

Cite as 3 WTD 337 (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 Refund of )	
)	No. 87-223
)	
)	Real Estate Excise Tax
)	
. . . )	
)	
)	
)	

[1] **REAL ESTATE EXCISE TAX:** RCW 82.45.010 -- NO CONSIDERATION. No real estate excise tax was due on the taxpayer's transfer of property to his wholly owned corporation where no consideration was received by the taxpayer for the transfer. A transfer without consideration is not a taxable transaction under RCW 82.45.010.

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: May 12, 1987

NATURE OF ACTION:

The taxpayer petitions for a refund of real estate excise tax on the basis that the transfer at issue was without consideration.

FACTS:

Frankel, A.L.J. -- . . . (hereinafter referred to as the taxpayer) purchased the property at issue in February of 1981

for \$450,000. Conveyance tax and real estate excise tax was paid on that transaction.

On September 14, 1982, the taxpayer transferred title to his wholly owned corporation, . . . (hereinafter referred to as Corporation A). No real estate excise tax was paid. The real estate excise tax affidavit shows the exemption was claimed because the transfer was to a family owned corporation.

Four years later, October 8, 1986, Corporation A sold the property to another company for \$950,000. The taxpayer paid the \$12,540 in real estate excise tax on that sale.

The County refused to record the 1986 sale by the corporation until an additional \$5,940 in real estate excise tax was paid on the September 14, 1982 transfer by the taxpayer to his corporation.

The taxpayer paid the tax and petitioned for a refund of the tax paid plus statutory interest. The taxpayer contends that no real estate excise tax was due on the September 14, 1982 transfer because the transfer was without consideration. The taxpayer submitted an affidavit in which he states he received no cash, relief from indebtedness, stock, or any other tangible or intangible property in exchange for the transfer.

The taxpayer also provided copies of the minutes of meetings of Corporation A's Board of Directors for January 23 and February 19 of 1981 to explain the underlying facts related to the transaction. The minutes state the taxpayer's intent to purchase the property at issue in his name as agent for the corporation. The taxpayer wanted title in his name because the corporation was part of a joint venture which was in the process of being liquidated. He was afraid that if the acquisition was in the name of the corporation, the joint venture agreement and its liquidation needlessly could be involved.

The resolution adopted at the January meeting approved the purchase and considered the funds for the purchase, renovation and maintenance of the property as capital contributions by the taxpayer to the corporation. The resolution adopted at the February meeting approved and confirmed the taxpayer's offer to purchase the property and take title in his name.

The Department's Property Tax Division denied the taxpayer's refund request. The denial was explained as follows:

This specific tax exemption, the transfer to a corporation which is wholly-owned by the transferor and/or the transferor's spouse or children is set forth in RCW 82.45.010, paragraph 3, and in WAC 458-61-320. Briefly stated, the tax is exempted for such a transfer into a corporation which is wholly-owned by the transferor, provided that neither the subject real property nor the corporate stock is sold to a third party within five years. The statute and the administrative code both require that the tax exempted on the initial transfer becomes due and payable in the event that such a sale occurs within five years.

[Corporation A] sold the real property within the five-year period. The . . . County Recorder's Office was therefore correct in recouping the tax previously exempted on the September 14, 1982 transfer. I must therefore deny your request for tax refund.

#### ISSUE:

Whether real estate excise tax is due on a transfer to a family owned corporation if the corporation sells the property to a third party within five years, even if the initial transfer to the family owned corporation was without consideration.

#### DISCUSSION:

Chapter 82.45 imposes an excise tax on each sale of real property. RCW 82.45.010 defines the term "sale."

As used in this chapter, the term "sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration . . . (Emphasis added.)

. . .

The term sale shall further not include a transfer to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or children: Provided, That if thereafter such transferee corporation or partnership

voluntarily transfers such real property, or such transferor, spouse, or children voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case maybe, to other than (1) the transferor and/or the transferor's spouse or children, (2) a trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of the transfer to the trust, or (3) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within five years of the original transfer to which this exemption applies, excise taxes shall become due and payable on the original transfer as otherwise provided by law.

The two prerequisites for a taxable transaction are (1) transfer of real property and (2) consideration paid or contracted to be paid for the transfer. State ex rel. Namer, Inc. Corp. v. Williams, 73 Wn.2d 1 (1968). In the absence of the issuance of stock or some other lawful consideration, the transfer of an interest in real property from one corporation to another is without consideration and not subject to the real estate excise tax. See AGLO 1977 No. 6.

We agree with the taxpayer that no real estate excise tax was due on his transfer of title to the corporation. The taxpayer was acting on behalf of the corporation when he purchased the property. He stated he received no consideration for the transfer and such a transfer is not defined as a "sale" for purposes of the real estate excise tax. RCW 82.45.010.

#### DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 30th day of June 1987.