

STATE OF WISCONSIN
TAX APPEALS COMMISSION

NORTHSIDE DEVELOPMENT OF LA CROSSE, LLC,

DOCKET NO. 09-T-154

Petitioner,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This matter comes before the Commission on a Stipulation of Facts with Exhibits filed by the parties on April 16, 2010 (the "Stipulation"). Attorney Joshua M. Koch of Arndt Buswell & Thorn, S.C., Sparta, Wisconsin, represents the Petitioner in this matter. The Respondent, the Wisconsin Department of Revenue (the "Department"), is represented by Attorney Peter D. Kafkas. Both parties have submitted briefs.

The Commission's findings of fact consist of the facts stipulated by the parties, with certain changes made for form, clarity and consistency. Having considered the entire record before it, the Commission finds, decides and orders as follows:

FINDINGS OF FACT

1. The Petitioner, Northside Development of La Crosse, LLC (“Northside Development”), is a Wisconsin limited liability company (“LLC”) and was so at all times relevant to this matter. (Stip. ¶ 4.)

2. The Petitioner is located in the State of Wisconsin, owned real estate in Wisconsin, was the grantor of real estate in Wisconsin, and is subject to Wisconsin real estate transfer fee laws (Ch. 77, subchapter II, Wis. Stats.) for all relevant years. (Stip. ¶ 2.)

3. Three Rivers Condominiums, Inc. (“Three Rivers”), is a Wisconsin corporation and was so at all times relevant to this matter. (Stip. ¶ 5.)

4. Northside Offices, LLC (“Northside Offices”), is a Wisconsin limited liability company and was so at all times relevant to this matter. (Stip. ¶ 6.)

5. At no time did the Petitioner, Three Rivers or Northside Offices file a certificate of conversion or a plan of conversion with the Wisconsin Department of Financial Institutions. (Stip. ¶ 7.)

6. Three Rivers is a separate entity from the Petitioner with stockholders identical to the Petitioner’s members, each holding the same proportional interest in Three Rivers as in the Petitioner. (Stip. ¶ 8, Ex. 1 and 2.)

7. Three Rivers was created to receive and hold real estate that the Petitioner needed to divest for financing reasons. (Stip. ¶ 9.)

8. Three Rivers was created to receive and hold Lot 4 of Certified Survey Map filed September 5, 2005 in Volume 12 of Certified Survey Maps, page 108 as Document No. 1431155 and related easements (“Lot 4”). (Stip. ¶ 10.)

9. Northside Offices is an entity separate from the Petitioner with members identical to the Petitioner’s members, each holding the same proportional interest in Northside Offices as in the Petitioner. (Stip. ¶ 11, Ex. 3.)

10. Northside Offices was created to receive and hold real estate that the Petitioner needed to divest for financing reasons. (Stip. ¶ 12.)

11. Northside Offices was created to receive and hold Lot 1 of Certified Survey Map filed September 6, 2005 in Volume 12 of Certified Survey Maps, page 108 as Document No. 1431155 and related easements (“Lot 1”). (Stip. ¶ 13.)

12. The Petitioner conveyed Wisconsin Lot 4 to Three Rivers (“Three Rivers conveyance”) by a warranty deed recorded with the La Crosse County Register of Deeds Office. (Stip. ¶ 14, Ex. 4.)

13. On May 23, 2006, the Petitioner filed a real estate transfer return (“Three Rivers return”) as the grantor of Lot 4 on the Three Rivers conveyance with the La Crosse County Register of Deeds Office declaring the total value of the real estate transferred to be \$910,118 and submitted no real estate transfer fee with the Three Rivers return. The Petitioner declared that the Three Rivers conveyance was exempt pursuant to Wis. Stat. 77.25(6). (Stip. ¶ 15, Ex. 5.)

14. The Petitioner conveyed Lot 1 to Northside Offices (“Northside Offices conveyance”) by warranty deed recorded with the La Crosse County Register of Deeds Office. (Stip. ¶ 16, Ex. 6.)

15. On July 26, 2006, the Petitioner filed a real estate transfer return (“Northside Offices return”) as the grantor of Lot 1 on the Northside Offices conveyance with the La Crosse County Register of Deeds Office declaring the total value of the real estate transferred to be \$931,876 and submitted no real estate transfer fee with the Northside Offices return. Petitioner declared that the Northside Offices conveyance was exempt pursuant to Wis. Stat. 77.25(6m). (Stip. ¶ 17, Ex. 7.)

16. On or about April 30, 2009, the Department issued Real Estate Transfer Fee Assessments to the Petitioner in the amounts of \$4,424.10 and \$4,464.32 for the Three Rivers conveyance and the Northside Offices conveyance, respectively, which included interest and penalty to that date. (Stip. ¶ 18, Ex. 8.)

17. On or about June 1, 2009, the Petitioner filed a petition for redetermination with the Department requesting abatement of the assessments. In its petition for redetermination, the Petitioner revised its exemption claim for the Three Rivers conveyance from exemption under Wis. Stat. § 77.25(6) to exemption under Wis. Stat. § 77.25(6m). (Stip. ¶ 19, Ex. 9.)

18. On or about June 19, 2009, the Department issued two notices of action denying the petition for redetermination and claims of exemption under Wis. Stat. § 77.25(6m).¹ (Stip. ¶ 20, Ex. 10.)

19. On or about August 10, 2009, the Petitioner filed a timely petition for review with the Commission.

CONCLUSIONS OF LAW

1. The Petitioner has failed to satisfy its burden of proving the assessments at issue in this matter to be incorrect.

2. The conveyances at issue were subject to the real estate transfer fee and were not exempt from the fee pursuant to Wis. Stat. § 77.25(6m).

DECISION

A. APPLICABLE STATUTES

Wis. Stat. § 77.22(1) imposes a fee on every conveyance of real estate as follows:

77.22 Imposition of real estate transfer fee.

(1) There is imposed on the grantor of real estate a real estate transfer fee at the rate of 30 cents for each \$100 of value or fraction thereof on every conveyance not exempted or excluded under this subchapter. . . .

* * *

¹ Because the Petitioner amended its claim of exemption in its petition for redetermination and the Department accepted that amendment, we do not address any claim of exemption under Wis. Stat. § 77.25(6), which generally exempts conveyances made pursuant to mergers of corporations.

Wis. Stat. § 77.25(6m) exempts certain conveyances from the real estate transfer fee as follows:

77.25 Exemptions from fee. The fees imposed by this subchapter do not apply to a conveyance:

* * *

(6m) Pursuant to the conversion of a business entity to another form of business entity under s. 179.76, 180.1161, 181.1161, or 183.1207, if, after the conversion, the ownership interests in the new entity are identical with the ownership interests in the original entity immediately preceding the conversion.

B. STANDARD OF REVIEW

The Petitioner has the burden of showing that the Department's determination is incorrect. *Laabs v. Tax Commission*, 218 Wis. 414, 424, 261 N.W. 404 (1935); *Dept. of Taxation v. O.H. Kindt Mfg. Co.*, 13 Wis. 2d 258, 268, 108 N.W.2d 535 (1961); and *Woller v. Dept. of Taxation*, 35 Wis. 2d 227, 232, 151 N.W.2d 170 (1967). The real estate transfer fee has generally been treated like a tax. *See, Gottfried, Inc. v. Wis. Dep't of Revenue*, 145 Wis. 2d 715, 429 N.W.2d 508 (Ct. App. 1988). Exemptions from the transfer fee "are construed against the taxpayer, who must bring himself or herself clearly within the terms of the exemption." *Id.*, 145 Wis. 2d at 719-720, *citing Ramrod, Inc. v. Wis. Dep't of Revenue*, 64 Wis. 2d 499, 504, 219 N.W.2d 604, 607 (1974).

When interpreting a statute, we assume that the legislature's intent is expressed in the statutory language. Statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry."

State ex rel. Kalal v. Circuit Court, 271 Wis. 2d 633, 663, 681 N.W.2d 110 (2004). “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Id.*; *see, also*, Wis. Stat. § 990.01(1). Context and structure are also important factors, and construction should strive to avoid absurd or unreasonable results. “If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.*

C. ANALYSIS

In this matter, the Petitioner argues that the conveyances at issue were exempt from the real estate transfer fee under Wis. Stat. § 77.25(6m), which exempts transfers made “[p]ursuant to the conversion of a business entity to another form of business entity under s. 179.76, 180.1161, 181.1161, or 183.1207, if, after the conversion, the ownership interests in the new entity are identical with the ownership interests in the original entity immediately preceding the conversion.” Wis. Stat. § 77.25(6m). The two conveyances at issue were made by the Petitioner to a corporation (the Three Rivers conveyance) and by the Petitioner to another LLC (the Northside Offices conveyance), respectively. The Department assessed the fees at issue on the grounds that these transfers were not made pursuant to any conversion of a business entity to another form of business entity, and that Wis. Stat. § 77.25(6m) therefore did not apply.

We agree with the Department's position in this matter. By its terms, the exemption under Section 77.25(6m) only applies to a transfer made pursuant to a conversion completed under Section 179.76, 180.1161, 181.1161 or 183.1207, Stats., which govern the conversion of a limited partnership, corporation, nonstock corporation or limited liability company, respectively, into another type of business entity. According to these statutes, such a conversion can only be accomplished by first filing a plan of conversion with the Wisconsin Department of Financial Institutions ("DFI") and then obtaining a certificate of conversion from DFI. *See*, §§ 179.76, 180.1161, 181.1161 and 183.1207, Stats.

The parties stipulated that "at no time did the Petitioner, Three Rivers or Northside Offices file a certificate of conversion or a plan of conversion with the Wisconsin Department of Financial Institutions." (Stip. ¶ 5.) The Petitioner has provided no evidence showing that a conversion under Section 179.76, 180.1161, 181.1161 or 183.1207, Stats., ever occurred. Instead, the stipulated facts and exhibits show that (1) the Three Rivers conveyance was made from one LLC (the Petitioner) to a corporation (Three Rivers) and (2) the Northside Offices conveyance was made from one LLC (the Petitioner) to another LLC (Northside Offices). All three of these entities were in existence prior to the transfers and all three remained in existence after the transfers. There was no conversion of any business entity, simply two transfers of property from one entity to another.

The Petitioner offers two basic arguments in opposition to the Department's actions. First, the Petitioner argues that the transfers should be exempt because they were completed to satisfy a lender's single purpose entity financing requirements, which required that the properties each be owned by an entity that owned no other property. Second, the Petitioner argues that the ownership of the transferee entities was exactly the same as the ownership of the transferor (the Petitioner), which also supports exemption of the transfers under Wis. Stat. § 77.25(6m).

Even if true, the Petitioner's arguments only partially support the claimed exemption under Wis. Stat. § 77.25(6m). The fact that the Petitioner completed the transfers to satisfy financing requirements is irrelevant to an analysis under Wis. Stat. § 77.25(6m), which provides a specific two-part test. The transfers completely fail the first part of the test, since neither transfer was made pursuant to a business entity conversion. Because the ownership interests in the various entities involved in the transfers were all identical, the Petitioner arguably could have satisfied the second part of the two-part test, if there had been a business entity conversion. However, the Petitioner never makes it to the second part of the test, because both transfers fail step one.

The Petitioner cites *Dep't of Revenue v. Mark*, 168 Wis. 2d 288, 483 N.W.2d 302 (Ct. App. 1992), as support for its case, but *Mark* provides no such support. In *Mark*, a group of trust beneficiaries transferred their interests in certain property previously

distributed to them by a trust to a partnership, and the individuals involved retained the same ownership interests in the property before and after the transfers. The transferors then claimed that the real estate transfer fee imposed under Wis. Stat. § 77.22(1) did not apply to the conveyances at issue in that case, because they resulted in a mere change of form or title, and thus were not “conveyances” within the meaning of the statute. The Court of Appeals disagreed and upheld the Department’s assessment of the fees, holding that the transfers were indeed “conveyances” within the meaning of the statute.

To the extent it applies at all in this case, *Mark* supports the Department’s position, not the Petitioner’s. First, *Mark* did not involve a claim of exemption under Wis. Stat. § 77.25(6m), so it is of limited use at best in this case. Here, the Petitioner did not challenge the fee under § 77.22(1); it claimed exemptions under § 77.25(6m). Second, the taxpayers in *Mark* made an argument very similar to the argument that the Petitioner offers in this case, in that both groups argued that their transfers should not be subject to the fee because they represented mere changes of form or title. Consistent with *Mark*, we reject that argument here. Finally, the Commission has considered a number of other similar cases in the past and has repeatedly held that, to be exempt, a transfer must fit squarely within the terms of the claimed exemption, and the Court of Appeals has consistently affirmed those decisions. *See, Turner v. Wis. Dep’t of Revenue*, 271 Wis. 2d 760, 679 N.W.2d 880 (Ct. App. 2004) (transfer from limited partnership to

limited liability partnership owned by same married couple was not exempt); *F.M. Management Co. Ltd. Partnership v. Wis. Dept. of Revenue*, 269 Wis. 2d 526, 674 N.W.2d 922 (Ct. App. 2003) (transfers between limited partnership and LLC with related ownership were not exempt); and *Wolter, et. al. v. Wis. Dep't of Revenue*, 231 Wis. 2d 651, 605 N.W.2d 283 (Ct. App. 1999) (transfer from partnership to LLC owned by same family members was not exempt).

The Department's assessments are presumed to be correct and any party challenging an assessment has the burden of showing that it is incorrect. The facts are not in dispute, and the Petitioner has offered only arguments that are not supported by the applicable statutes or relevant case law. According to the plain meaning of the statute, the exemption provided by Wis. Stat. § 77.25(6m) does not apply to the conveyances at issue, because these conveyances were not made pursuant to the conversion of a business entity to another form of business entity under § 179.76, 180.1161, 181.1161, or 183.1207, Stats. Thus, we agree with the Department's analysis of this matter, and we conclude that the Petitioner has not met its burden of proof.

ORDER

The Department's actions on the Petitioner's petitions for redetermination in this matter are affirmed.

Dated at Madison, Wisconsin, this 24th day of November, 2010.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"