

Cite as Det. No. 18-0232, 39 WTD 130 (2020)

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

In the Matter of the Petition for)	<u>D E T E R M I N A T I O N</u>
Correction of Assessment of)	
)	No. 18-0232
)	
...)	Registration No. . . .
)	

RULE 458-61-430; RCW 82.45.030: REAL ESTATE EXCISE TAX (REET) – SELLING PRICE. Where property is sold in an arm's length transaction between unrelated persons, a rebuttable presumption exists that the selling price is equal to the total consideration paid. If the selling price of the improvements on leased land was separately stated, then the tax is properly assessed based on the total consideration paid. Where tax was remitted based on the most recent selling price for the property and there is no evidence that the sale was not an arm's length transaction, we find no basis to use the value assessment for the property maintained on the county property tax rolls and conclude tax was properly remitted on the market value of the property established by the selling price.

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.

Kreger, T.R.O. – A person who transferred a 50% interest in property that he recently purchased at auction and remitted real estate excise tax (REET) based on the sales price protests the assessment of additional tax based on the higher value for the property recorded on the county assessor's rolls. The Special Programs Division asserted that the transfer was not an arm's length transaction; however, no evidence has been presented [by the Special Programs Division,] that the sales price (which was based on half of the auction price) did not establish the fair market value of the property at the time of transfer or that there was any relationship or agreement between the parties that would support characterizing the subsequent transfer as anything other than an arm's length transaction. We find that tax was remitted based on the most recent selling price for the property and grant the Taxpayer's petition.¹

ISSUE

Does the purchase price of property establish the true and fair value of the property conveyed and the taxable "selling price" for the property under RCW 82.45.030?

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

FINDINGS OF FACT

Taxpayer purchased real property located in ...County in a foreclosure sale The minimum bid for the property at issue was \$. . . , and the Taxpayer was the successful bidder, purchasing the property for \$ That transfer was recorded REET was paid on this purchase and there is no assertion that any additional tax is due on the purchase of the property by the Taxpayer.

At issue here is the subsequent conveyance of a fifty percent interest in the property. At the . . . auction, Taxpayer began a discussion with [Third Party], who had unsuccessfully bid on properties, including the property purchased by the Taxpayer. The Taxpayer subsequently offered [Third Party] a 50% interest in the property he just purchased if [Third Party] was willing to pay half of the purchase price. [Third Party] agreed and paid the Taxpayer \$. . . , and on . . . , the transfer was recorded and REET was remitted based on the \$. . . purchase price.

The Department of Revenue's Special Programs Division subsequently contacted the Taxpayer to inquire about the transfer as the assessed value of the parcel per . . . County Assessor's Office was \$ The Taxpayer provided information on the purchase and subsequent transfer. . . . Special Programs issued an assessment to the Taxpayer for \$. . . in additional REET due on the transfer to [Third Party], asserting that this was not an arm's length transaction and assessing tax based on the higher value for the property recorded in the . . . County tax rolls. The Taxpayer timely petitioned for review of the assessment.

ANALYSIS

Washington's REET is imposed on the "sale of real property" measured by its "selling price." RCW 82.45.060. RCW 82.45.010 defines the term "sale" for REET, as follows:

As used in this [REET] chapter, the term "sale" has its ordinary meaning and includes any conveyance . . . or transfer of the ownership of or title to real property . . . or any estate or interest therein for a valuable consideration

RCW 82.45.010(1). RCW 82.45.020(1) defines "selling price," for purposes of REET, as follows:

As used in this chapter, the term "selling price" means the true and fair value of the property conveyed. If property has been conveyed in an arm's length transaction between unrelated persons for a valuable consideration, a rebuttable presumption exists that the selling price is equal to the total consideration paid

WAC 458-61A-101(2)(c) defines "true and fair value" as: "market value, which is the amount of money that a willing, but unobliged, buyer would pay a willing, but unobligated, owner for real property, taking into consideration all reasonable, possible uses of the property."

RCW 82.45.030(4) details a hierarchy for determining taxable selling price:

If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, the market

value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price.

WAC 458-61A-102(19) also addresses selling price and provides:

There is a rebuttable presumption that the true and fair value is equal to the total consideration paid or contracted to be paid to the seller or to another person for the seller's benefit.

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

- (i) A fair market appraisal of the property; or
- (ii) An allocation of assets by the seller and the buyer made under section 1060 of the Internal Revenue Code of 1986, as amended.

(b) When the true and fair value of the property at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained in the county property tax rolls at the time of sale will be used as the selling price. RCW 82.45.030.

Here we have the sale of property at auction, followed by the subsequent sale between Taxpayer and [Third Party] for half of the auction price, or \$ In general, an arm's length sale involves "a transaction negotiated by unrelated parties, each acting in his or her own self-interest; the basis for a fair market value determination." Black's Law Dictionary 100 (5th ed. 1979); *see also Washington v. Kleist*, 126 Wn.2d 432, 434, 895 P.2d 398 (1995) ("Market value" is defined in this state as the price which a well-informed buyer would pay to a well-informed seller, where neither is obliged to enter into the transaction"). The total consideration paid for the property at auction was \$ The subsequent sale was based on one-half of the auction price paid by Taxpayer, or \$ While the property sold for an amount substantially below the \$. . . value recorded on the . . . County tax rolls at the time of the sale, the \$. . . purchase price was the amount a buyer was willing to pay for one-half of that property [on the date of the transfer of the 50% interest to Third Party].

Special Programs has generally asserted that this subsequent transfer between the Taxpayer and [Third Party] was not an arm's length transaction, but offers no support for this assertion beyond the fact that the price for this transfer was based on the auction selling price rather than the higher value on the county assessor's tax rolls. While the Taxpayer and [Third Party] are acquainted with one another, there is no evidence of any relationship that would support characterizing them as related parties. Additionally, there is no evidence or argument made that the auction price was not the market value for the property [the date of the auction], or that the later price [of the transfer of the 50% interest in the property] was not also the market value of the property. [We conclude that Special Programs has not rebutted the presumption that the selling price of the fifty percent interest in the property was \$ *See* WAC 458-61A-102(19)]

We find that the price [paid at the time of the transfer of the 50% interest] established a new true and fair value for the property transferred at issue and REET was properly paid on this transfer. Accordingly, we grant the Taxpayer's petition.

DECISION AND DISPOSITION

The Taxpayer's petition is granted and the . . . assessment issued to the Taxpayer is hereby cancelled.

Dated this 7th day of September 2018.