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Cite as Det. No. 22-0069, Annual WTD Page (Year)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON¹

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. 22-0069
...)	...
)	

[1] WAC 458-61A-102; RCW 82.45.030; EXCISE TAXES – REAL ESTATE EXCISE TAX – SELLING PRICE. When a seller sold real property on the open market to an unrelated buyer for most of the real property’s assessed value as established by the county tax rolls, and the county tax rolls indicated a significant drop in the value of the real property during the immediately preceding year, there is a rebuttable presumption the total consideration the buyer paid to the seller represents the true and fair value of the real property conveyed.

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.

McCormick, T.R.O. – A seller of two separate real properties under a single transaction to a single buyer disputes the Department’s assessment of real estate excise tax (REET) on the transaction, asserting that the consideration it received from the buyer under the transaction represented the true and fair value of the real properties. The seller objects to the Department’s use of the county assessed value as the selling price of the real property at the time of sale. We grant the petition.

ISSUE

Whether, under RCW 82.45.030 and WAC 458-61A-102, the Department correctly assessed additional REET due on a seller’s sale of real properties when it determined the selling price did not reflect the true and fair value of the property and used an alternative method in determining the value of the property.

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

FINDINGS OF FACT

. . . (Taxpayer) is the previous owner of the parcels of real property (Properties) whose sale is at issue here. On March . . . , 2017, Taxpayer filed a REET affidavit with . . . County for the transfer of the Properties to . . . (Buyer), reporting a total sale price of \$. . . , on which Taxpayer paid REET in the amount of \$. . .

According to Taxpayer, in 2016, Taxpayer “engaged an advisor . . . who marketed the . . . [Properties] on our behalf. We were unsuccessful in securing a single buyer for the entire operation so it was ultimately broken down into several smaller transactions.” Petition at 13. Taxpayer asserts that it considered separate offers from two potential buyers before entering into its sales agreement with Buyer. Other than the sale of the Properties, Taxpayer maintains that no relationship exists between Taxpayer and Buyer.

During 2021, the Department’s Audit Division (Audit) reviewed Taxpayer’s sale of the Properties. As part of its review, Audit considered the county assessed value for 2017, which valued the Properties at \$. . . [approximately 26 percent greater than Taxpayer’s selling price]. In an email sent on February 16, 2021, Audit informed Taxpayer that its sale of the Properties “[was] under audit due to the reported selling price being significantly below the county assessed value of the properties transferred. . . . If we do not receive substantiation by the due date we may issue an estimated tax assessment based on the county assessed value of the parcels.” Petition at 12. Audit subsequently determined that because “. . . [Taxpayer] has not presented sufficient evidence to support the selling price reported through the methods described in WAC 458-61A-101(22)(a)[, t]he department used the county assessed value of the parcels to determine the true and fair market value. The additional REET was properly assessed.” Audit Response at 5.

On March 15, 2021, Audit issued Letter ID . . . , a REET assessment (Assessment) in the total amount of \$. . . , which includes \$. . . in assessed REET, with a credit in the amount of \$. . . that Taxpayer previously paid, a substantial underpayment penalty of \$. . . , and \$. . . in interest.

On April 14, 2021, Taxpayer petitioned for administrative review of the Assessment. Taxpayer posits that it should not be required to obtain an independent appraisal of the Properties to substantiate their true and fair value, asserting that “[w]hen a property is offered for sale on the open market, the bids received should be a good indication of fair market value.” Petition at 2. Taxpayer disputes Audit’s interpretation of the term “nominal selling price” as defined under WAC 458-61A-303(6)(b) because the consideration it received would not “cause disbelief by a reasonable person” and asserts that Audit has not “rebut[ted] the presumption that the price paid is the fair market value.” Petition at 3. Taxpayer maintains that the sale of the Properties was made pursuant to multiple bids on the open market and the sale between Taxpayer and Buyer “was an arm’s length transaction.”² *Id.* Taxpayer argues that until Audit overcomes the presumption that the consideration it received under the sale was the true and fair value of the Properties, Audit may not consider the county assessed values of the Properties to determine the amount of REET due on

² Audit’s Response states that Taxpayer’s email, sent on February 26, 2021, “also include[d] a confidential memorandum purporting to show the two offers they had received for the ‘Fairfield’ part of the transaction. The memo from the Ocean Park Advisors was heavily redacted. It appeared to show another offer in the amount of \$1.1 million for assets and inventory. . . .” Audit Response at 3.

the sale. Taxpayer also asserts that the county assessed value of the Properties for 2016 was \$. . . , which dropped to \$. . . in 2017, showing:

[a] drop of \$. . . [approximately 43 percent] that clearly indicates a substantial decrease in value. Since the county assessor indicated a drop of over 43% in the assessed value of the property in the prior year there can be no assertion that the price . . . [Buyer] paid was nominal or that any reasonable person would find that it was obvious that the total consideration was anything but the true and fair market value.

Petition at 4. Taxpayer requests that the Department cancel the Assessment and its imposition of additional REET on its sale of the Properties.

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.” RCW 82.45.032(1). REET is measured by the “selling price.” RCW 82.45.030; [RCW 82.45.060;] WAC 458-61A-101(4); WAC 458-61A-102(22).

RCW 82.45.030 defines “selling price” as follows:

(1) As used [for REET purposes], 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

(Emphasis added.)

We recently addressed what constitutes an arm’s length transaction in Det. No. 18-0232, 39 WTD 130 (2020). Therein, we stated:

In general, an arm’s length sale involves “a transaction negotiated by unrelated parties, each acting in his or her own self-interest; the basis for a fair market value determination.” Black’s Law Dictionary 100 (5th ed. 1979); *see also Washington v. Kleist*, 126 Wn.2d 432, 434, 895 P.2d 398 (1995) (“‘Market value’ is defined in this state as the price which a well-informed buyer would pay to a well-informed seller, where neither is obliged to enter into the transaction.”).

Here, Taxpayer and Buyer are unrelated parties. During the course of negotiating the sale of the Properties, Taxpayer considered multiple bids from Buyer and another potential buyer before arriving at the final sales price. Audit does not assert to the contrary. While not required in every sale at arm’s length, such negotiations here further support that each party was acting in its own self-interest and that neither was obliged to enter into the transaction. We find that the sale at issue

in this matter was an arm's length transaction between unrelated parties and turn now to whether the facts presented rebut the presumption in RCW 82.45.030(1).

We cannot determine true and fair value based on speculation but must look to the objective evidence. *See In re Westlake Ave.*, 40 Wash. 144, 150, 82 P.279 (1905). As the court stated in *Westlake*, market value is not limited to the value of the property to the owner. Instead,

The market value of property is the price which it will bring when it is offered for sale by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it. In estimating its value, all the capabilities of the property, and all the uses to which it may be applied or for which it is adapted, are to be considered, and not merely the condition it is in at the time and the use to which it is then applied by the owner. It is not a question of the value of the property to the owner

Id.; *see also Donaldson v. Greenwood*, 40 Wn.2d 238, 252, 242 P.2d 1038 (1952) (“Fair market value means neither a panic price, auction value, speculative value, nor a value fixed by depressed or inflated prices. . . . [but the amount] a purchaser willing, but not obliged, to buy the property would pay an owner willing, but not obligated, to sell it.”)

The court's analysis in *Westlake* is reflected in WAC 458-61A-101(2)(c), which states that “true and fair value” is defined as “market value, which is the amount of money that a willing, but unobliged, buyer would pay a willing, but unobligated, owner for real property, **taking into consideration all reasonable, possible uses** of the property.” (Emphasis added.)

In Det. No. 17-0196, 37 WTD 053 (2018), we found a steeply discounted sale price rebutted the presumption that the sales price was the true and fair value when that price was only 34 percent of the assessed value on the county property tax rolls and the taxpayer produced no appraisal of the property at issue or any other explanation for why the discounted sale price was acceptable to the seller. 37 WTD at 54-56.

Here, Audit asserts that the selling price for the Properties was so low in relationship to the assessed value maintained in the county property tax rolls, that the difference rebuts the presumption under RCW 82.45.030(1). Audit asserts that, because the selling price listed on Taxpayer's REET affidavit was less than the county assessor's valuation of the Properties at the time of sale, Taxpayer sold the Properties for a nominal selling price and now bears the burden to “present[] sufficient evidence to support the selling price reported through methods described in WAC 458-61A-102(22)(a).” Audit Response at 5. We disagree.

We note Taxpayer sold the Properties for \$. . . in 2017. At the time of the sale, the county tax rolls showed that the county assessor valued the Properties at \$. . . . Therefore, the selling price of the Properties was 79 percent of the value on the county tax rolls.³ The tax rolls also show that the Properties had been declining in value from \$. . . in 2016, to \$. . . in 2017 [an approximately 43 percent decline].

³ \$. . . [2017 assessed value] divided by . . . [selling price] = 0.793 (79 percent).

The plain language of RCW 82.45.030 and WAC 458-61A-102(22) clearly state that when a property has been conveyed in an arm's length transaction between unrelated persons for a valuable consideration, there is a rebuttable presumption that the total consideration paid by the buyer represents the true and fair value of the property. As explained above, it is undisputed that Taxpayer and Buyer are unrelated, and that Taxpayer's sale of the Properties to Buyer was an arm's length transaction for valuable consideration. Thus, there is a rebuttable presumption that the total consideration Buyer paid to Taxpayer represents the true and fair value of the Properties. Audit must overcome this presumption before considering alternative methods of determining the value of the Properties under WAC 458-61A-102(22), such as relying on the county assessor's valuation. However, Audit has not presented any evidence to rebut the presumption that the total consideration Buyer paid represents the true and fair value of the Properties.

We note that the facts in this matter are unlike those in 37 WTD 053, where we found the sale of a property at a significant discount was sufficient to rebut the presumption that the selling price represents the true and fair value of the property. In that matter, the selling price was only 34 percent of the value on the county tax rolls and the taxpayer gave no explanation of why it accepted the price. Here, the selling price of \$. . . is 79 percent of the assessed value for the Properties on the county tax rolls. Further, Taxpayer has produced evidence to show that it negotiated to sell the Properties on the open market, entertaining multiple bids from at least two unrelated potential buyers before entering into the sales agreement with Buyer. As we found above, the sale of the Property was an arm's length transaction between unrelated parties. Considering circumstances surrounding the sale, there is nothing in the facts to rebut the presumption that the selling price represents the true and fair value of the Property. Accordingly, we find that because the presumption has not been successfully rebutted, the total consideration Buyer paid to Taxpayer represents the true and fair value of the Properties.

We turn next to whether the selling price was nominal. A selling price in a real property transaction may still be set aside as the basis for REET and replaced with the value assessed in the county tax rolls if it is a nominal selling price [that does not represent market value]. RCW 82.45.100(4); WAC 458-61A-303(6)(b). RCW 82.45.100(4) states:

If upon examination of any **affidavits** or from **other information** obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department must assess against the taxpayer the additional amount found to be due plus interest and penalties.

(Emphasis added.)

WAC 458-61A-303 is the Department's administrative rule that addresses REET affidavits. It requires that affidavits be "complete," and states:

[A]n affidavit is incomplete if any required information is omitted or obviously incorrect, such as the use of a nominal selling price. A nominal selling price is an amount stated on the affidavit that is **so low in comparison with the fair market value assessment stated on the property tax rolls that it would cause disbelief by a reasonable person**. In the case of a nominal selling price, the county assessed

value will be used as the selling price, unless there is an independent appraisal showing a greater value.

WAC 458-61A-303(6)(b) (emphasis added).

Audit asserts that the selling price of the Property was a nominal selling price under WAC 458-61A-303(6) and that the value shown on the county tax rolls should replace the selling price as the measure of REET. We disagree. As we stated above, Taxpayer has provided evidence that it negotiated the sale on the open market to unrelated Buyer for 79 percent of the Properties' assessed values as established by the county tax rolls. Further, the county tax rolls indicate a drop of over 43 percent in the value of the Properties from 2016 to 2017. In light of such evidence, we find that no reasonable person would experience disbelief in comparing the selling price with the value on the county tax rolls. Thus, we find Audit incorrectly concluded Taxpayer should have paid REET based on the value of the Property shown in the county tax rolls at the time of the sale. Accordingly, we grant Taxpayer's petition.

DECISION AND DISPOSITION

Taxpayer's petition is granted.

Dated this 20th day of April 2022.