

Cite as 3 WTD 341 (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. 87-224
)	
)	
. . .)	Real Estate Excise
Tax	
)	Affidavit No. . . .
)	Tax Audit No. . . .

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, where the sole consideration is the assumption of the liabilities owing on a mortgage, is not subject to the real estate excise tax. 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: Pro Se

DATES OF HEARING: July 23, 1986 and June 22, 1987

NATURE OF ACTION

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

FACTS

Normoyle, A.L.J. (successor to M. Clark Chandler, A.L.J.) -- The taxpayers and another person (referred to herein as "Mr. I") purchased real estate as tenants in common. To obtain funds for remodeling, the co-tenants then took out a loan, secured by a mortgage. The taxpayers could not keep up with their one-half payments on the mortgage, and quit-claimed their interest in the property to Mr. I, who agreed to assume all liability for the mortgage debt. No other consideration was paid by Mr. I to the taxpayers. The taxpayer did not pay real estate excise tax on the transfer, claiming that there was an exemption because the transfer was an assumption of the mortgage obligation only.

The Department of Revenue assessed real estate excise tax on the transfer. The Department relied on Washington Administrative Code (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 the ground that the sole consideration was the assumption of liabilities owing on the mortgage debt.

ISSUE:

Is a transfer by quit claim deed from one tenant in common to the other tenant in common subject to the real estate excise tax, when the sole consideration is assumption of a mortgage?

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. That statute states that a grantee's assumption of the mortgage balance owing, where no consideration passes otherwise, is not a "sale."

RCW 82.45.150 states 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.

The version of Rule 210 in effect at the time of the quit claim deed provided as follows:

(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 (the grantor in the excise tax affidavit, and the grantee by separate affidavit).

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 and 650 provide otherwise.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The assessment contained in Real Estate Tax Audit No. . . . shall be cancelled.

DATED this 30th day of June 1987.