

Cite as 3 WTD 287 (1987)

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

In the Matter of the Petition) D E T E R M I N A T I O N
For Correction of Assessment of)
) No. 87-216
)
) Real Estate Excise Tax
) Affidavit No. . . .
 . . .) Tax Audit No. . . .
)
)
)
)

[1] **REAL ESTATE EXCISE TAX:** RCW 82.45.010 -- WAC 458-61-650(2) -- WAC 458-61-210 -- ASSUMPTION -- TENANTS IN COMMON. The transfer of an interest in property from one tenant in common to the other tenant in common is not subject to the real estate excise tax where the sole consideration is the assumption of the liabilities owing on the underlying real estate contract. Such a transfer is not a "sale" as that term is used in RCW 82.45.010 and WAC 458-61-650(2).

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: June 9, 1987

NATURE OF ACTION:

The taxpayer protests the assessment of real estate excise tax on the transfer of an interest in real property to a tenant in common.

FACTS:

Frankel, A.L.J. -- The taxpayer and . . . (hereinafter B) agreed to purchase a parcel of real estate by contract on August 22, 1983. On June 30, 1986, the taxpayer assigned his interest in the contract to B and B agreed to fulfill the conditions of the real estate contract. No excise tax was paid on the transfer. The taxpayer/grantor claimed an exemption on grounds the transfer was an assumption of his co-purchaser's \$69,274 obligation under an existing real estate contract and Real Estate Excise tax was previously paid on the sale.

The Department assessed Real Estate Excise tax and delinquent penalties of \$922.58 on the transfer, based on an assessed value of \$66,565.

The Department relied on WAC 458-61-650 and found the transfer was a taxable sale of an interest in real property from one tenant in common to another tenant in common. The taxpayer protests the assessment on grounds the sole consideration was the assumption of liabilities owing on the real estate contract.

ISSUE:

Whether the transfer of an interest in property from one tenant in common to the other tenant in common, for assumption of liabilities owing on a real estate contract only, is subject to the real estate excise tax.

DISCUSSION:

WAC 458-61-650(2) states:

The sale of the interest in real property from one or more tenants in common to remaining tenants or to a third party is a taxable transaction. The taxable amount of the sale is the proportionate share of the market value of the property being sold. (Emphasis added.)

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 grantor and grantee furnished such a statement stating that the sole consideration was the assumption of all liabilities 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 assumptions of liabilities owing on obligations secured by mortgages.

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

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 24th day of June 1987.