Cite as Det No. 12-0171, 32 WTD 55 (2013)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 12-0171
. . .	)	
	)	Registration No. . . .
	)	Document No. . . .
	)	Docket No. . . .

[1] WAC 458-61A-102, WAC 458-61A-201; RCW 82.45.010(3)(a): REAL ESTATE EXCISE TAX – DEFINITION OF "CONSIDERATION" AND THE GIFT TAX EXCLUSION. A transferor of a real property interest subject to underlying debt is subject to the Real Estate Excise Tax on the amount of debt relief. The fact that the grantee refinanced the debt in his name only after the transfer created a rebuttable presumption that the transfer was not a gift.

[2] RCW 82.45.010(3)(e): REAL ESTATE EXCISE TAX – TRANSFERS PURSUANT TO ENDING A COMMITTED INTIMATE RELATIONSHIP. The exclusion from the Real Estate Excise Tax for transfers made under a decree of dissolution of marriage or state registered domestic partnership do not extend for former partners in a committed intimate relationship.

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.

Jensen, A.L.J. – A transferor of a real property interest appeals a Real Estate Excise Tax (REET) assessment claiming that she transferred her interest in the property as a gift and pursuant to ending a committed intimate relationship with the joint owner of the property. The Department of Revenue (Department) assessed REET on the transferor's relief of debt following the transfer. We uphold the assessment.[1]

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

ISSUES

1. Is the transfer of real property not subject to REET under WAC 458-61A-201 as a gift when the transferee assumes all of the debt on the property and refinances the debt immediately after the transfer?

2. Is the transfer of real property between former partners in a committed intimate relationship not subject to REET under WAC 458-61A-203 when the transfer is done upon completion of that relationship?

FINDINGS OF FACT

[Taxpayer] and [Grantee] were in a committed intimate relationship from sometime before 2006 to 2010. In June of 2006, Taxpayer and Grantee acquired a home together for $. . . .[2] Taxpayer and Grantee shared in the expenses of having a home, including making mortgage payments. Mortgage payments came directly from Grantee's checking account, but Taxpayer and Grantee both deposited money into that account for the payments.

Taxpayer and Grantee separated in 2010 and Taxpayer moved out of the home that they had purchased. Taxpayer ceased contributing to the mortgage and agreed with Grantee to quitclaim her interest in the property to him. This was done so that Grantee could refinance the property in his own name. Taxpayer did not receive any money for this transfer.

On November . . ., 2010, Taxpayer quitclaimed her interest in the property to Grantee. The quitclaim deed stated that the transfer was done "To Facilitate Financing – No Monetary Consideration." The parties filed a REET Supplemental Statement and REET Affidavit the next day. Taxpayer claimed the REET exclusion for gifts in WAC 458-61A-201 on the REET Affidavit. On the REET Supplemental Statement, the parties checked a box indicating that "Grantee (buyer) has made and will continue to make 100% of the payments on total debt of. . . and has not paid [Taxpayer] any consideration towards equity." It is undisputed that both parties made payments towards the mortgage while they were living together in the home despite indicating otherwise on the REET Supplemental Statement. Grantee refinanced the property after the transfer.

The Department's Special Programs Division (Special Programs) reviewed the November … 2010 transfer and concluded that Taxpayer was ineligible for the gift tax exclusion from REET in WAC 458-61A-201. On September 15, 2011, Special Programs issued a REET assessment against Taxpayer in the amount of $. . . . This amount included $. . . in REET, $. . . in interest, and $. . . in an assessment penalty. Special Programs imposed REET on the amount of Taxpayer's debt relief, $. . ., or one-half of the mortgage balance paid off when Grantee refinanced the mortgage in his own name.

[2] [Taxpayer and Grantee owned the home as tenants in common. Taxpayer and Grantee were co-borrowers on the mortgage secured by the home.]

Taxpayer appeals this assessment. On appeal, Taxpayer argues that the . . ., transfer of real property to Grantee is not subject to REET either as a gift or because the transfer was made because of the termination of a committed intimate relationship.

ANALYSIS

Washington imposes REET on "each sale of real property" in this state. RCW 82.45.060.[3] RCW 82.45.010(1) defines "sale" as "any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property . . . for a valuable consideration . . . ." The statute than provides certain exclusions from the definition of "sale," including "a transfer by gift." RCW 82.45.010(3)(a).

[1] Taxpayer first argues that while she quitclaimed her interest in real property to Grantee, she did so without receiving valuable consideration and that the transfer was a gift under RCW 82.45.010(3)(a). The Department promulgated WAC 458-61A-201 to further explain the REET exclusion for gifts. That Rule explains that "[a] gift of real property is a transfer for which there is no consideration given in return for granting an interest in the property." WAC 458-61A-201(1). The Rule refers to WAC 458-61A-102 for the definition of "consideration."

WAC 458-61A-102(2) explains that "consideration" includes "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 Rule further explains that "'[c]onsideration' includes the assumption of an underlying debt on the property by the buyer at the time of transfer." WAC 458-61A-102(2)(b); *see also* WAC 458-61A-201(3). In this case, Taxpayer's transfer of her interest in real property to Grantee resulted in her being relieved of half of the underlying debt on the property. This is consideration for REET purposes. Therefore, the transfer at issue is not a gift under RCW 82.45.010(3)(a).

Additionally, in this case, Grantee refinanced the debt immediately following the November 3, 2010 transfer. WAC 458-61A-201(4)(a) also explains "[t]here is a rebuttable presumption that the transfer is a sale and not a gift if the grantee is involved in a refinance of debt on the property within six months of the time of the transfer." WAC 458-61A-201(6)(d)(ii) provides the following example of how to apply this rebuttable presumption:

> Casey and Erin, as joint owners, convey their residence valued at $200,000 to Erin as sole owner. There is an underlying mortgage on the property of $170,000. Prior to the transfer, Casey and Erin had both contributed to the monthly mortgage payments. Within one month of the transfer, Erin refinances the mortgage in her name only and begins to make payments from her separate account. In this case, there is a rebuttable presumption

[3] REET "is the obligation of the seller." RCW 82.45.080(1). Taxpayer argued at the hearing that Grantee should be jointly liable for REET. According to RCW 82.45.080(1), Taxpayer, as the seller of her interest in the real property, is the party liable for REET. In this case, the REET was only imposed on Taxpayer's one-half interest in the property because, as explained more below, this is the portion of the transfer for which Taxpayer received consideration in the form of debt relief.

> that this is a disguised sale, since Erin, through her refinance, has assumed sole responsibility for the underlying debt. [REET] is due on $85,000 (Casey's fractional interest in the property multiplied by the total debt on the property: 50% x $170,000).

This example is analogous to the facts of this case. Taxpayer and Grantee conveyed their residence to Grantee as the sole owner. Both parties made payments to the mortgage prior to the transfer even though the payments came from Grantee's checking account. After the transfer, Grantee refinanced the mortgage in his name only and is the only party to make payments towards the new debt. While the equity transferred between Taxpayer and Grantee is a gift, Taxpayer is subject to REET on the amount of debt relief or fifty percent (i.e. Taxpayer's fractional interest in the property) of the $. . . mortgage remaining on the property at the time of the transfer.

[2] Taxpayer next argues that REET does not apply to transfers of property that occur because of the termination of a committed intimate relationship. RCW 82.45.010(3)(e) provides an exclusion from the REET definition of "sale" for "[t]he assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement."

As explained in Det. No. 05-0247, 25 WTD 85 (2006), the exclusion from the definition of "sale" in RCW 82.45.010(3)(e) does not apply to transfers pursuant to ending a committed intimate relationship.[4] This is because the language of RCW 82.45.010(3)(e) limits the exclusion to transfers "from one spouse . . . to the other spouse." 25 WTD at 87. While the language of the statute now includes transfers in accordance with dissolution of a state registered domestic partnership, the statute still does not include transfers from partners in a committed intimate relationship. As explained in Det. No. 05-0247, we have no authority to extend the application of the exclusion in RCW 82.45.010(3)(e) to transfers not covered by the language of the statute. *Id*.; *citing Budget Rent-A-Car of Wash-Or, Inc., v. Dep't of Revenue*, 81 Wn.2d 171, 500 P.2d 764 (1972).

Though former partners in a committed intimate relationship may be entitled to an equitable division of property acquired during the relationship, courts do not extend statutory benefits given directly to married couples to those in committed intimate relationships. *Connell v. Francisco*, 127 Wn.2d 339, 348-49, 898 P.2d 831 (1995); *Peffley-Warner v. Bowen*, 113 Wn.2d 243, 252-53, 778 P.2d 1022 (1989). Accordingly, Taxpayer is ineligible for the REET exclusion in RCW 82.45.010(3)(e).

[4] 25 WTD 85 referred to the parties as having been involved in a "meretricious relationship." In 2007, the Washington State Supreme Court replaced the term "meretricious relationship" with "committed intimate relationship" because of the prior term's negative connotation. *Oliver v. Fowler*, 161 Wn.2d 655, 657 n. 1, 168 P.3d 348 (2007).

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 6th day of July 2012.