

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. 11-0063
)
...) Registration No.
) Document No.
)
) Docket No.

RULE 458-61A-101; RCW 82.45.030: REAL ESTATE EXCISE TAX (REET) – TRANSFER OF CONTROLLING INTEREST – SELLING PRICE – TRUE AND FAIR VALUE OF PROPERTY CONVEYED. A real estate agent's opinion of value of real property was not a fair market appraisal of the property for purposes of determining the true and fair value of the property conveyed.

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.

Klohe, A.L.J. – Taxpayer appeals an assessment of real estate excise tax (REET) on a controlling interest transfer, arguing that the county assessor’s valuation used by the Department does not reflect the true and fair value of the property. Taxpayer’s appeal is denied.¹

ISSUE

Whether the “true and fair value” of the real property under RCW 82.45.030 and WAC 458-61A-101(4) can reasonably be determined from a real estate agent’s opinion of value for purposes of REET.

FINDINGS OF FACT

[In] 2010, [Corporation] filed a Corporate License Renewal and Annual Report with the Washington Secretary of State, indicating that it owns land, buildings, or other real property in Washington and that there had been a change of fifty percent (50%) or more of the ownership of the stock or other interest in the company during the last twelve (12) months. On April 21, 2010,

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

the Special Programs Division (Special Programs) of the Department of Revenue (Department) notified [Corporate officer], Registered Agent for the corporation and the sole corporate officer, that a controlling interest affidavit must be completed based on the information reported on the Corporate License Renewal and Annual Renewal.

Because [Corporate officer] did not respond to the request for a controlling interest affidavit, on June 21, 2010, Special Programs issued a REET assessment with tax due in the amount of \$. . . , based on the . . . County Assessor's valuation of the corporation's property at the time of the transfer, which was \$. . . for the improvements only and no land, and a date of sale The Notice of REET assessment lists the Transferor and Transferee as [Corporation/Corporate officer] (Taxpayer).

Taxpayer timely appealed. Taxpayer raised the following issues on appeal:

The only asset owned by [Corporation] that is subject to real estate excise tax is a building. The corporation did not, and does not, own any real property. The building that it owns was constructed for a cost of \$. . . . The other owner in the business sold his one-half interest to [Corporate officer] for \$. . . . This price included good will and inventory, as well as the value of the building. A real estate excise tax affidavit/controlling interest transfer return along with a check in the sum of \$. . . was submitted to the Department of Revenue on May 28, 2010 (copy attached). The Department of Revenue appears to be basing its tax assessment on the . . . County assessed value for the real property. [Corporate officer] contacted the . . . County assessor's office about correcting the valuation. He has been informed that it will be corrected to a lower amount which more accurately reflects the value of the building. That correction is in process and documentation is pending. Valuation aside, the Department of Revenue tax assessment does not take into account the fact that [Corporate officer] owned a one-half interest from [the other owner]. It does not reflect the true and fair value of the property or the fact that \$. . . was previously paid toward the assessment. For these reasons, the taxpayer requests a review of the tax assessment.

Upon notification to Special Programs that the payment of \$. . . had not been applied towards Taxpayer's REET assessment, Special Programs applied the payment, adjusting the REET due to \$. . . (excluding accrued interest). Ultimately, Taxpayer was not able to obtain a reevaluation of the real property from the . . . County Tax Assessor. However, Taxpayer did receive an "opinion of value" on the real property from a local real estate agent. In the opinion of the real estate agent, the value of the real property is \$. . . . In his evaluation, the real estate agent described the property as follows:

A . . . café with seating for . . . people in a . . . steel building that is . . . years old. . . . It has a small store with [sporting goods]. The total gross from the café, store, and [sporting goods] is \$. . . in the . . . days of open season.

The resort has . . . camps site (sic) with power and water. This will gross \$. . . in the . . . open season.

There . . . boats (sic) that will gross \$. . . in the . . . days of open season. There is swear (sic) dump site, out side bath rooms, with a shower room.

There are . . . years left on the lease at \$. . . a month for the . . . month's (sic) of [open] season and . . .% of gross over \$ The property includes . . . acres with . . . feet of water front.

[Corporate officer's] CMA Presentation . . . dated December 14, 2010.

ANALYSIS

Chapter 82.45 RCW imposes REET on every sale of real estate in Washington. "Real Property" means 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). "The term 'sale' shall have its ordinary meaning and also includes "the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration." RCW 82.45.010(2)(a); *see also* WAC 458-61A-102(16)(b).

In the case of a corporation, the term "controlling interest" means: "either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation. . ." RCW 82.45.033(1)(a). [Taxpayer] argues that it should not pay REET on the full value of the real property when he only acquired a 50% interest. Taxpayer's position is inconsistent with Washington state law in this area. RCW 82.45.030(2) specifically addresses the sale of controlling interests: "the selling price shall be *the true and fair value of the real property* owned by the entity and located in this state." (Emphasis added).

According to Taxpayer's appeal petition, the grantors in this case, [the other owner and spouse], sold their 50% interest in the corporation to Taxpayer for \$. . . . With respect to the sale of an entity, the value taxed is not the consideration paid, but the value of the real estate owned by the entity. Det. No. 08-0169, 28 WTD 25 (2009) (citing *McFreeze Corp. v. Dep't of Revenue*, 102 Wn. App. 196, 200, 6 P.3d 1187 (2000); Det. No. 98-083, 17 WTD 271 (1998)). Under RCW 82.45.030(2), if the sale is a transfer of a controlling interest and the "true and fair value" of the real property located in this state cannot reasonably be determined, the selling price shall be determined according to "the market value assessment for the property maintained on the county property tax rolls at the time of the sale."

Rule 101(2)(c) defines "true and fair value" as "market value, which is the amount of money that a willing, but unobligated, buyer would pay a willing, but unobligated, owner for real property, taking into consideration all reasonable, possible uses of the property." In this case, there has not been any recent arms-length sale of the real property to provide a valuation of the property based on market value as defined in Rule 101(2)(c). When the true and fair value of the property cannot reasonable be determined, Rule 101(4) provides the following additional methods that

may be used to determine the true and fair value of the property owned by the entity at the time the controlling interest is transferred:

- (a) If the true and fair value of the property cannot reasonably be determined, one of the following methods may be used to determine the true and fair value:
 - (i) A fair market value appraisal of the property; or
 - (ii) An allocation of assets by the seller and the buyer made pursuant to section 1060 of the Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2005.
- (b) If the true and fair value of the property to be valued at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained on the county property tax rolls at the time of the sale will be used as the selling price.

Special Programs used the market value assessment for the property maintained by the . . . County Tax Assessor, which was \$. . . at the time of sale in 2010. Taxpayer argues that this value does not reflect the true and fair value of the property. Taxpayer offers an “opinion of value” prepared by a local real estate agent, which values the real property at [a lesser amount]. The crux of the issue in this appeal is whether the opinion of value is an accurate “fair market value appraisal of the property.” . . . Taxpayer argues that the county tax assessor’s value for 2010 is not accurate, although Taxpayer acknowledges that it did not appeal the assessor’s valuation.

There is a reason that both the statute and administrative rule default to the county assessor’s property tax valuation when the true and fair value of the property cannot reasonably be determined. Washington law requires property to be valued at one hundred percent of its true and fair value, which means “fair market value.” *See Washington Beef, Inc. v. County of Yakima*, 143 Wn. App. 165, 177 P.3d 162 (2008) (citing RCW 84.40.030). There are three methods for determining fair market value: (1) capitalization of income, (2) cost, and (3) market. *Id.* at 172. Appraisers generally use one or all three methods and then reconcile the value arrived. *Id.*

In this case, it appears that the real estate agent used an income approach to determine the market value of Taxpayer’s real property, but it does not appear that the real estate agent followed industry practice. Under the capitalization of income method, value is assumed to be approximately equal to the present value of future benefits. *Sahalee Country Club, Inc. v. Bd. of Tax Appeals*, 108 Wn.2d 86, 33, 735 P.2d 1320 (1987). The appropriate annual rate of capitalization is applied to the forecast of annual net revenue to arrive at an estimate of present value. *Id.* The real estate agent’s opinion of value prepared for Taxpayer provides information of the annual gross income from the café and resort, but there is no information about the annual net revenue or the capitalization rate used to determine a market value of \$. . . In sum, there is no real valuation. Therefore, we conclude that Special Programs properly issued the REET assessment based on the county assessor’s valuation of the property.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 23rd day of February, 2011.