

STATE OF WISCONSIN
TAX APPEALS COMMISSION

THE COLLEGIATE, LLC,

DOCKET NO. 08-T-047

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 November 14, 2008 (the "Stipulation"). Attorney Scott Herrick, Herrick & Kasdorf, L.L.P., Madison, Wisconsin, represents the Petitioner in this matter. The Respondent, the Wisconsin Department of Revenue (the "Department"), is represented by Attorney John R. Evans. 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, Collegiate, LLC, is a Wisconsin limited liability company and was so at all times relevant to this matter.

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 the real estate transfer fee laws (Ch. 77, subchapter II, Wis. Stats.) of Wisconsin for all years that may be relevant.

3. The Governor of Madison, LLC ("The Governor") is a Wisconsin limited liability company and was so at all times relevant to this matter.

4. The Varsity of Madison, LLC ("The Varsity") is a Wisconsin limited liability company and was so at all times relevant to this matter.

5. On April 30, 2004, the Petitioner filed a real estate transfer return (the "Governor return") as the grantor of real estate by Quit Claim deed (Stip. Exh. 1) on a Wisconsin conveyance to The Governor (the "Governor conveyance") with the Dane County Register of Deeds Office declaring the consideration for the Governor conveyance to be \$1,600,000. The Petitioner submitted no real estate transfer fee (Stip. Exh. 2) with the Governor return, declaring that said conveyance was exempt pursuant to § 77.25(15s), Stats.

6. On April 30, 2004, the Petitioner filed a real estate transfer return (the "Varsity return") as the grantor of real estate by Quit Claim deed (Stip. Exh. 3) on a Wisconsin conveyance to The Varsity (the "Varsity conveyance") with the Dane County Register of Deeds Office declaring the consideration for the Varsity conveyance to be \$706,000. The Petitioner submitted no fee with that original Varsity return (Stip. Exh. 4), declaring that said conveyance was exempt pursuant to § 77.25(15s), Stats.

7. The Petitioner had the same limited liability company membership as The Governor at the time of the Governor conveyance, that membership being identical, and all of the members of the two entities were related by marriage or blood and consisted of the following individuals: Harold Langhammer; Phyllis Sanfilippo, his wife; and Garth Langhammer, his son.

8. The Petitioner had the same limited liability company membership as The Varsity at the time of the Varsity conveyance, that membership being identical, and all of the members of the two entities were related by marriage or blood and consisted of the following individuals: Harold Langhammer; Phyllis Sanfilippo, his wife; and Garth Langhammer, his son.

9. At the time of the Governor conveyance and the Varsity conveyance, the grantees assumed the mortgages and became encumbered with the mortgages, as applicable.

10. On or about November 29, 2007, the Department issued a Notice of Additional Assessment of Real Estate Transfer Fee to the Petitioner (the "Governor assessment") in the amount of \$8,158.82, with respect to the Governor conveyance (Stip. Exh. 5).

11. On or about November 29, 2007, the Department issued a Notice of Additional Assessment of Real Estate Transfer fee to the Petitioner (the "Varsity assessment") in the amount of \$3,600.08, with respect to the Varsity conveyance (Stip. Exh. 6).

12. On or about January 28, 2008, the Petitioner filed with the Department a petition for redetermination objecting to the Governor assessment (the “Governor petition”) (Stip. Exh. 7) and a petition for redetermination objecting to the Varsity assessment (the “Varsity petition”) (Stip. Exh. 8).

13. On or about January 30, 2008, the Department issued a Notice of Action letter (the “Notice of Action”) to the Petitioner denying both the Governor petition and the Varsity petition. (Stip. Exh. 9).

14. On or about April 1, 2008, the Petitioner filed a timely Petition for Review of the Notice of Action with the Commission.

15. On November 14, 2008, the parties filed the Stipulation of Facts with Exhibits with the Commission, and both subsequently filed briefs in this matter.

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(15s).

DECISION

A. APPLICABLE STATUTES

Wis. Stat. § 77.22(1)(a) 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

* * *

Wis. Stat. § 77.25(15s) 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:

* * *

(15s) Between a limited liability company and one or more of its members if all of the members are related to each other as spouses, as lineal ascendants, lineal descendants or siblings, whether by blood or by adoption, or as spouses of siblings and if the transfer is for no consideration other than the assumption of debt or an interest in the limited liability company.

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 parties agree that the conveyances at issue would have been exempt under Wis. Stat. § 77.25(15s) from the real estate transfer fee if the Petitioner had first transferred the properties to its members, and the members had then transferred the properties to The Governor and The Varsity, respectively. However, the conveyances instead were each made from one LLC directly to another LLC, with no intermediate step. The Department assessed the fees at issue on the grounds that a transfer from one LLC to another LLC is not exempt from the transfer fee, and argues that the exemption under Wis. Stat. § 77.25(15s) does not apply.

The Petitioner offers variations on essentially one argument in opposition to the Department's actions. (Pet. Br. pp. 1-2.) As summarized in the Stipulation, the Petitioner argues that the fee should not be payable under these circumstances, because

“the form of the conveyance which the Department claims is required to qualify for exemption would be an empty shell transaction, instantaneously transient without economic substance or reality, under the circumstances,” and therefore “would be unnecessarily and pointlessly wasteful of private and public resources.” (Stip. ¶ 19.)

More specifically, the Petitioner argues that these LLC’s are all “pass-through” entities, and therefore their members should be treated as the real parties in interest in these transactions. According to this theory, no taxable transfers occurred, because the same individuals own the same interests in the properties that they owned before the transactions took place. However, the Petitioner is attempting to apply an income tax concept to the real estate transfer fee, where it simply does not fit. Although a pass-through entity generally is not subject to income tax, it is subject to other taxes, including property tax, sales and use tax and the real estate transfer fee. The Petitioner further argues that a straightforward interpretation of the exemption statute is unreasonable, because it requires a two-step transaction to qualify, rather than a simpler and more efficient single transaction. This argument has been rejected in all prior relevant cases.

The Commission has considered a number of very 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, regardless of any perceived inefficiencies. The Court of Appeals has consistently affirmed these 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 *Volter, 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). No relevant distinction can be drawn between the facts in these prior cases and this case, and the Petitioner does not attempt to do so. Thus, the result under the applicable statutes is the same. The Petitioner's policy arguments regarding its preferred application of the real estate transfer fee should be addressed to the legislature, not this Commission, which is required to apply the statutes and applicable precedent as written.

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 § 77.25(15s), Stats., does not apply to the conveyances at issue. These conveyances were made from one LLC to another LLC, and not between an LLC and its member(s). 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 11th day of September, 2009.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"