

Cite as Det. No. 19-0024, 40 WTD 127 (2021)

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

In the Matter of the Petition for Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 19-0024
)	
...)	Registration No. . . .
)	

WAC 458-61A-109; RCW 82.45.010(1): REAL ESTATE EXCISE TAX – BOUNDARY LINE ADJUSTMENTS - CONSIDERATION. Boundary line adjustments are not subject to Real Estate Excise Tax only when made solely to settle a boundary line dispute and when no other consideration is present. When a taxpayer receives a monetary payment as part of a boundary line adjustment, other consideration is present and Real Estate Excise Tax applies to 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.

Ryan A. Johnson, T.R.O. – An individual petitions for refund of the Department’s assessed Real Estate Excise Tax (“REET”) on a transfer of land in exchange for consideration made to settle a boundary line dispute. The individual asserts that the transfer is not subject to the tax because it was made solely to settle a boundary line dispute. We deny the petition.¹

ISSUE

Is a property owner’s transfer of a small section of real property to an adjacent property owner excluded from REET under RCW 82.45.060 and WAC 458-61A-109 as a boundary line dispute settlement when it received monetary consideration in the exchange?

FINDINGS OF FACT

. . . (“Taxpayer”) is an individual who owns a parcel of real property in . . . Washington (“Property”). On or about July 22, 2017, Taxpayer transferred a strip of the Property (“Transfer”) to . . . (“Grantees”), owners of an adjacent parcel. The Transfer was transacted to settle a boundary line dispute between Taxpayer and Grantees (collectively, “Parties”).

The Parties signed a boundary line agreement on or about July 12, 2017, which was recorded in . . . County on August 17, 2017. Taxpayer made the Transfer to the Grantees via a quitclaim deed that

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

Taxpayer signed on or about July 22, 2017, and recorded in . . . County on August 23, 2017. On August 23, 2017, the Parties recorded in . . . County a REET Affidavit regarding the Transfer. Therein, the Parties claimed an exemption under WAC 458-61A-109 and listed the gross selling price as \$0.00.

The Department's Special Programs Division ("Special Programs") reviewed the Transfer. As part of its review, Special Programs obtained a copy of the recorded REET Affidavit from . . . County and mailed Taxpayer an inquiry letter to request additional documents and information regarding the Transfer. Attached to the copy of the recorded REET Affidavit was a wire transfer receipt for \$ Special Programs contacted Taxpayer regarding the wire transfer receipt and Taxpayer confirmed that it received that amount from Grantees in exchange for the Transfer.

On July 18, 2018, the Department issued a REET Assessment ("Assessment") against Taxpayer on the \$. . . Taxpayer received from Grantees for the Transfer. The Assessment was for the sum of \$. . . , including REET in the amount of \$. . . , interest in the amount of \$. . . , and a delinquent payment penalty in the amount of \$. . . , representing twenty percent of the REET assessed. Taxpayer timely filed a Petition for Review ("Petition") of the Assessment. Taxpayer thereafter paid the entirety of the Assessment, converting its Petition from a request for correction of the Assessment into a request for refund.

Taxpayer asserts that the Transfer is not subject to REET under WAC 458-61A-109. Taxpayer states in its Petition, "I am charged an excise tax in the amount of \$. . . on a sale that was a settlement of a dispute." Further, "The boundary line adjustment was a settlement of dispute. Therefore, no excise tax should be assessed." Taxpayer cites WAC 458-61A-109 in support of this contention.

ANALYSIS

Washington imposes REET on "each sale of real property" in this state. RCW 82.45.060. RCW 82.45.010(1) defines "sale" as "any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property . . . for a valuable consideration . . ." REET "is the obligation of the seller." RCW 82.45.080(1).

REET is imposed on the "selling price" of the property. RCW 82.45.060. "[S]elling price" is defined by statute to mean the "true and fair value of the property conveyed." RCW 82.45.030(1). "If property has been conveyed in an arm's length transaction between two unrelated persons for a valuable consideration, a rebuttable presumption exists that the selling price is equal to the total consideration paid or contracted to be paid to the transferor. . . ." *Id.* "[T]otal consideration paid or contracted to be paid" includes "money or anything of value, paid or delivered or contracted to be paid or delivered in return for the sale. . ." RCW 82.45.030(3). *See also* WAC 458-61A-102(2) ("Consideration" means 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."); Det. No. 12-0171, 32 WTD 55, 57 (2013).

Here, Taxpayer transferred the Property to the Grantees via a quitclaim deed and received \$. . . from Grantees in exchange. The \$. . . received by Taxpayer is valuable consideration because it

is money paid in return for real property. *See* RCW 82.45.030(3); WAC 458-61A-102(2). Thus, the Transfer is a “sale” under RCW 82.45.010(1) and subject to REET, because it is a quitclaim of real property for valuable consideration. We have no evidence to suggest that Taxpayer and Grantee are related parties; under RCW 82.45.030(1), a rebuttable presumption exists that the selling price is equal to the total consideration paid to Taxpayer in the Transfer, \$ Accordingly, REET applies to Grantee’s payment to Taxpayer of \$. . . unless an exclusion applies.

[1] Taxpayer asserts that the Transfer is excluded from REET as a boundary line adjustment made for the settlement of a dispute. WAC 458-61A-109 is the Department’s administrative rule that explains and applies the exclusion from REET for boundary line adjustments. It provides in relevant part:

(2) Boundary line adjustments.

(a) Introduction. A boundary line adjustment is a legal method to make minor changes to existing property lines between two or more contiguous parcels. Real estate excise tax may apply depending upon the specific circumstances of the transaction. Boundary line adjustments include, but are not limited to, the following:

- (i) Moving a property line to follow an existing fence line;
- (ii) Moving a property line around a structure to meet required setbacks;
- (iii) Moving a property line to remedy a boundary line dispute;
- (iv) Moving a property line to adjust property size and/or shape for owner convenience; and
- (v) Selling a small section of property to an adjacent property owner.

(b) Boundary line adjustments in settlement of dispute. Boundary line adjustments made solely to settle a boundary line dispute are not subject to real estate excise tax **if no other consideration is present.**

(c) Taxable boundary line adjustments. **In all cases, real estate excise tax applies to boundary line adjustments if there is consideration (other than resolution of the dispute),** such as in the case of a sale or trade of property.

WAC 458-61A-109(2) (emphasis added).

Here, the Transfer involved the Taxpayer and Grantees moving a property line to remedy a boundary line dispute. Because such activity is included in the definition of a boundary line adjustment under WAC 458-61A-109(2)(a), it is possible that the Transfer would be excluded from REET. However, WAC 458-61A-109(2)(b) and (c) require that we look further and determine whether consideration was present. Taxpayer was paid \$. . . in return for the transfer of real property. Under RCW 82.45.030(3) and WAC 458-61A-102(2), this constitutes “consideration.” Thus, although the Transfer is a boundary line adjustment, it is not excluded from REET under WAC 458-61A-109(2) because consideration was present.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 29th day of January 2019.