

Cite as Det. No. 15-0028, 34 WTD 520 (2015)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of) D E T E R M I N A T I O N
Assessment of) No. 15-0028
)
)
...) Registration No. . . .
)

[1] WAC 458-61A-201; RCW 82.45.010: REET – CONSIDERATION – DEED OF TRUST – REVOCABLE TRUST – BENEFICIARY. A grantor’s transfer of real property to a beneficiary of a revocable trust is not a gift when the beneficiary signed a deed of trust payable to the grantor’s revocable trust. The transfer is a sale, subject to REET.

[2] WAC 458-61A-102; RCW 82.45.010, RCW 82.45.030: REET – SELLING PRICE -- CONSIDERATION – DEED OF TRUST – REVOCABLE TRUST – MEASURE. REET is measured by the “total consideration paid or contracted to be paid” and includes a deed of trust payable to the grantor’s revocable trust.

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.

Pree, A.L.J. – An individual grantor, who transferred Washington real estate to a grantee who agreed to pay \$. . . to the grantor’s revocable trust secured by the property, protests real estate excise tax (REET) assessed on the transfer. The grantor alleges that he was acting as trustee on behalf of the grantee, who was a beneficiary of the trust. Because the grantor could revoke the trust and receive the payments from the grantee under the deed of trust, the transfer was subject to REET measured by the amount due under the deed of trust.¹

ISSUES

- Under RCW 82.45.010, was a transfer of real property to a beneficiary of a revocable trust who signed a deed of trust payable to the revocable trust, a sale subject to REET?
 - Under RCW 82.45.030, if the transfer was a sale, what was the selling price used to measure REET?

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

FINDINGS OF FACT

On December 18, 2013, [Grantor] signed a quit claim deed transferring Washington real estate to his daughter, . . . , and her husband, [Grantees]. On the same day, the grantees signed a deed of trust securing a note to pay \$. . . to the grantor's revocable trust. The grantee was a beneficiary of the [revocable] trust. The grantor and grantees signed a REET supplemental statement to a REET affidavit stating the property transfer was a gift without consideration. The statement erroneously said that the grantees had made and would continue to make 100% of all the payments on the total debt of \$. . . on the property transferred, and that they had not paid the grantor any consideration towards equity.

The Department of Revenue ("Department") investigated the transfer. When no documents were provided showing that the grantees had previously made and continued to make payments on a \$. . . debt, the Department's Special Programs assessed \$. . . of REET in Document No. . . . , measured by the \$. . . in stated debt relief. The assessment totaled \$. . . , with \$. . . in interest and a 5% tax assessment penalty of \$ The grantor appealed.

On appeal, the grantor explains that there was no debt on the property prior to the transfer. The grantor had purchased the property in his individual capacity on July 1, 2013. Special Programs checked the recorded documents, and there was no mortgage or deed of trust recorded on the property prior to the transfer. There was no reference to the trust on any documents when the grantor purchased the property, nor was there a reference to the trust on the December 18, 2013 quit claim deed. The property transfer was made in the grantor's individual capacity, not as a trustee of the trust.

The trust was set up as a revocable trust in 1994 by the grantor and his wife, who were named as the trustees. The grantee and her three siblings were named as beneficiaries. After his wife died in 1998, the grantor continued to manage the trust. As trustee, under Section 4.c. of the trust, the grantor had sole and absolute discretion to distribute trust funds to or for the benefit of the beneficiaries that he considered necessary or advisable for the beneficiaries' education, health, maintenance, or support. Under Section 4.a. of the trust, the beneficiaries were entitled to all the income of the trust with no limitation and, under Section 4.b., could request principal from the trust without limitation. Yet the trust is revocable, and according to the representative, no event has occurred making it irrevocable.

ANALYSIS

REET is imposed by RCW 82.45.060 on each sale of real property in this state by multiplying the selling price by the REET rate. The term "sale" is defined by RCW 82.45.010 as including "any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property . . . or interest therein for a valuable consideration." A rebuttable presumption exists that the selling price is equal to the total consideration paid or contracted to be paid to the transferor, or to another for the transferor's benefit. RCW 82.45.030(1). For purposes of REET, the term "consideration" includes:

“Total consideration paid or contracted to be paid” includes money or anything of value, paid or delivered or contracted to be paid or delivered in return for the sale, and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

RCW 82.45.030(3); *see also* WAC 458-61A-102(19).

In this case, the grantees contracted to pay the trust \$. . . at the same time they received the property. Therefore, they contracted to pay \$. . . in consideration for the property.

There are several exclusions from the definition of “sale” that are set out in RCW 82.45.010(3), which the grantor would like to us consider. In this case, the grantor contends that two exclusions may be applicable: the exclusion for “transfer[s] by gift” and for “transfer[s] of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership.” RCW 82.45.010(3)(a),(o). A person claiming a tax exemption or exception has the burden of proving he or she qualifies for the exemption or exception. *Group Health Cooperative of Puget Sound, Inc. v. State Tax Commission*, 72 Wn.2d 422, 433 P.2d 201 (1967); Det. No. 89-268, 7 WTD 359 (1989); Det. No. 04-0106, 23 WTD 344 (2004).

We will first consider whether the transfer was a gift. WAC 458-61A-201(1) explains that a gift of real property is a transfer for which there is no consideration given in return for granting an interest in the property. If consideration is given in return for the interest granted, then the transfer is not a gift, but a sale, and it is subject to the REET to the extent of the consideration received. *Id.* We note that under RCW 82.45.030(1), the grantee’s consideration may be payable to another for the transferor’s benefit.

In our case, the grantees signed a deed of trust showing that they contracted to pay \$. . . to the grantor’s revocable trust.² The grantor notes the grantee was a beneficiary of the trust. In this case, the trust was a revocable trust. The grantor has the right to revoke the trust he created. When a grantor exercises a power of revocation, the interest of the beneficiary ceases, and an assignee of the grantor takes the corpus of the trust free from the trust. C.J.S., Trusts § 103 (2014). In this case, the grantor could revoke his trust, and take the corpus including the \$. . . deed of trust from the grantees or it could distribute funds to other beneficiaries under the trust. Thus, the grantor indirectly received \$. . . in consideration for the property. Therefore, under RCW 82.45.030(1), the grantor transferred the property to the grantees, who contracted to pay \$. . . for the grantor’s benefit.

The grantor argues in the alternative that the transfer was merely a change in identity under RCW 82.45.010(3)(o). According to the grantor, the grantee would own the deed of trust as a beneficiary of the trust, entitled to withdraw its principal upon request. However, the transaction was not structured either as a transfer of the property from the trust to the grantee, or as a deed of

² While the REET supplemental statement says there was \$. . . in total debt, we have no evidence that they provided consideration other than the \$. . . promise of payment. The grantor indicated that this was an error on the supplemental statement.

trust payable to the beneficiary. The Department may not change its manner of taxation to accommodate the taxpayer's chosen form, and the Department is not at liberty to disregard the structure of the taxpayer's transaction at the expense of the state. *See Washington Sav-Mor Oil Co. v. State Tax Comm'n*, 58 Wn.2d 518, 522-523, 364 P.2d 440 (1961).

The grantees owed \$. . . to the revocable trust for the property. Because the grantor could exercise his power of revocation and thereby revoke the interest of the grantee-beneficiary, the grantor could take the deed of trust from the trust. The Department recognizes that transfers from a revocable trust to the original grantor are mere changes of identity or form. *See e.g.* WAC 458-61A-201(2)(h). The transaction at issue, however, was not structured in that manner. The grantor transferred the property to the grantees who executed a deed of trust to the grantor's revocable trust, indirectly for the grantor's benefit.

Under RCW 82.45.030, the selling price was not \$. . . , which was mistakenly entered on the REET supplemental statement, but \$. . . Under RCW 82.45.030, the grantees provided \$. . . in total consideration in exchange for the property, which is the selling price under RCW 82.45.010 in this case. To the extent there was a transfer of equity in excess of \$. . . , it would be treated as a gift. *See* 458-61A-201. Accordingly, while the transfer was subject to REET, the measure of REET should be reduced to \$. . .

DECISION AND DISPOSITION

We grant the petition in part and deny it in part. We conclude that the transfer at issue is not exempt from REET, but that the measure of REET should be reduced to the \$. . . in consideration received for the transfer.

Dated this 6th day of February, 2015.