

Cite as 3 WTD 291 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION
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> <u>N</u>
For Correction of Assessment of)	
)	No. 87-217
)	
)	Real Estate Excise Tax
. . .)	Affidavit No. . . .
)	Tax Audit No. . . .
)	
and)	
)	
For Refund of Real Estate Excise Tax of)	
)	
. . .)	Affidavit No. . . .
)	Tax Audit No. . . .
)	

[1] **REAL ESTATE EXCISE TAX:** RCW 82.45.010 AND WAC 458-61-210 -- ASSUMPTION -- JOINT VENTURERS. The exclusion from the term "sale" for an assumption of the underlying indebtedness can apply where the grantor and grantee are joint venturers.

[2] **REAL ESTATE EXCISE TAX:** WAC 458-61-570(2) -- PARTNERSHIP -- JOINT VENTURE -- DISSOLUTION OF. A joint venture is treated the same as a general partnership for real estate excise tax purposes. Under Washington law, if all partnership interests are assigned to one partner, the partnership does not dissolve as a matter of law; thus the transfer of all partnership interests to the remaining partner is not necessarily subject to the real estate excise tax as provided by WAC 458-61-570(2), dissolution of a partnership.

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: February 11, 1987

NATURE OF ACTION:

The taxpayers protest the assessment of real estate excise tax on the transfers of their interests in property to a joint venturer for his assumption of the underlying indebtedness only.

FACTS:

Frankel, A.L.J. -- In February of 1985, the taxpayers [hereinafter Mr. N and Mr. K] and . . . [Mr. S] formed a joint venture to purchase an older home, fix it up, sell the home and hopefully share the profits. Mr. S's funds were used for the downpayment, Mr. K agreed to work on the house for a pre-agreed low wage. The property was purchased by real estate contract by the three d/b/a/ NSK Enterprises.

The taxpayers stated they could not continue in the project and each quit-claimed any interest they might in the property to Mr. S, who agreed to assume the underlying mortgage and contract indebtedness. Mr. N stated this was done to avoid foreclosure proceedings and that they were given nothing of value for their interests in the property. No excise taxes were paid on the transfers.

[N] transfer

On his real estate excise tax affidavit, Mr. N claimed an exemption on grounds that the transfer was to dissolve the NSK Enterprise partnership. (Affidavit No. . . . -May 12, 1986.) The Department assessed tax and delinquent penalty totaling \$248.08, based on an assessed value of \$22,293. In assessing the tax, the revenue officer relied on WAC 458-61-570(2) which provides for the application of the real estate excise tax upon the dissolution of a partnership. The tax applies to the fair market value of the transferred real property.

After inquiry by the Department, the taxpayer explained that the transfer was for assumption of indebtedness only. The taxpayer stated he contacted his local assessor and the county treasurer who "doubted" that a tax was due. The taxpayer said that he was told if a tax were due, it should be based on his 1/3 interest and not on the full assessed value. (letter of September 8, 1986)

The Department responded, stating the tax was due on the full value if the property was in the partnership name and on 1/3 the value if held in the names of the individuals. (letter of September 16, 1986)

The taxpayer replied to the Department's decision as follows:

I have talked to local authorities here in Wenatchee and have been advised that we do not owe the tax as per your letter. WAC 458-61-210-(3) concerns the underlying mtg. assumed by the [S's]. WAC 458-61-210(4) concerns the contract that was assumed by the [S's], prior to their refinancing the property. (letter of September 29, 1986.)

The Department upheld the tax assessment on grounds the transfer was a dissolution of a partnership (letter of October 15, 1986).

Mr. N appealed, again stating that he had been informed by his local county assessor, county treasurer, and the title company that under WAC 458-61-210(3) and 458-61-210(4) no tax was due when the underlying mortgage and contracts were assumed by Mr. S.

[K] transfer

The underlying facts relating to this transfer are the same as above except Mr. K stated his wife paid the assessment when she saw the letter with the "threat" that a warrant would be filed against them if the tax was not paid. They seek a refund of the tax paid and interest. They also rely on WAC 458-61-210 and have submitted a signed real estate excise tax supplemental statement that no additional consideration was paid by the grantee to the grantor. The statement was signed in December of 1986.

ISSUE:

Whether the transfer of an interest in property from one joint venturer to a co-joint venturer is subject to the real estate excise tax, where the transfer is for assumption of liabilities owing on a real estate contract only.

DISCUSSION:

The real estate excise tax is to be paid by the seller on each sale of real property. RCW 82.45.080. As used in chapter

82.45 RCW, however, the term "sale" does not include all transfers of property for consideration. RCW 82.45.010. At issue is the exclusion from the term for a grantee's assumption of the mortgage balance owing, where no consideration passes otherwise.

RCW 82.45.150 provides that the Department shall, by rule, provide for the effective administration of the Real Estate Excise tax laws. WAC 458-61-210 (Rule 210) is the administrative rule dealing with assignments.

During the period at issue, Rule 210 provided:

(1) The real estate excise tax does not apply to the following types of purchaser's assignments, provided that no consideration passes to the grantor:

. . .

(b) Assumption by a grantee of the balance owing on an obligation which is secured by a mortgage, deed of trust or real estate contract; . . .

. . .

The real estate excise tax affidavit is required for each of the above. If the transfer is to a third party other than the current lienholder, the grantor must furnish a notarized statement signed by both the grantor and grantee that no additional consideration of any kind is being paid by the grantee to the grantor or to any party other than current lienholders.

In the present case, the grantors and grantee furnished such a statement stating that the sole consideration was the assumption of the underlying mortgage and the indebtedness owing on the real estate contract. As Rule 210 notes, the exclusion is not limited to a transfer back to the original seller or mortgagee, nor is the exclusion limited to assumption of liabilities owing on obligations secured by mortgage.

We find the exclusion from the term "sale" for assumptions only applies when the grantor and grantee are joint venturers. Neither RCW 82.45.010 nor WAC 458-61-210 provide otherwise.

[2] Furthermore, we note that the Department's longstanding position has been to treat a joint venture the same as a general partnership for real estate excise tax purposes. That position was added to WAC 458-61-570 by an amendment to the rule which was effective September 8, 1986. Under Washington law, if all partnership interests are assigned to one partner, the partnership does not dissolve as a matter of law. RCW 25.04.410(2). As Rule 570 provides, the assignment of a partnership interest is not subject to the real estate excise tax.

DECISION AND DISPOSITION:

The taxpayers' petitions are granted.

DATED this 24th day of June 1987.