer has no standing to request a refund of the REET paid with regard to the second transfer of the Property from Grantee to Member because Taxpayer was not a party to the transaction. Pursuant to RCW 82.45.080, it was Grantee who was obliged to make payment of the REET, and thus it is Grantee who has standing to request a refund under WAC 458-61A-301(12)(d).

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<sup>6</sup> Ownership of property is controlled by legal conveyances made via deed, not by any agreements to the contrary. *See* RCW 64.04.010, which provides, "Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed." Thus, regardless of the . . . Agreement for Real Estate, which purports to assign Member a 50% ownership of the Property, Taxpayer was the sole owner and seller of the Property at the time of its conveyance to Grantee.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 31st day of July 2019.