

Cite as Det. No. 16-0139, 35 WTD 609 (2016)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

RCW 82.45.060 and WAC 458-61A-204(5): REAL ESTATE EXCISE TAX – TENANTS IN COMMON – FORMER SPOUSE. Where former spouses became tenants in common of a residential property under a property settlement agreement, REET was due when one former spouse subsequently quit-claimed his 50% interest and the transfer relieved the granting spouse of his obligation on the remaining mortgage.

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.

Valentine, TRO. – A taxpayer appeals the assessment by the Department of Revenue (Department) of real estate excise tax (REET) on the quit claim transfer of his 50 percent ownership in residential property to his former spouse who owned the other 50 percent. The taxpayer contends that the transfer was between tenants in common and pursuant to a court order, exempting the transfer from REET. Taxpayer's petition is denied.¹

ISSUE

Pursuant to RCW 82.45.060, RCW 82.45.010, WAC 458-61A-100 (Rule 61A-100), and WAC 458-61A-102 (Rule 61A-102), is REET due when [former] spouses [are tenants in common under a property settlement agreement, each retaining a] 50 percent ownership in a residential property . . . , and . . . one spouse quit-claims his 50 percent interest in the property . . . to his former spouse, and the [transfer relieves the grantor spouse of the remaining mortgage debt]?

FINDINGS OF FACT

On August 21, 2013, [Taxpayer] transferred his 50 percent interest in a residential property to his former spouse who owned the other 50 percent.² Taxpayer claimed a REET gift transfer exemption.

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

² Taxpayer and his former spouse completed the paperwork in November of 2012, but did not present the document for recording with the county until August 21, 2013.

Taxpayer and his former spouse purchased the property, in December 1997, as husband and wife. Both spouses borrowed the funds used to purchase the property at issue. The couple's marital dissolution was final in December 2009.

At the time of the dissolution, Taxpayer and his former spouse owned two residential properties. The property settlement agreement decreed that Taxpayer and his former spouse owned the two properties as tenants in common, each with 50 percent ownership and 50 percent responsibility for costs, until such time as the properties were sold. At the time of the transfer, 50 percent of the debt remaining on the property at issue in this case equaled \$ Also, in August 2013, Taxpayer's former spouse refinanced the remaining debt in her own name.

The Department's Special Programs Division (Special Programs) reviewed the quit claim transaction from Taxpayer to his former spouse to determine if the gift exemption was warranted. Special Programs determined that, since Taxpayer received debt relief as a result of the transfer, REET was due. Special Programs assessed Taxpayer a total of \$. . . (including interest and penalties) on the basis of 50 percent of the remaining debt on the property.

Taxpayer paid all but \$. . . of the assessment³ and now requests a refund, asserting that the mutual transfers were between tenants in common and were the result of a court order.

ANALYSIS

Every sale of real property located within Washington is subject to REET unless the sale is specifically exempted from the tax. RCW 82.45.060; Rule 61A-100. The term "sale," for REET purposes, "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) (Emphasis added); Rule 61A-102(17)(a).

Rule 61A-102 is the Department's administrative rule that defines terms applicable to REET. Section 2 defines the term "consideration" as "*money or anything of value*, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, *in return for the transfer of real property.*" (Emphasis added.) The term "consideration" also includes "*the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of the sale.*" (Emphasis added.) Rule 61A-102(2). For example, "consideration" includes "*the assumption of an underlying debt on the property by the buyer at the time of the transfer.*" Rule 61A-102(2)(b).

In addition, Rule 61A-103(1) states that "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." *See also* Det. No. 11-0026, 31 WTD 78 (2012).

Taxpayer now asserts that the transfer of real property in the present case is exempt from REET under WAC 458-61A-204 (Rule 61A-204).⁴ Rule 61A-204(1) explains that "[t]he real estate

³ Taxpayer paid \$. . . , but by the time payment had been made, additional interest had accrued. Thus, \$. . . remains due as principal, plus applicable extension interest.

excise tax does not apply to the transfer of real property that results in the creation of a tenancy in common or joint tenancy . . . if no consideration passes otherwise.” In the present case, the transfer of property at issue did not create a tenancy in common or a joint tenancy. Rather, the quit claim transfer dissolved the tenancy in common. Thus, Rule 61A-204(1) is not applicable here.

Rule 61A-204(2) states that “[t]he partition of real property by tenants in common or joint tenants, by agreement or as the result of a court decree, is not subject to excise tax.” The rule also states the following: “Transfers to partition real property are not subject to real estate excise tax *provided that the transfer is without additional consideration passing.*” *Id.* (Emphasis added.)

Taxpayer contends that the example described in Rule 61A-204(3)(b) is applicable here.⁵ It reads:

David and Corwin are business partners; they own two parcels of real estate as tenants in common. One parcel is valued at \$200,000 and has an underlying debt of \$175,000. The other parcel is valued at \$25,000 and has no underlying debt. Pursuant to a proceeding to liquidate their partnership, the court orders partition of the real property. David receives the more valuable parcel and assumes full responsibility for the debt. Corwin receives the less valuable parcel. No real estate excise tax is due, because the partition of the property is pursuant to a court order.

The property agreement between Taxpayer and his former spouse did not order partition of the property. It simply stated that Taxpayer and his former spouse would each own 50 percent of the property as tenants in common until such time as the property sold. Thus, we disagree that this example is applicable in the present case.

We conclude that Rule 61A-204(5) is applicable to the present case. It reads:

The sale of an interest in real property from one or more joint tenants or tenants in common to remaining tenants or to a third party is a taxable transaction. The taxable amount of the sale is the total of the following:

- (a) Any consideration given; and
- (b) Any consideration promised to be given, including the amount of any debt remaining unpaid on the property at the time of sale multiplied by that fraction of interest in real property being sold.

⁴ Although Taxpayer no longer contends that the transfer is exempt from REET as a gift, we note that WAC 458-61A-201(4)(a) states: “There is a rebuttable presumption that the transfer is a sale and not a gift if the grantee is involved in refinance of debt on the property within six months from the time of the transfer.” We note that the quit claim transfer at issue occurred the same month as the refinance.

⁵In December 2012, Taxpayer’s former spouse quitclaimed her 50 percent ownership in the second residential property to Taxpayer. There was no debt remaining on the second residential property at the time of the transfer.

In the present case, the transfer of interest in real property was from one tenant in common to another. The transfer involved relief of mortgage debt for Taxpayer. The transfer was not the result of a court order. Thus, REET is applicable.

DECISION AND DISPOSITION

Taxpayer's petition for refund is denied.

Dated this 6th day of April, 2016.