

Cite as Det. No.22-0024, 44 WTD 019 (2025)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

Rule 211; RCW 82.45.010(3)(p): REAL ESTATE EXCISE TAX – MERE CHANGE IN IDENTITY OR FORM – FAMILY CORPORATIONS. A husband and wife's transfers of real property to a limited liability company ("LLC") qualify for an exemption from real estate excise tax as a mere change in identity or form because the LLC is a corporation or partnership wholly owned by husband.

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.

Lewis, T.R.O. – A husband and wife request review of the Department’s denial of a refund of 50% of the Real Estate Excise Tax (“REET”) paid on the sale of jointly owned real property to an LLC owned only by the husband. Taxpayer’s petition is granted under the provisions of WAC 458-61A-211(5).¹

ISSUE

Whether the transfer of title of real property to a limited liability company by a husband and wife where only the husband is a member of the LLC constitutes a mere change in identity or form that is excluded from the definition of sale of real property under RCW 82.45.010(3)(p) and WAC 458-61A-211.

FINDINGS OF FACT

During June 2020, Taxpayer submitted six requests to . . . County for refund of the REET paid on the sale of . . . six properties. The facts of all six refund requests are much the same. Between July 2018 and July 2019, . . . , husband and wife, ("Taxpayer"), sold [six] jointly owned properties to . . . ("LLC"), an LLC of which . . . [husband] is the sole member. An escrow company closed the sales and remitted REET to the county on 100% of the sales price. The properties involved are listed in the table below:

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

| Reg. No. | Parcel No. | Sale Price | Date Sold | REET Paid |
|----------|------------|------------|-----------|-----------|
| ... | ... | \$... | ..., 2019 | \$... |
| ... | ... | \$... | ..., 2018 | \$... |
| ... | ... | \$... | ..., 2018 | \$... |
| ... | ... | \$... | ..., 2018 | \$... |
| ... | ... | \$... | ..., 2019 | \$... |
| ... | ... | \$... | ..., 2019 | \$... |

... Taxpayer requested that ... County refund the REET paid on each of the six sales. The REET Refund requests claimed REET had been paid in error because:

... (husband and wife) are the 100% owners of ... LLC. ... [husband and wife] sold property to ... LLC. The transfer is exempt from real estate tax because there has been no change in beneficial ownership under WAC 458-61A-211(2)(d).

Real Estate Excise Tax Refund Request at 1.

Taxpayer claimed it paid the REET in error because WAC 458-61A-211 ... [recognizes] a REET exemption if the transfer of real property "consists of a mere change in identity or form of ownership of an entity." More specifically, Taxpayer claimed the REET exemption [recognized] under the provisions of [WAC 458-61A-211(2)(d)] where "[t]he transfer by a corporation, partnership or other entity of its interest in real property to another corporation, partnership, or other entity if the grantee owner(s) receives it in the same pro rata shares as the grantor owner(s) held prior to the transfer."

The Department's Audit Division ("Audit") reviewed the refund requests and concluded that [WAC 458-61A-211(2)(d)] did not apply because Taxpayer was not "a corporation, partnership or other entity[.]" Audit found that WAC 458-61A-211(2)(a) was the more appropriate [provision] to consider as a basis for a REET exemption because it provided a REET exemption when the transfer was made by "an individual or tenants in common." Audit also found that the transactions did not qualify for that exemption because there was a change in beneficial ownership.

Audit's review disclosed that, contrary to the statement on the REET Refund Request, ... [husband and wife] did not own 100% of the LLC. Audit found that ... [husband] was the only member of the LLC. Thus, he owned 100% of the LLC and ... [wife] had no ownership interest. In sum, prior to the transfer ... [husband and wife] each owned a 50% share of the properties, whereas following the transfer to the LLC ... [husband], as sole member of the LLC, had 100% ownership of the properties and ... [wife] had none.

Audit concluded that the REET exemption only applied to ... [husband's] 50% ownership interest. Accordingly, the Department only allowed a REET refund representing ... [husband's] ownership.

Taxpayer requested that Audit consider whether [WAC 458-61A-211(5)] applied. Audit informed Taxpayer that for it to review the validity of any new exemption claim a new REET refund request complete with supporting document must be filed with ... County.

Rather than file a new REET refund application, on April 19, 2021, Taxpayer's representative filed petitions for administrative review of the denied REET refunds with the Department's Administrative Review and Hearings Division [("ARHD")]. Taxpayer's petition maintained that "[w]e disagree with the auditor since there has been no change in the indirect beneficial ownership in the real estate after the transfer of the real estate to the limited liability company." Taxpayer's petition at 6.

On August 25, 2021, Taxpayer filed a supplement to its petition. Taxpayer maintained that Audit's conclusion that the LLC was . . . [husband's] separate property was in error because:

The entity at issue, [LLC,] is a Washington Limited Liability Company. This entity was acquired by . . . [husband and wife] during their marriage when . . . [husband] formed the entity. Under RCW 26.16.030, . . . [LLC] is presumed to be community property. Consistent with Washington's statutory presumption, . . . [husband and wife's] intent was, and still is, to own . . . [LLC] as Community property.

Taxpayer's supplemental submission at 2.

On September 14, 2021, ARHD held a teleconference with Taxpayer's representatives. During the teleconference Taxpayer's representative argued that even though . . . [husband] was the only member of the LLC, the beneficial interest in the properties sold to the LLC did not change because . . . [wife] is married to . . . [husband] and Washington is a community property state.

ANALYSIS

REET is imposed "upon each sale of real property in Washington." RCW 82.45.060. "Real property" includes "any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity which itself owns land or anything affixed to land." RCW 82.45.032(1).

A sale of real property is subject to REET unless an exemption applies. RCW 82.45.060. "Sale" is broadly defined by statute and "has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, . . . for a valuable consideration. . . ." RCW 82.45.010(1).

In this case, the transfer resulted in a change in ownership from . . . [husband and wife] to the LLC. The transfer therefore fits within the definition of a sale and is subject to REET unless an exemption applies. We construe tax exemptions narrowly[:] . . . "Taxation is the rule and exemption is the exception." *Budget Rent-A-Car v. Dep't of Revenue*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972). Taxpayers have the burden of establishing eligibility for an exemption. *In re Sehome Park Care Center, Inc.*, 127 Wn.2d 774, 778, 903 P.2d 443 (1995); Det. No. 04-0147, 23 WTD 369, 375 (2004).

RCW 82.45.010(3)(p) states that “sale” does not include the following:

A transfer 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. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor’s spouse or domestic partner or children of the transferor or the transferor’s spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor’s spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (i) the transferor and/or the transferor’s spouse or domestic partner or children of the transferor or the transferor’s spouse or domestic partner, (ii) a trust having the transferor and/or the transferor’s spouse or domestic partner or children of the transferor or the transferor’s spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor’s spouse or domestic partner or children of the transferor or the transferor’s spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

RCW 82.45.010(3)(p) [(emphasis added)].

[WAC 458-61A-211(5)] explains the application of RCW 82.45.010(3)(p) in the case of family corporations, partnerships, or other entities. It states, in pertinent part:

This exemption applies to transfers to an entity that is wholly owned by the transferor and/or the transferor’s spouse, state registered domestic partner, children, or state registered domestic partner’s children regardless of whether the transfer results in a change in the beneficial ownership interest. . . .

For example, parents own real property as individuals. They create an LLC that is owned by themselves and their three children. The parents transfer the real property to the LLC. Despite the fact that there was a change in beneficial ownership interest, it is still exempt from tax, because the LLC is owned by the grantor and/or the grantor’s spouse, state registered domestic partner, children, or state registered domestic partner’s children.

[WAC 458-61A-211(5)].

We find the provisions of [WAC 458-61A-211(5)] apply to . . .[wife’s] transfer of interest in the properties because the LLC is owned by . . .[wife’s] spouse, . . . [husband]. Taxpayer’s refund request is granted. . . .

DECISION AND DISPOSITION

Taxpayer's refund request is granted

Dated this 26th day of January 2022