

Cite as Det. No. 20-0127, 41 WTD 95 (2022)

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

In the Matter of the Petition for Correction of )	<u>D E T E R M I N A T I O N</u>
Assessment of )	
)	No. 20-0127
)	
... )	Registration No. . . .
)	

WAC 458-61A-211(2)(b); RCW 82.45.010(3)(p): REAL ESTATE EXCISE TAX – MERE CHANGE IN IDENTITY. In a sale of real estate, transfer from an entity to its owners is only a mere change in identity when the transfer is in the same pro rata share as the ownership interest.

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.

NATURE OF THE CASE

Gabriella Herkert, T.R.O. – A taxpayer protests imposition of the real estate transfer tax (REET) on a transaction it claims was exempt as a mere change in identity. Taxpayer’s petition is denied.<sup>1</sup>

ISSUE

Under RCW 82.45.010(3)(p) and WAC 458-61A-211(2)(b), was taxpayer’s transaction exempt from the imposition of REET as a mere change of identity?

FINDINGS OF FACT

[In] 2006, [Individual A] transferred real property<sup>2</sup> (Parcel) located in . . . , Washington to [Limited Partnership] (Taxpayer). [In] 2006, [Individual A] filed a REET affidavit for the transfer based on WAC 458-61A-211<sup>3</sup>, [as a mere] change in [identity or form of] ownership of an entity. The . . . County property tax website reflected the transaction.

[In] 2016, Taxpayer transferred [the Parcel by] Quit Claim . . . back to [Individual A]. . . Taxpayer submitted a REET affidavit listing the [county] assessed value of the property as \$. . . and claiming

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

<sup>2</sup> Parcel No. . . .

<sup>3</sup> Specifically, the mere change in identity or form of ownership of an entity exemption for REET is found at WAC 458-61A-211(2)(b).

exemption from REET under WAC 458-61A-211(2)(b), as a mere change in identity or form of ownership. Taxpayer recorded the Quit Claim deed [five days later].

[Later in] 2016, a second REET affidavit was filed for the Parcel. The second REET affidavit listed [Corporation] as grantor and [Individual B] and . . . LLC as grantee. The second REET affidavit listed the [county] assessed value of the Parcel as \$. . . . The second REET affidavit claimed exemption from REET under WAC 458-61A-208(4), as a court ordered sale in a foreclosure proceeding.

On February 10, 2017, the Department of Revenue . . . sent Taxpayer an inquiry letter. As part of the inquiry, the Department requested documentation. The Department sent a second inquiry letter on March 16, 2017. Taxpayer failed to respond to both inquiry letters. On March 31, 2017, the Department imposed REET in the amount of \$. . . <sup>4</sup> on the total assessed value of the property, \$. . . on the [first transfer in] 2016 [from Taxpayer to Individual A]. Taxpayer's REET was due May 1, 2017.

Taxpayer contacted the Department after receiving the assessment dated March 31, 2017. Taxpayer subsequently provided additional documentation including a copy of the Certificate of Limited Partnership for Taxpayer amended as of . . . 2009. The Certificate of Limited Partnership listed [Individual C] as general partner and two limited partners, [Individual D] and [Individual A]. The Certificate of Limited Partnership listed [Individual C] percentage of interest as 1%, [Individual D] interest as 50% and [Individual A] interest as 49%. The Taxpayer also provided a copy of the Notice of Trustee's Sale [for the second transfer in] 2016 and a Trustee's Deed dated . . . 2016 for the Parcel listing [Corporation] as Trustee and . . . LLC as grantee.

The Trustee's Deed stated that:

Conveyance was made pursuant to the powers, including the power of sale, conferred upon the Trustee by that certain Deed of Trust between [Individual A], a married woman, as her sole and separate property, as Grantor to . . . as Trustee and . . . as Beneficiary, dated . . . 2001, recorded . . . 2001 as No. . . . , records of . . . County, Washington.

Trustee's Deed, Recitals.

The Trustee's Deed stated that:

The defaults specified in the "Notice of Trustee's Sale" not having been cured ten days prior to the date of the Trustee's Sale and said obligation secured by said Deed of Trust remaining unpaid, on . . . , 2016, the date of sale, which is not less than 190 days from the date of default of the obligation secured, the trustee then and there sold at public auction to said Grantee, the highest bidder therefore, the property herein above described, for the sum of \$. . . .

---

<sup>4</sup> TRA . . . dated March 31, 2017 included \$. . . in state and local REET, \$. . . in state and local delinquent interest and \$. . . in tax assessment penalty.

Trustee's Deed, Paragraph 10.

The Trustee's Deed was executed . . . 2016. The Trustee's Deed was recorded . . . 2016.

On July 11, 2017, following review of additional documentation provided by Taxpayer, the Department determined that Taxpayer's transfer represented a beneficial change in ownership of the Parcel. Using 51% of the assessed value of the property, \$ . . . , the Department reduced the taxable amount of Taxpayer's transaction to \$ . . . The Department recalculated Taxpayer's REET obligation as \$ . . . ,<sup>5</sup> [under WAC 458-61A-211(2)(b)], which was due August 10, 2017.

Taxpayer timely requested review. Taxpayer claimed that the date it attempted to transfer the Parcel was . . . 2016 not . . . 2016, the date the REET affidavit and the Quit Claim deed were executed. Taxpayer claimed the Quit Claim deed was corrected but did not provide a copy of it. Taxpayer claimed that Trustee sold the Parcel according to the Trustee's Deed on . . . 2016 not . . . 2016. Taxpayer contended that since the attempted transfer from the [Taxpayer] to [Individual A] occurred after the Trustee had already sold the Parcel, the transaction upon which REET was imposed never actually occurred and therefore, REET was improperly imposed on the transfer.

#### ANALYSIS

REET is imposed upon the sale of real property in Washington. RCW 82.45.060. RCW 82.45.010 defines "sale" to include: "[A]ny conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property . . . for a valuable consideration." RCW 82.45.010(1).

There are two required factors for imposition of the tax: (1) the transfer of an interest in real property or controlling interest in a realty-holding entity; and (2) consideration paid or contracted to be paid in exchange for the transfer. *See State ex rel Namer, Inc. v. Williams*, 73 Wn.2d 1, 435 P.2d 975 (1968); Det. No. 97-240R, 21 WTD 145 (2002).

RCW 82.45.010(3)(p) provides an exclusion from the definition of "sale" subject to REET for:

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

---

<sup>5</sup> TRA . . . dated July 11, 2017 included \$ . . . in state and local REET, \$ . . . in state and local delinquent interest and \$ . . . in tax assessment penalty.

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).

WAC 458-61A-211 is the Department's rule implementing this exclusion. It defines a qualified transaction as one where no change in beneficial ownership occurs. WAC 458-61A-211(2). The rule explains that a transfer is exempt from REET where it is a:

[T]ransfer by [an entity] of its interest in real property to its shareholders or partners, who will hold the real property either as individuals or as tenants in common in the same pro rata share as they owned [the entity]. To the extent that a distribution of real property is disproportionate to the interest the grantee partner has in the partnership, it will be subject to real estate excise tax.

WAC 458-61A-211(2)(b) (emphasis added).

Under RCW 82.32.070, "every taxpayer liable for any tax collected by the department must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which the taxpayer may be liable." RCW 82.32.070(1).

[In] 2016, Taxpayer submitted a REET affidavit showing a transfer of the Parcel on that same day from Taxpayer to [Individual A]. Prior to [that] 2016 transfer, [Individual A] held a 49% beneficial ownership in Taxpayer. After the transfer, [Individual A] owned 100% of the property. Since [Individual A] did not hold the property in the same pro rata share after [that] 2016 transfer as she held in Taxpayer prior to that transfer, the exemption of WAC 458-61A-211(2)(b) does not apply to the extent that the distribution was disproportionate to the interest the grantee partner, [Individual A], had in the partnership. Since [Individual A] held a 49% beneficial interest in the partnership but received 100% of the property, the extent to which the distribution was disproportionate was 51%.<sup>6</sup>

Taxpayer claimed that it did not and could not transfer the Parcel to [Individual A] because when it attempted to do so, the Parcel had already been sold by the Trustee. Taxpayer claimed that the Quit Claim deed and original REET affidavit included incorrect dates. Taxpayer claimed that the attempted transfer via Quit Claim deed actually occurred on [a later date in] 2016. Taxpayer provided nothing beyond a self-serving statement to suggest that the transfer from Taxpayer to [Individual A] actually occurred later than the Quit Claim deed and REET affidavit show. Since Taxpayer's argument relied on the Trustee Sale occurring prior to Taxpayer's transfer to [Individual A], the fact that the Quit Claim deed and original REET affidavit show the earlier date

---

<sup>6</sup> While Taxpayer claimed an exemption from REET, it did not dispute that if the exemption did not apply, the disproportionate interest transferred was 51%.

is dispositive.<sup>7</sup> Taxpayer's own documentation failed to show the factual basis necessary to even consider its argument. While Taxpayer asserted it corrected the Quit Claim deed, it never provided a copy of a corrected [and recorded] deed.<sup>8</sup> Since Taxpayer bears the burden of keeping suitable records necessary to support its taxability under RCW 82.32.070(1), and it failed to meet that burden, we deny Taxpayer's petition.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 1st day of May 2020.

---

<sup>7</sup> Even if we were to accept Taxpayer's contention that the Quit Claim deed and original REET affidavit should have been dated [later in] 2016, Taxpayer would still have to establish that the Trustee's Sale of the Parcel occurred prior to [that] 2016 to support that the transfer was rendered moot by an earlier Trustee's sale. Taxpayer has not done so. Taxpayer contends the Trustee sold the Parcel on [an earlier date in] 2016. The Trustee's Deed does not support Taxpayer's contention. The Trustee's Deed was executed on . . . 2016 and recorded on . . . 2016[, dates after the transfer at issue]. . . . The Trustee's Deed also lists the owner of the Parcel being conveyed as [Individual A], as a married woman, not Taxpayer. This is consistent with Taxpayer transferring the Parcel to [Individual A] prior to the Trustee's conveyance on . . . 2016.

<sup>8</sup> Even if Taxpayer had provided a corrected deed, a subsequently filed amended deed does not change what was actually transferred. A properly recorded conveyance of real property gives notice of its content to the whole world. *Koch v. Swanson*, 4 Wn. App. 456, 458, 481 P.2d 915 (1971). "One searching the [County auditor's general index of real property conveyances] has a right to rely on what the index and recorded document discloses . . ." *Id.* at 459.