

Cite as Det. No. 21-0045, 41 WTD 333 (2022)

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. 21-0045
)	
...)	Registration No. ...
)	

[1] WAC 458-61A-204; RCW 82.45.010(3)(e): REAL ESTATE EXCISE TAX – EXEMPTION –PARTITION OF PROPERTY BY TENANTS IN COMMON. The exemption for the partition of property by tenants in common does not apply when a property is not divided into distinct portions with the grantors and grantee taking separate ownership of the property.

[2] WAC 458-61A-211; RCW 82.45.010(3)(e): REAL ESTATE EXCISE TAX – EXEMPTION – MERE CHANGE IN IDENTIY. A transfer is not exempt from real estate excise tax as a mere change in identity where the pro rata share of ownership of the property changed after the transfer.

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.

Fisher, T.R.O. – Two individuals protest the assessment of real estate excise tax, asserting the transfer was not a “sale of real property” under RCW 82.45.010 because the transfer was a partition of property among tenants in common or a mere change in identity. The petition is denied.¹

ISSUES

1. Whether, under RCW 82.45.010(3)(e) and WAC 458-61A-204, a transfer of multiple properties between tenants in common that results in a partition of real property is not subject to real estate excise tax.
2. Whether, under RCW 82.45.010(3)(p) and WAC 458-61A-211, a transfer of multiple properties between tenants in common is a mere change in identity not subject to real estate excise tax.

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

FINDINGS OF FACT

[In] 2018, . . . [Grantor 1] and . . . [Grantor 2] (“Grantors”) transferred property located at . . . (“Property”) to . . . (“Grantee”). As a part of the transaction, Grantors and Grantee executed a real estate excise tax (“REET”) affidavit, claiming the transaction was exempt from REET due to being a partition of real property by tenants in common. The outstanding debt on the Property was \$. . . as of the transfer.

The Department of Revenue audited the . . . 2018, transfer. Grantors explained to the Department that Grantors and Grantee owned six properties together, and shared rents and expenses equally. Grantors further explained that, in order to dissolve the partnership, Grantors quitclaimed Grantors’ interest in three of the properties, including the Property, to Grantee. Grantee assumed the debt owed by Grantors on the properties quitclaimed by Grantors, including the debt on the Property. Grantee quitclaimed Grantee’s interest in the other three properties to Grantors. Grantor assumed the debt owed by Grantee on the properties quitclaimed by Grantee.

The Department determined that the transfer of the Property from Grantor to Grantee was subject to REET. The Department determined that the amount of consideration was half of the outstanding debt owed on the Property at the time of transfer, which was \$. . . . The Department assessed Grantors \$. . . in REET and \$. . . in interest.

Grantors timely sought administrative review of the assessment. Grantors do not dispute the Department’s determination of the selling price for purposes of assessing REET. Instead, Grantors assert that the transfer of the Property is exempt from REET under WAC 458-61A-204 as a partition of real property by tenants in common or, in the alternative, exempt under WAC 458-61A-211 as a mere change in identity. At the hearing, Grantors explained that there was no written agreement to divide the six properties owned in common by Grantors and Grantees, and that there was no court order requiring the partition. Grantors asserted that all six properties were developed at the same time with houses having identical floor plans, identical values to one another, and identical debts secured against each property. Before the transfers of the six properties, both Grantors and Grantee paid the debts owed on the properties. According to Grantors, before the transfers, Grantors and Grantee each owed 50% of the debt on all six properties and, after the transfers, Grantors owed 100% of the debt on three of the properties (including the Property) and Grantee owed 100% of the debt on the remaining three properties. Because the debts secured by all six properties are identical, the total amount of debt owed by Grantors and Grantee did not change.

Along with its petition for administrative review, Grantors provided records showing the amount of debts on the six properties. According to the records, as of . . . the day before the transfer of the Property, five of the six properties owned by Grantors and Grantee, including the Property, had an identical amount of debt. The sixth property had less than a dollar difference in debt owed.

ANALYSIS

Washington's REET is imposed on the "sale of real property" measured by its "selling price." RCW 82.45.060; Det. No. 17-0021, 36 WTD 563, 568 (2017). "Sale of real property," in the context of REET, "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). REET is due at the time the sale occurs, and is the obligation of the seller. RCW 82.45.080; WAC 458-61A-100(2)(a).

"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. . . ." RCW 82.45.030(1). WAC 458-61A-102(3) defines consideration to mean "money or anything of value . . . in return for the transfer of real property" and includes the amount of any lien, mortgage, or other encumbrance remaining on the property at the time of sale.

Here, Grantors were relieved of debt owed on the Property at the time of sale in return for transferring the Property to Grantee. The relief of debt on the Property is consideration. WAC 458-61A-102(3). Grantors assert that there was no consideration because the total amount of debt owed by Grantors was the same before and after the transfer of the properties between Grantors and Grantee. This is irrelevant. Before the transfer, Grantors owed debt on the Property. After the transfer, Grantors no longer owed any debt on the Property. The fact that Grantors owed additional debt on other properties does not change the fact that Grantors were relieved of debt on the Property.

Because there was relief of debt, there was consideration in exchange for the transfer of ownership of real property. Accordingly, there was a "sale" of real property, and the "selling price" was the amount of debt owed by Grantors on the Property at the time of the transfer. Thus, unless an exemption applies, the transfer of the Property is subject to REET.

RCW 82.45.010(3)(e) excludes from the definition of sale of real property "the partition of property by tenants in common by agreement or the result of a court decree." WAC 458-61A-204 is the administrative rule implementing RCW 82.45.010(3)(e). Grantors assert the transfer of the Property is not a sale of real property under RCW 82.45.010(3)(e) and WAC 458-61A-204.

We disagree. WAC 458-61A-204(2) explains that a partition results when tenants in common agree that certain tenants will be assigned certain particular tracts "*within* the property they own together." (Emphasis added.) Partition involves the division of land by joint owners into distinct portions, to be owned separately. *Schultheis v. Schultheis*, 36 Wn. App. 588, 589 n.1, 675 P.2d 634 (1984) (citing Black's Law Dictionary). For there to have been a partition of the Property, the Property would need to have been divided into distinct portions with Grantors and Grantee taking separate ownership of those portions of the Property. That is not what happened here. Grantee took ownership of the entirety of the Property. Because there was no "partition," RCW 82.45.010(3)(e) and WAC 458-61A-204 do not apply.

RCW 82.45.010(3)(p) excludes from the definition of a sale of real property transfers of real property which consists of “a mere change in identity or form of ownership of an entity where there is no change in the beneficial interest.” WAC 458-61A-211 is the administrative rule implementing RCW 82.45.010(3)(p). Relevant to tenancies in common, WAC 458-61A-211(2) explains that no change in beneficial interest happens where the end result is ownership is maintained in the same pro rata share as before the transfer. Here, before the transfer Grantors owned 50% and Grantee owned 50% of the Property. After the transfer, Grantee owned 100% of the Property. Because the pro rata share of ownership of the Property changed after the transfer, the transfer was not a mere change in identity.

Accordingly, no exclusion applies, and REET was properly assessed.

DECISION AND DISPOSITION

Grantors’ petition is denied.

Dated this 25th day of February 2021.