

Cite as 3 WTD 349 (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 Ruling of Tax Liability of)	
)	No. 87-229
)	
. . .)	Registration No. . . .
)	
)	

[1] **REET:** REAL ESTATE EXCISE TAX -- TRANSFER -- CORPORATION -- ASSUMPTION OF INDEBTEDNESS BY GRANTEE -- STOCK NOT ISSUED BY GRANTEE. The real estate excise tax does not apply to a transfer of real property from one corporation to another where the grantee does not issue stock to the grantor and the only consideration is the assumption by the grantee of indebtedness secured by mortgage.

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: . . .

NATURE OF ACTION:

The taxpayer has asked for a ruling on the applicability of real estate excise tax to the transfer of real property in conjunction with a corporate reorganization.

FACTS AND ISSUES:

Potegal, A.L.J. -- The taxpayer's petition states in part:

The salient facts are these:

1. X Corporation conducts two separate lines of business. It acquires real estate and develops the

real estate into residential lots suitable for sale to construction companies and private individuals who wish to construct their own homes. X Corporation also conducts a residential construction business. Both of these activities have been ongoing for over 20 years.

2. The increased growth of the development business produces more residential lots than the construction division can utilize and therefore the corporation has been selling lots to third-party construction companies. However, X Corporation has found itself at a disadvantage in selling to other construction companies because of the fact that it competes with those same companies through its construction division. To remedy the problem, the corporation has proposed a plan which would separate the development company and its inventory of lots for sale from the construction company and its property and construction projects.

3. Under the proposed plan of reorganization, X Corporation's ownership will remain unchanged. Presently, the sole shareholder is [Mr. X]. Following the reorganization into two separate companies, Mr. X will be the sole shareholder of both corporations.

4. The proposed reorganization anticipates that the properties under development will be contributed to a newly formed subsidiary of X Corporation as a capital contribution to increase surplus with no further issuance of stock by the subsidiary. Thereafter, the stock of the subsidiary held by X Corporation will be distributed to Mr. X without the imposition of federal tax by virtue of §§ 368 and 355 of the Internal Revenue Code. The subsidiary will be referred to hereafter as the "Development Company"; the reorganized X Corporation as the "Housing Company." One of the federally-imposed conditions of such a tax-free exchange is that the shareholders (here, Mr. X) of the reorganized corporations maintain their ownership of the stock and not liquidate either corporation for some period of time following the reorganization. Mr. X intends to comply with this requirement.

5. No excise tax is avoided by virtue of this reorganization. Indeed, after the reorganization, excise taxes will be due and owing because lots presently held as inventory by X Corporation will be sold by the Development Company to the Housing Company as well as to third parties. The Development Company anticipates payment of excise tax on all future sales of its developed property, including those to the Housing Company, its former parent corporation. Each lot now owned by X Corporation will, when sold, generate excise tax liability because each of these transactions will be for consideration.

Under these facts the taxpayer asked the following question:

Does the State of Washington impose a real estate excise tax on the transfer of real property by a parent corporation to a newly formed corporation, which will assume the indebtedness to which the property is subject, in connection with a corporate reorganization where no stock or other consideration is received in exchange, there is a valid business purpose for the reorganization, and there is no intent to avoid the excise tax by subsequent liquidation of either corporation?

Although not stated specifically in the petition, the taxpayer has telephonically advised us that the indebtedness to be assumed by the newly formed corporation is secured by mortgage.

DISCUSSION:

The real estate excise tax is imposed on "each sale of real property." RCW 82.45.060. RCW 82.45.010 provides in part that "the term 'sale' shall have its ordinary meaning and shall include any . . . transfer of . . . real property . . . for a valuable consideration" RCW 82.45.010 further provides that "the term [sale] shall not include . . . the assumption by a grantee of the balance owing on an obligation which is secured by a mortgage . . . where no consideration passes otherwise"

The transfer proposed by the taxpayer will not be subject to real estate excise tax. The tax applies to sales of real property. Here, the transfer takes place through an assumption of indebtedness by the grantee. That type of

transfer is specifically excluded from the statutory definition of sale if no other consideration passes. There is no other consideration. If the grantee corporation issued stock to the grantor corporation in exchange for the property there would be additional consideration and the transfer would be taxable. Under the proposed transfer, however, no stock will be issued. See AGLO 1977 No. 6.

RULING:

The real estate excise tax does not apply under the facts stated above.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the Department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the Department upon these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 10th day of July 1987.