

Cite as Det. No. 21-0192, 42 WTD 033 (2023)

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. 21-0192
)	
...)	Registration No. . . .
)	

WAC 458-20-102; RCW 82.45.030: REAL ESTATE EXCISE TAX – SELLING PRICE – COUNTY TAX ROLL VALUE. Audit properly relied upon the market value assessment in the county tax rolls to establish the selling price, where an interest in real property was conveyed between related parties and the parties did not provide an appraisal or allocation of the assets.

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.

Lewis, T.R.O. – . . . (“Taxpayer”) protests the Department’s imposition of Real Estate Excise Tax (“REET”) on the fair market value of real property according to the county tax roll instead of the value assigned by Taxpayer. We find that the Department’s Audit Division (“Audit”) correctly valued the transfer using the property’s value as recorded on . . . County property tax rolls. Taxpayer’s petition is denied.¹

ISSUE

Under RCW 82.45.030 and WAC 458-61A-102 (“REET Rule 102”), does Taxpayer’s calculation of REET based on a sale price determined by two members of an LLC reflect the true and fair value of transferred interest in real property?

FINDINGS OF FACT

[In] 2017, Taxpayer conveyed a 15.7 percent interest in a parcel of real property to . . . [Grantee]. Taxpayer reported and paid REET on a declared value of \$. . . [50,000.²]

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

² [This is not the actual declared value. Proxy numbers are substituted for the redacted actual declared value and value on the county rolls to protect taxpayer confidentiality. All bracketed property value numbers (other than actual percentages) in the remainder of the determination are proxy numbers. The property tax value Taxpayer declared was approximately 3.56 percent of the value of the property as listed on the county property tax rolls. Audit based the assessment instead on 15.7 percent of the county’s listed value.]

Subsequently, Audit reviewed the REET transaction. Audit needed additional information to fully review the transaction. Thus, Audit sent letters to Taxpayer on February 5, 2021, and March 2, 2021, requesting additional information. When Taxpayer initially failed to reply to the request for additional information, on March 23, 2021, Audit issued a REET assessment based on the full value of the property. Audit used a valuation of \$. . . [\$1,404,494], which was the amount that the property was carried on the . . . County real property tax rolls in 2017.

Following issuance of the assessment, [Member], a member and manager of Taxpayer, provided Audit with additional information. [Member] explained that on December 9, 2009, [Grantee], also a member and manager of Taxpayer, transferred a 15.7 percent interest in a residential property to Taxpayer. The transfer was made as part of a plan to assist [Grantee's] obtaining a loan to improve her home. [Grantee] did not pay REET on the 2009 transfer, citing WAC 458-61A-212(e), which provides a REET exemption for transfers where gain is not recognized under the Internal Revenue Code. [Member] was unable to provide any written agreements from 2009 when the original transfer was made. However, on May 25, 2021, he did provide Audit with a copy of a "Settlement Agreement Regarding Real Property," which provides important detail regarding the transfers of interest in [Grantee's] property. Pertinent parts of the Agreement include:

THIS AGREEMENT entered into this . . . 2017, is by [Grantee], [Member] and [Taxpayer].

Recitals

WHEREAS [Grantee] and [Taxpayer] hold title to the property whose legal description is:

WHEREAS [Grantee] and [Member] are members of [Taxpayer].

WHEREAS [Member] through [Taxpayer], originally provided a \$200,000 loan to [Grantee] to help her with a construction project on The Property.

WHEREAS to pay back the loan, [Taxpayer] co-signed on the Mortgage whose funds were partially used to pay back [Member] and [Taxpayer].

WHEREAS title in The Property is currently vested whereby [Grantee] owns 84.3% and [Taxpayer] owns 15.7% of The Property.

WHEREAS [Taxpayer] and [Member] were not paid interest and incurred risk associated with co-signing on the . . . Mortgage.

WHEREAS [Taxpayer] has agreed to sell its 15.7% interest in the Property to [Grantee] for \$[50,000].

WHEREAS the parties hereto, in consideration of the releases and the mutual promises and benefits conferred hereunder, agree as follows:

Agreement

...

2. To fully compensate [Taxpayer] and [Member], [Grantee] agrees to pay [Taxpayer] and [Member] the sum of \$[50,000].
3. The above payment represents a complete and total payoff of all sums due and owing from [Grantee] to [Taxpayer] and to [Member], individually.
4. Upon receipt of this payment, [Taxpayer] shall transfer its 15.7% interest in The Property to [Grantee].
5. Upon receipt of this payment, [Member] and [Taxpayer] shall waive any other claims, causes of action, or other damages that may have arisen as a result of this transaction.
6. Upon completion of the transfer of [Taxpayer's] interest in The Property, [Grantee] shall transfer her 10% interest in [Taxpayer] to [Member].
7. Upon completion of the transfer of her 10% interest in [Taxpayer], [Grantee] shall (i) waive any other claims, causes of action, or other damages that may have arisen as a result of the transaction and (ii) refinance the . . . Mortgage.
8. This document reflects the parties' full understanding and agreement of all matters regarding the parties' relationship.

Settlement Agreement Regarding Real Property at 1-2.

The document was signed by [Grantee], individually; [Member], individually; and [Grantee] and [Member], as members of [Taxpayer].

Based on the additional information that Taxpayer presented, Audit concluded that the \$[50,000] value used for reporting REET was in error. Similarly, Audit concluded the assessment it had issued was in error. Instead, Audit reasoned that the amount of REET due on the transfer should be calculated on 15.7% of the fair value of the property. Thus, as Audit's response to Taxpayer's petition explained:

It was determined that REET was due on 15.7% of the value of the property maintained on the County tax rolls of \$[1,404,494]. The remaining REET due was calculated on [15.7% of the amount on the property tax rolls] minus the REET already paid on the [original declared value]. An assessment was issued for the remaining REET due of \$. . .

On June 23, 2021, the Department reissued Taxpayer's assessment. The reissued assessment amount was \$. . . , consisting of \$. . . in REET, \$. . . in interest, and \$. . . penalty.

Taxpayer disagreed with the assessment. On June 29, 2021, Taxpayer filed a petition requesting review with the Department's Administrative Review and Hearings Division. Taxpayer's petition explained the assessment was in error because the conveyance was done as the last part of a long-standing loan transaction and that the money received was related to the loan.

ANALYSIS

REET is imposed upon the sale of real property in Washington. RCW 82.45.060. "Real property" means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity that itself owns land or anything affixed to land. RCW 82.45.032(1). RCW 82.45.030 defines "selling price" and "total consideration paid" for purposes of applying the law related to REET. RCW 82.45.030 provides:

(1) As used in this chapter, the term "selling price" means the true and fair value of the property conveyed. If property has been conveyed in an arm's length transaction between 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, or to another for the transferor's benefit.

...

(3) As used in this section, "total 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, and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale. Total consideration shall not include the amount of any outstanding lien or incumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements. When a transfer or conveyance is made by deed in lieu of foreclosure to satisfy a deed of trust, total consideration shall not include the amount of any relocation assistance provided to the transferor.

(4) If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price.

RCW 82.45.030.

Here, the Agreement's last recital states that the interest in the property is sold for \$[50,000]: "WHEREAS [Taxpayer] has agreed to sell its 15.7% interest in the Property to [Grantee] for \$[50,000]."

Selling price is the measure of tax and means the true and fair value of the property conveyed. RCW 82.45.030(1). The question here is whether \$[50,000] represents the true and fair value of the property conveyed. RCW 82.45.030(1) explains that "[i]f property has been conveyed in an arm's length transaction between 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, or to another for the transferor's benefit."

Here, the property was not conveyed in an arm's length transaction because both [Member] and [Grantee] were Taxpayer's members and managers. [Grantee] was on both sides of the transaction: as a member of Taxpayer, who received the \$[50,000], and as the receiver of the 15.7 percent interest in the property. Because this was not an arm's length transaction and because this was not a transfer of a controlling interest in an entity, the selling price is determined by RCW 82.45.030(4), which provides:

(4) If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price.

RCW 82.45.030(4).

REET Rule 102(22) echoes the definition of "selling price" contained in RCW 82.45.030 and further provides:

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

(i) A fair market appraisal of the property; or
(ii) An allocation of assets by the seller and the buyer made under section 1060 of the Internal Revenue Code of 1986, as amended.

(b) When the true and fair value of the property at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained in the county property tax rolls at the time of sale will be used as the selling price. RCW 82.45.030.

...

REET Rule 102(22).

Taxpayer did not provide any appraisal, or an allocation of assets made by Taxpayer and [Grantee]. We conclude that under the provisions of REET Rule 102(22), Audit correctly chose to value the percentage interest in property transferred by using the parcel's value on . . . County's property tax roll.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 6th day of December 2021.