

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
N	
For Refund of )	
)	No. 88-365
)	
. . . )	Real Estate Excise Tax
)	King County Real Estate
)	Tax Affidavit No. . . .

- [1] **REAL ESTATE EXCISE TAX:** RCW 82.45.010 -- RCW 82.45.030 -- RCW 82.45.060 -- SELLING PRICE. The real estate excise tax is due on each sale of real property. The tax is due at the time of sale on the "selling price," which is defined in RCW 82.45.030 to include any amount contracted to be paid.
- [2] **REAL ESTATE EXCISE TAX:** REFUND -- RESCISSION -- WAC 458-61-100(4)(a) -- WAC 458-61-030(19). A real estate excise tax refund will be made only if a transaction is completely rescinded as defined by WAC 458-61-030(19). A sale is not rescinded unless both the grantor and grantee are restored to their original positions.
- [3] **REAL ESTATE EXCISE TAX:** RCW 82.45.010 -- RCW 82.32.060 -- REFUND -- LIMITATION OF ACTIONS. RCW 82.45.010 does not allow the Department to refund real estate excise tax more than four years after the original sale.

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.

NATURE OF ACTION:

The taxpayer seeks a refund of real estate excise tax paid on a contract sale of real property in 1983 on grounds the

property was conveyed back to him in lieu of forfeiture and the consideration received was much less than the original selling price.

FACTS AND ISSUES:

Roys, A.L.J. -- Mr. . . . (hereinafter referred to as seller) seeks a refund of real estate excise tax paid on a sale of real property to Mr. and Mrs. . . . (hereinafter purchasers). The property at issue was originally sold on real estate contract for \$130,000 on April 28, 1983. Real estate excise tax of \$1,716 was paid at the time of the sale.

The purchasers made a downpayment of \$15,000 and payment of \$1,041.85 per month in 1983 and 1984. In 1985 they began to fall behind in making payments. On November 15, 1986, the purchasers and sellers entered into an Agreement for the reconveyance of the property to the sellers in return for the cancellation of the real estate contract. The Agreement stated the sellers agreed to pay the purchasers \$2,000 and the purchasers would quit claim their interest to the sellers.

The Agreement also provided the purchasers could rent the property and try to sell or refinance the property and cash out the sellers under the terms of the original contract, plus payment of the additional fees incurred by the sellers in the quit claim transaction. The Agreement gave the purchasers until February 2, 1987 to sell or refinance the property.

A quit claim deed was filed on December 9, 1986. The Deed states the purchasers conveyed and quitclaimed the property to the sellers "In lieu of foreclosure." No real estate excise tax was paid on that transaction.

The sellers filed a petition for an excise tax refund on June 22, 1987. The reason for the refund claim was that the reconveyance of the property resulted in nonpayment of valuable consideration which the sellers calculated as follows:

Original sale price	\$130,000
Down payment	- 15,000
Credit to Balance due	- 2,248
Non payment	112,752

The sellers contend the real estate excise tax should only be on the consideration actually received (\$17,248). They contend the amount owed was \$227.67. They sought a refund of

the difference between that amount and the amount paid (\$1,716 - 227.67 = \$1,488.33).

The Department reviewed the seller's petition and denied the claim for the following reasons:

1) The seller's records showed they had received payments totalling \$57,564.75; and

2) The refund claim was made more than four years after the original payment (Letter from Miscellaneous Tax Division, December 18, 1987).

The Department's letter explained that a contract which has been defaulted is not a basis for refund of the tax unless the transaction is rescinded.

#### DISCUSSION:

We agree with the real estate excise tax coordinator's denial of the request for refund. We do not find the contract was rescinded. Also, the claim for refund was beyond the non-claim period provided by RCW 82.45.100.

[1] Chapter 82.45 RCW imposes an excise tax on each sale of real property. The term "sale" includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property for a valuable consideration, including any contract for such conveyances. RCW 82.45.010. The term does not include a cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, where no consideration passes otherwise.<sup>1</sup> The Real Estate Excise Tax, as many of this state's taxes, is a tax on a transaction. There is no provision for a reduction in the tax because a seller sustains expenses or other losses in reclaiming his property.

The real estate excise tax is payable at the time of sale. RCW 82.45.100. The measure of tax is the "selling price." RCW 82.45.060. The "selling price" is defined in RCW 82.45.030 as:

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<sup>1</sup> Real estate excise tax was also due when the purchasers quit claimed their interest back to the sellers if they received cash in addition to the cancellation of the indebtedness owing. The "selling price" would be the amount of cash received, plus the amount of indebtedness that was cancelled.

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 . . . , 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. (Emphasis added.)

[2] Chapter 458-61 of the Washington Administrative Code contains the rules established by the Department for the administration of the real estate excise tax. WAC 458-61-100 states the only transactions for which the Department is authorized to issue tax refunds. WAC 458-61-100(4)(a) provides for a refund for "[t]ransactions that are completely rescinded as defined in WAC 458-61-030(19)."

WAC 458-61-030(19) defines a "rescinded transfer" as

a real property transfer wherein both grantor and grantee have been restored to their original positions. In such case, title to the real property has been reconveyed to the grantor and all valuable consideration paid toward the sales price principal has been returned to the grantee.

The word "rescind" is a legal term which means:

To abrogate, annul, avoid, or cancel a contract; particularly, nullifying a contract by the act of a party. . . . To declare a contract void in its inception and to put an end to it as though it never were. . . . Not merely to terminate it and release parties from further obligations to each other but to abrogate it from the beginning and restore parties to relative positions which they would have occupied had no contract ever been made. . . . (Citations omitted.) (Black's Law Dictionary 1471 (4th edition 1968))

Under Washington law, a rescission can occur when there is a mutual consent to rescind the contract. Woodruff v. McClellan, 95 Wn.2d 394, 397 (1980).

In this case, we do not find the original contract was rescinded. The seller did not refund all of the \$15,000

downpayment and principal paid. In fact, the Agreement between the sellers and purchasers stated that the purchasers had some time to try to sell or refinance the property "to pay out [sellers] and protect the additional equity which the [purchasers] feel they have in the property." (Agreement - page 3)

[3] Limitations of Actions -- RCW 82.45.100 provides that the Real Estate Excise Tax is due and payable immediately at the time of sale and that

(3) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of fraud or of misrepresentation of a material fact by the taxpayer or a failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer. (Emphasis added.)

The limitation is the same as that provided in chapter 82.32 RCW, the general administrative provisions. See RCW 82.32.060 (no refund or credit shall be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed). In Guy F. Atkinson Co.v. State, 66 Wn.2d 570, 572 (1965), the court held that the time for a refund allowed by RCW 82.32.060 presented a question of nonclaim rather than a statute of limitations question. The court stated RCW 82.32.060 is procedural, imposing a limitation addressed to the power to make a refund and conditions under which a refund may be made. Id. We view RCW 82.45.100 also as imposing a procedural requirement for a refund.

In the present case, therefore, a second valid reason for a denial of the refund claim was that it was made more than four years after the date of the sale.

#### DECISION AND DISPOSITION:

Taxpayer's petition for refund is denied.

DATED this 21st day of September 1988.