

Cite as Det. No. 14-0004, 34 WTD 79 (2015)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for)	<u>D E T E R M I N A T I O N</u>
Correction of Letter Ruling of)	
)	No. 14-0004
...)	
)	Registration No. . . .
)	

[1] WAC 458-61A-211; RCW 82.45.010: REET – EXEMPTION – MERE CHANGE IN FORM. Because there was consideration for the transfer the conveyance of real property from an irrevocable trust to the grantor of the trust constitutes a sale subject to REET.

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.

Kreger, A.L.J. – A Taxpayer appeals a letter ruling classifying the transfer of real property from a personal residence trust to the grantor as a sale subject to Real Estate Excise Tax. Because there was consideration for the transfer we affirm the letter ruling. The Taxpayer’s petition is denied.¹

ISSUES

1. Whether the distribution of real property from a trust in exchange for a promissory note qualifies as a mere change in identity or form, which does not constitute a taxable sale under RCW 82.45.010(3)?

...

FINDINGS OF FACT

Procedural History:

On December 16, 2011, [Taxpayer] requested a letter ruling from the Department of Revenue (Department) that the transfer of real property, the Taxpayer’s personal residence, from a Qualified Personal Residence Trust back to the Taxpayer would not be subject to Real Estate Excise Tax (REET). On January 12, 2012, the Department issued a ruling holding that the transfer as detailed constituted a sale subject to REET. The Taxpayer subsequently paid the tax due on January 13, 2012.

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

On January 31, 2012, the Taxpayer contacted the Department by phone and requested that the January 12, 2012, letter ruling be reconsidered. This request was followed by a written request for reconsideration of the ruling on February 20, 2012. The Taxpayer subsequently provided additional records and information to the Department, including detail of a prior transaction that [they] believed to be similar where the Department had classified the transfer as eligible for exemption.

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On December 13, 2012, the Department issued a letter ruling affirming its prior conclusion that the transfer at issue constituted a taxable sale. The Taxpayer timely appealed this ruling.

Details of the Property Transfers:

On January 21, 1992, the Taxpayer created an irrevocable Qualified Personal Residence Trust and transferred residential real estate that she owned separately to the trust. The Taxpayer is the sole beneficiary of the trust during the term of the trust, and the term of the trust was for 20 years or the life of the Taxpayer. [Trust] § (A) & (B). At the conclusion of the term of the trust, the property was to be distributed based on the terms of the Taxpayer's will if the trust terminated due to her death or in equal shares to her sons at the conclusion of the 20 year term. [Trust] § (F) & Article FIFTH.

The Taxpayer continued to occupy the residence and was responsible for the maintenance of the property, after conveying the residence to the trust. On January 13, 2012, the Taxpayer and the Trustee of the trust entered into a Purchase and Sale Agreement, pursuant to which the Trustee agreed to accept an unsecured promissory note from the Taxpayer as payment for the residence and transfer the residence back to the Taxpayer. The purchase price for the residence was \$. . . and to be paid by the delivery of a promissory note. Purchase and Sale Agreement § 2. The purchase and sale agreement also represents and warrants that the Trustee as a representative of the [the Trust] is the sole owner of the property. Purchase and Sale Agreement § 7.1.

The promissory note was executed on January 17, 2012 and delivered to the Trustee. The note provides that the Taxpayer "promises to pay to the order of" the trustee in the sum of Promissory Note, Exhibit B to Purchase and Sale Agreement. The note also provides that interest will be paid on the unpaid principal until the note is paid, that the note may be prepaid, and that the note may be assigned. *Id.*

The Trustee executed and recorded a deed transferring title to the residence to the Taxpayer as her separate property. On January 19, 2012, the Trustee then assigned the note back to the Taxpayer.

ANALYSIS

The REET is imposed on sales of real property. RCW 82.45.060. RCW 82.45.010(1) defines "sale" for REET purposes in pertinent part as follows:

(1) As used in this chapter, the term "sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property . . . for a valuable consideration . . . The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

Thus, under this statutory framework, there are two prerequisites for the imposition of REET; (1) the transfer of an interest in real property; and (2) consideration paid or contracted to be paid in exchange for the transfer. *State ex rel Namer, Inv. Corp. v. Williams*, 73 Wn.2d 1, 435 P.2d 975 (1968); AGLO 1977 No. 6.

In this instance we have a transfer of an interest in real property from the [Trust], as sole owner of the property, to the Taxpayer. The transfer was executed pursuant to a purchase and sale agreement for a stated consideration of \$. . . , to be paid in the form of a promissory note. Thus, on its face the transaction at issue meets the two essential requirements for a taxable sale. We next turn to whether there is an applicable [exemption] to excuse the imposition of tax.

The Taxpayer asserts that the transfer should be [treated] as a mere change in identity or form of ownership where there is no change in the beneficial ownership. RCW 82.45.010 (3)(p).² The Taxpayer also cites WAC 458-61A-210, which addresses irrevocable trusts and provides that:

- (1) Introduction. The distribution of real property to the beneficiaries of an irrevocable trust is not subject to the real estate excise tax if no valuable consideration is given for the transfer and the distribution is made according to the trust instrument.
- (2) Transfer into trust. A conveyance of real property to an irrevocable trust is subject to the real estate excise tax if:
 - (a) The transfer results in a change in the beneficial interest and not a mere change in identity or ownership; and
 - (b) There is valuable consideration for the transfer.

² RCW 82.45.010 (3)(p) excludes from the term sale:

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.

(Emphasis added.)

While these provisions address and provide for the exemption from tax for the initial conveyance of the property into the trust, they do not address the sale of the residence by the trust to the Taxpayer. The sale of the residence pursuant to the purchase and sale agreement is not a distribution to the beneficiaries of the trust.

WAC 458-61A-211 specifically addresses transfers that effect a mere change in identity or form. This rule includes a transfer into any revocable trust, as a qualified transaction. WAC 458-61A-211(2)(g). However, a transfer to or from an irrevocable trust is not . . . a qualified transaction.³ Furthermore, while addressing revocable trusts, WAC 458-61A-211(2)(h) notes that: “A sale of real property by the trustee to a third party, or to a beneficiary for valuable consideration, is subject to the real estate excise tax.”

The Taxpayer argues that the promissory note should not be considered valuable consideration because it was subsequently distributed back to the Taxpayer. We disagree. The transfer at issue was structured as a sale for specific consideration. We find no authority to support the position that the promissory note did not constitute valuable consideration for the sale. Furthermore, we note that the sale of the property to the Taxpayer also affected a change in beneficial interest in the property. Under the terms of the trust the Taxpayer’s sons were the beneficiaries to whom the property was to be distributed at the conclusion of the 20 year term of the trust. [Trust] § Article FIFTH. Or if the Taxpayer had died during the term of the trust, the property was to be distributed as provided in her will. [Trust] § (F). The sale of the property altered these future interests.

In this case the Taxpayer irrevocably conveyed property to the trust and subsequently purchased that property back from the trust. As detailed above, there is an express exemption applicable to the contribution of the property for the trust, however, we find no corresponding exemption for the subsequent sale of the property back to the Taxpayer and therefore affirm the letter ruling classifying this transaction as a taxable sale.

The Taxpayer provided copies of a 2002 letter ruling issued to another party, which reached the conclusion that the purchase of trust property was not subject to REET. The Taxpayer asserts that this ruling should provide guidance to the case at issue here. We note that RCW 82.32A.020(2) specifically requires a written document from the Department to a specific taxpayer (“to that taxpayer”) in order for a taxpayer to rely on written instructions, and WAC 458-20-100(2)(b) further requires a taxpayer to disclose “all pertinent facts” to obtain a ruling. Therefore, a ruling [applies] only to the specific taxpayer who requests it and is limited to the particular facts disclosed to the Department by that taxpayer.

We sustain the letter ruling issued by the Department on December 13, 2012, and deny the Taxpayer’s petition.

³ [While the type of transfer at issue here is not specifically listed as an example of a qualified transaction in WAC 458-61A-211(2), we note that the list of examples is non-exclusive. However, unlike the representative transactions set forth in the rule, the transfer at issue was in exchange for consideration. It is the existence of consideration (which makes this transfer fit within the definition of a “sale”) that renders WAC 458-61A-211(2) inapplicable, rather than the fact that the type of transfer here is not specifically included as an example in the rule.]

DECISION AND DISPOSITION

The Taxpayer's petition is denied.

Dated this 9th day of January 2014.