

BEFORE THE INTERPRETATION AND 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. 88-251

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Real Estate Excise Tax
Tax Audit No. . . .

- [1] **REAL ESTATE EXCISE TAX:** RCW 82.45.010 -- WAC 458-61-210 -- WAC 458-61-370 -- EXEMPTION FROM TAX -- ASSUMPTION OF MORTGAGES -- TRADE OF REAL PROPERTY. Real estate excise tax exclusion for transfer of property where grantee assumes existing mortgage applies only if no additional consideration is received. Where two parties trade real estate parcels and each party assumes the mortgage on the parcel received, the transfer is an exchange of parcels of real property and is subject to tax.
- [2] **REAL ESTATE EXCISE TAX:** METHOD OF VALUATION -- Current assessed value is the method used for valuing property for tax purposes if a fair market value is not readily ascertainable. Taxpayer contesting valuation method used must provide impartial documentation supporting request for lower assessment.

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.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: August 13, 1986

NATURE OF ACTION:

The taxpayer protests an assessment of real estate excise tax, because the property was transferred for assumption of debt only.

FACTS AND ISSUES:

Johnson, A.L.J. (successor to Dressel, A.L.J.): Taxpayer transferred real property (Parcel 1) to another party in March, 1986, and received, as consideration, Parcel 2. The grantee of each parcel paid no consideration other than assuming the mortgage on the parcel received in the trade. Taxpayer attached signed affidavits stating that the transfers were exempt, because they were for the assumption of the mortgage balance only. On December 30, 1985, the Department of Revenue sent taxpayer an inquiry, indicating that the trade was taxable pursuant to WAC 458-61-370, which states:

The real estate excise tax applies when real property is exchanged for other real property or any other valuable property, either tangible or intangible. In the case where real property is exchanged for other real property, the transfer of each property is individually subject to the tax. The gross taxable value of each property is the fair market value of each property, not the equity that each owner has vested in the properties.

The assessment was for \$ X in excise tax and a delinquent penalty of \$ X, for a total tax due of \$ X, to have been paid by January 15, 1986. Upon failure of Taxpayer to respond, the Department sent an additional assessment on April 2, 1986, in the amount of \$ X and noted that, under RCW 82.45.080, this tax is an obligation of the seller.

DISCUSSION:

[1] RCW 82.45.080 requires payment by sellers of real estate excise tax on transfers of real property. In some instances, a transfer of real property is not subject to tax. RCW 82.45.010. One such instance is where the seller receives no consideration whatever and the buyer only assumes an outstanding mortgage or contract price on the parcel. However, the requirement that no consideration be received is strictly construed. WAC 458-61-210 is the administrative regulation addressing this problem; it has the full legal force and effect of the law itself. RCW 82.32.300. This rule states that assumption by a grantee of the balance owing on a mortgage is not subject to tax, "provided that no consideration passes to the grantor."

In this case, the two parties each disposed of a parcel of mortgaged property. Each received in return a different parcel of property. RCW 82.45.030 defines "selling price" as

the consideration, including money or anything of value, paid or delivered or contracted to be paid or delivered in return for the transfer of the real property or estate or interest in real property, and shall include the amount of any lien, mortgage, contract indebtedness or other incumbrance, either given to secure the purchase

price, or any part thereof, or remaining unpaid on such property at the time of sale.

Additionally, WAC 458-61-370 specifically states that the real estate excise tax applies when real property is exchanged for other real property.

Here, the taxpayers' affidavits expressly state that "the total consideration is the assumption of obligation secured by mortgage and real estate contract." Had that been the only consideration received, Taxpayer could take advantage of the statutory exclusion on the transfer.

Part of the reason for enactment of RCW 82.45.010, granting that type of exemption, is to avoid assessing tax against a taxpayer who has received nothing of value other than relief of mortgage liability on the disposition of his property. However, this taxpayer received, in addition to relief from liability on the mortgage, a parcel of real estate. This consideration turns the one-sided transaction in which a party disposes of a parcel of property without receiving valuable consideration into an exchange; and that type of transaction is clearly taxable under WAC 458-61-370.

[2] Alternatively, taxpayer contends that the method of valuation used in determining the amount of tax due did not reflect the true current value of the property or take into consideration the fact that the farming area was experiencing a recession.

Property tax values are determined by fair market value in a case such as this; if no impartial appraisal documentation is available, the county appraiser's figures are used. To prevail in a protest of such methods of valuation, the taxpayer must provide a documented, appraised value, which the Property Tax Division will examine. Additionally, if there was a substantial downturn in the economy, the county appraiser's valuation should now reflect it; if such is the case, it is possible that the assessment could be adjusted on that basis. The assessment as it stands is being upheld and taxpayer's petition is being denied.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 29th day of June 1988.