
From: realprop@yahoogroups.com
To: WSBA Real Property Section Listserv; KCBA Real Property Section Listserv
Sent: 4/19/2012 3:25PM
Subject: [realprop] Conveyance Tax Required to Record Inheritance Documents

Mike Winslow posted last Friday giving warning about a new position being adopted by the Department of Revenue [DOR] in Skagit County. That state agency has a person at each Auditor's location who must first review documents related to excise taxability. That DOR person is preventing recording of documents without payment of excise tax for transfers by operation of law. His scenario was a transfer to an heir pursuant to intestate succession. I wish I could say that is not true. Oh, yes, they are attempting to require payment of excise where no deed is required to transfer title. There are other counties asserting the same position. They conclude that all manner of transfers by operation of law are taxable unless the strict document requirements of RCW 82.45.197 can be satisfied.

Their position is not correct. The statutes that impose the conveyance tax define sales. See 82.45.010. It does include transfers of the ownership without a deed, but it seeks to tax only those transfers "for a valuable consideration." That statute specifically excludes inheritance from its definition of sale: "(3) The term "sale" does not include: (a) A transfer by gift, devise, or inheritance." Other statutory exemptions are also being challenged under this position.

RCW 82.45.197 is relied upon as the authority of the DOR position. In my opinion, the purpose of that statute is to provide a clear route to claim exemption for those people who choose to record a deed or other document to evidence a transfer that was legally done by operation of law. Many people, apparently including the DOR, are not aware that no recording of any document is required to transfer title in many such circumstances. A court order that vests title in one spouse in a divorce action, a partition action, or a quiet title action in the Superior Court of the county of the property does not require recordation. By RCW 11.04.250, no probate and no recording are required to vest title in the heirs. Yet, many people want to record a document anyway.

It is common to record documents so the unknown and off-record matters are defined. For example, when John Doe dies owning Blackacre, we don't know if he had a Will, and if so, whether it is consistent with intestate succession. Even if we believe intestate succession is applicable, we don't know what level of heirs are living or their names. A recorded affidavit stating he left no Will, and that Susan Jones and Johnny Jr. are his living children, merely gives notice of those alleged facts. The affidavit is not a transfer of ownership. The Humane Society later might initiate a probate of John's Will that gives all his land to that charity. Insuring succession of ownership based upon "lack of probate" isn't as easy as some think.

If the Real Property or the Probate and Trust lawyers would like to suggest statutory clarification of the taxability of conveyances by operation of law, please contact me as the Co-Chair of the Washington Land Title Association to work on that for the next session. A short term route may be an Attorney General opinion letter. In any event, the State is seeking to collect more revenue, so it is less likely that the DOR will revise its position.

Dwight A. Bickel

Legislative Committee Co-Chair

5/23/2014

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From: realprop@yahoogroups.com [mailto:realprop@yahoogroups.com] On Behalf Of Mike Winslow
Sent: Friday, April 20, 2012 6:00 PM
Subject: [realprop] excise tax on affidavits of inheritance.

[excerpt]

I have been preparing and recording affidavits of inheritance to avoid the necessity of probate for many years. This when we have no need for a probate to transfer assets and we have property passing to children under the automatic vesting statute under RCW 11.04.250.

A local title company is now telling me that Skagit county is requiring excise tax be paid for "transfers" by affidavit of heirship/lack of probate affidavits because they don't fit the statutory exemptions from excise tax under RCW 82.45.197.

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