

Cite as Det No. 11-0026, 31 WTD 78 (2012)

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. 11-0026
...)
) Registration No.
) Document No.
) Docket No.

WAC 458-61A-201; WAC 458-61A-103; RCW 82.45.010: REET--CONSIDERATION-- DEBT. Even if no money is directly paid to the grantor for the transfer of real property, a grantor receives consideration where a grantee makes payments toward underlying debt on the transferred property, or the grantee agrees to assume payment of the grantor's debt on the property in return for the transfer.

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. – A daughter, who quitclaimed mortgaged real property to her father who paid off the mortgages with a reverse mortgage, protests the assessment of real estate excise tax (REET) on the transfer, arguing the transfer qualifies for the gift exemption in WAC 458- 61A-201. We conclude the transfer was a sale, not a gift, and deny the petition.

ISSUE

Was a daughter's transfer of mortgaged real property to her father a gift, exempt from REET under WAC 458-61A-201, where the father paid off the daughter's mortgages with a reverse mortgage?¹

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

FINDINGS OF FACT

[Taxpayer] owned real property including a house in Washington. The property was subject to two mortgages upon which the taxpayer had made the payments until the beginning of 2009. On June . . ., 2009, she filed a quit claim deed, which transferred a 50% interest in her house to her father, Then, on December . . ., 2009, the taxpayer transferred her remaining 50% interest in the real property to the grantee. To avoid foreclosure, on December . . . 2009 [within six months of the June, 2009, transfer], the grantee took out a reverse mortgage, which paid off the existing mortgages. The balance due on the two mortgages totaled \$. . . . Neither the grantee, nor the taxpayer, received any money as a result of the refinance.

When the [June, 2009,] deed was recorded, the taxpayer and the grantee filed a real estate excise tax affidavit. On the supplemental statement, they claimed a gift exemption, and did not pay real estate excise tax. They checked a box indicating that there had not been, and would not be, a refinance of the debt. According to the form they both signed, the taxpayer would continue to make 100% of the payments on [the mortgage] debt due.

[On December . . ., 2009, the taxpayer filed another REET affidavit claiming the gift exemption. The taxpayer checked a box indicating, "There is no debt on the property, Grantor has not received any consideration towards equity". The taxpayer also checked the box indicating a refinance of the debt.]

The Department of Revenue reviewed the transaction. On June 9, 2010, the Department's Special Programs Division assessed \$. . . REET plus a 20% delinquent penalty, a 5% assessment penalty, plus \$. . . interest. The above referenced assessment totaled \$. . . . The taxpayer appealed, stating there was no sale.

The affidavit[s] filed by the grantee and taxpayer were not correct. The mortgages were refinanced with the reverse mortgage. The taxpayer did not continue to pay on the debt. The reverse mortgage paid off the taxpayer's mortgages, which were in place prior to the transfers of her interest to the grantee.

ANALYSIS

The taxpayer contends her quitclaim transfer of the real property qualifies for the gift exemption from REET. REET does not apply to transfers by gift. RCW 82.45.010(3)(a). WAC 458-61A-201 (Rule 201) is the administrative rule implementing the gift exemption. Rule 201 states, in pertinent part:

- (1) Introduction. Generally, a gift of real property is not a sale, and is not subject to the real estate excise tax. 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 real estate excise tax to the extent of the consideration received.

(2) Consideration. *See* WAC 458-61A-102 for the definition of "consideration." Consideration may also include:

- (a) Monetary payments from the grantee to the grantor; or
- (b) Monetary payments from the grantee toward underlying debt (such as a mortgage) on the property that was transferred, whether the payments are made toward existing or refinanced debt.

(3) Assumption of debt. If the grantee agrees to assume payment of the grantor's debt on the property in return for the transfer, there is consideration, and the transfer is not exempt from tax. Real estate excise tax is due on the amount of debt assumed, in addition to any other form of payment made by the grantee to the grantor in return for the transfer. However, equity in the property can be gifted.

(4) Rebuttable presumption regarding refinancing transactions.

- (a) There is a rebuttable presumption that the transfer is a sale and not a gift if the grantee is involved in a refinance of debt on the property within six months of the time of the transfer.

Further, WAC 458-61A-103(1) provides as follows:

The real estate excise tax applies to transfers of real property when the grantee relieves the grantor from an underlying debt on the property or makes payments on the grantor's debt. The measure of the tax is the combined amount of the underlying debt on the property and any other consideration.

Under these rules, even if no money is directly paid to the grantor for the transfer of real property, a grantor receives consideration where a grantee makes payments toward underlying debt on the transferred property, or the grantee agrees to assume payment of the grantor's debt on the property in return for the transfer. *See* Det. No. 01-039, 20 WTD 520 (2001); *C.f.*, Det. No. 04-0106, 23 WTD 344 (2004). If consideration is given in exchange for the transfer, then the transfer is not a gift, but a sale, and subject to REET to the extent of the consideration given.

We conclude the taxpayer transferred real property subject to mortgage debt, and that the grantee paid off the mortgages using a reverse mortgage. The taxpayer made no payments on the debt after the transfer. Therefore, we conclude that the transfer was a sale, and not a gift, and was taxable to the extent of the consideration present. In this case, relief of the amount due under the two mortgages constituted the consideration to the taxpayer.

REET was due on the taxpayer's transfer of her interest in real property. The Special Programs Division properly measured the tax by the underlying debt on the property. Accordingly, the petition for correction of assessment is denied.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 25th day of January, 2011.