

STATE OF WISCONSIN
TAX APPEALS COMMISSION

DOUGLAS ABRAHAMSON
D/B/A ABRAHAMSON/ABRAHAMSON, LLC,

DOCKET NO. 07-T-141

Petitioner,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE

Respondent.

ROGER W. LEGRAND, COMMISSIONER:

This case comes before the Commission on Petitioner's appeal of the action of the Department of Revenue ("Department") on Petitioner's Petition for Redetermination. Petitioner, Douglas Abrahamson, doing business as Abrahamson/Abrahamson, LLC ("Petitioner"), is represented by Attorney Charles D. Koehler of Herrling Clark Law Firm, Ltd. The Department is represented by Attorney John R. Evans.

The parties filed a Stipulation of Facts and exhibits in this matter with the Commission on April 17, 2008 (the "Stipulation"), and briefs according to a schedule then issued by the Commission. Having considered the entire record in this matter, the Commission finds, rules, and orders as follows:

FINDINGS OF FACT

The Commission adopts the facts stipulated by the parties as its findings

of fact, with certain changes made for form and consistency, as follows:

1. Beginning in 1981, Douglas Abrahamson was in a farm partnership with his mother, Irene Abrahamson, and his father, Russell Abrahamson. The partnership was commonly known as Abrahamson/Abrahamson, a Wisconsin Partnership. Russell, Irene and Douglas Abrahamson executed and recorded a deed that included the real estate at issue in this matter to Abrahamson & Abrahamson, a Wisconsin Partnership, dated January 30, 1991. (Stip. Exh. 1). Douglas Abrahamson's mother died on December 27, 1998, leaving as the only remaining two partners, Russell Abrahamson and Douglas Abrahamson.

2. Beginning in 1981, Irene and Russell began a plan of periodic gifting to transfer the farm partnership to their son, Douglas Abrahamson.

3. Effective January 1, 1999, Russell Abrahamson withdrew completely from Abrahamson/Abrahamson, a Wisconsin Partnership, leaving Douglas as the sole surviving owner of partnership property. Russell Abrahamson was 82 years old in 1999 and passed away four years later at age 86. Russell Abrahamson signed a partnership dissolution Agreement with Douglas Abrahamson on January 1, 1999. (Stip. Exh. 2). From and after January 1, 1999, Douglas Abrahamson owned and operated the farm and considered himself a sole proprietor. Douglas Abrahamson was the sole owner of all former partnership assets and all partnership real estate. However, since no deed had been executed back on January 1, 1999, Douglas Abrahamson had to execute the deed dated March 25, 2003 (Stip. Exh. 3) conveying the property from the partnership to Abrahamson/Abrahamson, LLC as grantee since the name on the title

had not been changed.

4. Prior to January 1, 1999, farm tax returns and Schedule F were filed under the partnership name of Abrahamson/Abrahamson, a Wisconsin Partnership, using the partnership tax identification number of 39-1XXXXX4.

5. Beginning in 1999, Douglas Abrahamson began filing farm income tax returns and Schedule F. He no longer has copies of the tax returns predating 2002.

6. Douglas Abrahamson filed a 2002 U.S. Individual Income Tax Return, together with Schedule F "Profit or Loss from Farming" (Stip. Exh. 4), as a sole proprietor.

7. Likewise, for 2003, Douglas Abrahamson filed a U.S. Individual Income Tax Return Form 1040 and Schedule F "Profit or Loss from Farming" (Stip. Exh. 5) as a sole proprietor.

8. On June 30, 1999, Douglas Abrahamson formed a limited liability company by filing Articles of Organization with the State of Wisconsin for a solely-owned limited liability company named Abrahamson/Abrahamson, LLC.

9. On March 25, 2003, Douglas Abrahamson executed a Quit Claim Deed from Abrahamson/Abrahamson, Ltd., a/k/a Abrahamson/Abrahamson, a Wisconsin Partnership, Grantor, to Abrahamson/Abrahamson, LLC, as grantee. (Stip. Exh. 3). Douglas Abrahamson was the sole individual person with an ownership or interest in both grantor and grantee. Douglas Abrahamson signed the deed, "Douglas Abrahamson, Partner, Abrahamson/Abrahamson, LTD, a/k/a Abrahamson/Abrahamson, a Wisconsin Partnership." The Wisconsin Real Estate

Transfer Return dated March 25, 2003 was filed with the deed of the same date and is the subject of this dispute. (Stip. Exh.'s 3 and 6.)

10. That prior to June 30, 1999, there was never a legally formed entity known as Abrahamson/Abrahamson, Ltd. This was a misnomer included in deeds for two parcels of property in the chain of title due to drafting errors. The deed prior to the deed dated March 25, 2003 (Stip. Exh. 3) was intended to be in the name of Abrahamson/Abrahamson, a Wisconsin Partnership.

11. Prior to the March 25, 2003 deed (Stip. Exh. 3), record title was in "Abrahamson & Abrahamson, a Wisconsin Partnership."

12. Section 178.03 Wisconsin Statutes states:

A partnership is an association of two or more persons to carry on as co-owners of a business for profit.

13. From and after January 1, 1999, through, including, and after March 25, 2003, when the deed in issue was executed, Douglas Abrahamson was the sole owner of all the farm property interests, including Abrahamson & Abrahamson, a Wisconsin Partnership, the grantor, and Abrahamson/Abrahamson, LLC, the grantee, conveyed by the deed dated March 25, 2003.

14. The Wisconsin Department of Revenue issued an assessment dated January 30, 2007. (Stip. Exh. 7). Petitioner timely filed a Petition for Redetermination dated February 16, 2007, and received on February 19, 2007. (Stip. Exh. 8). The Department issued its Notice of Action dated May 31, 2007 (Stip. Exh. 9), denying the Petition for Redetermination as follows:

Transfer Fee	\$3,900.00	\$1,300,000 Original Valuation
Interest	\$2,036.12	12% (3/25/2003 to 7/30/2007)
Penalty	<u>\$ 975.00</u>	per § 77.26(8), Stats.
Total Assessment	\$6,911.12	

15. Douglas Abrahamson paid \$6,911.12 pursuant to this determination and seeks a 100% refund under transfer fee exemption Wis. Stat. § 77.25(15s), which states:

(15s) Between a limited liability company and one or more members if all of the members are related to each other as spouses, 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.

16. Douglas Abrahamson always was and is now the sole member of Abrahamson/Abrahamson, LLC.

17. The conveyance by deed on March 25, 2003 was for no consideration other than Douglas Abrahamson's sole membership interest in Abrahamson/Abrahamson, LLC.

ISSUE PRESENTED

Was the Quit Claim Deed dated March 25, 2003 (Stip. Exh. 3) exempt from Wisconsin's real estate transfer fee?

DECISION

Wis. Stat. § 77.22(1) imposes a transfer fee on real estate conveyances including deeds and other instruments for the passage of ownership interests in real estate. There are certain exemptions from the transfer fee, including the exemption provided under Wis. Stat. § 77.25(15s) for the following type of transfer:

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 or siblings, whether by blood or 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.

In this case, there was a Quit Claim Deed (Stip. Exh. 3.) from Abrahamson/Abrahamson, Ltd., a/k/a Abrahamson/Abrahamson, a Wisconsin Partnership, Grantor and Abrahamson/Abrahamson, LLC, Grantee dated March 25, 2003 (the "Deed"). The Petitioner, Mr. Abrahamson, claimed an exemption under Wis. Stat. § 77.25(15s). The Department disallowed the claim on the grounds that the grantor of the Deed was a partnership and that the partnership did not meet any of the requirements needed for the exemption. The Petitioner claimed that the grantor was not a partnership because the partnership no longer existed on March 25, 2003, the date of the conveyance.

The language on the face of the Deed clearly denominates Abrahamson/Abrahamson, LTD, a/k/a Abrahamson/Abrahamson, a Wisconsin partnership as the grantor of the Deed. (Stip. Exh. 3). Despite this, Petitioner argues that we should look to substance over form. The Commission is asked to ignore the

plain language of the Deed and find that the grantor was actually a sole proprietorship. The Commission declines to do so.

The law is clear that assessments made by the Department are presumed to be correct and the burden is upon the Petitioner to prove by clear and convincing evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984). Tax exemptions, deductions, and privileges are matters of legislative grace and will be strictly construed against the taxpayer. *Fall River Canning Co. v. Dep't of Taxation*, 3 Wis. 2d 632, 637, 89 N.W.2d 203 (1958).

It is clear from the stipulated facts that prior to March 25, 2003, recorded title was held by the partnership. The partners agreed to dissolve the partnership in an agreement dated January 1, 1999. (Stip. Exh. 2). However, according to the stipulated facts, there was no recorded conveyance of the property at issue at the time of the alleged dissolution of the partnership in 1999. Had there been, it would have been subject to the transfer fee. *See* Wis. Admin. Code § Tax 15.03(4). Instead, the property remained titled in the name of the defunct partnership until 2003.

The Petitioner argues that the partnership was transformed into his sole proprietorship upon the dissolution of the partnership. The Petitioner offers no legal support for this claim, except for his argument that the partnership no longer fit within the definition of “partnership” under Wisconsin law after January 1, 1999, because it had only one partner. *See*, Wis. Stat. § 178.03. Even if true, that argument does not prove that the partnership then became a sole proprietorship under Wisconsin law.

In addition, the Petitioner cites no authority for the proposition that a substance-over-form analysis should apply in this case. In general, such an argument is unsuccessful when the taxpayer attacks the results of the very form he has chosen.

We see nothing unfair about preventing a taxpayer from asserting substance-over-form where the taxpayer has deliberately adopted form-over-substance in his tax filings. And even though the state could here have rejected taxpayer's form for the real substance if it had wanted to, it had no legal duty to probe into the shrouded substance and was entitled to accept at face value the form the taxpayer put on the transactions.

Ladish Co., Inc. v. Wis. Dept. of Revenue, Wis. Tax Rptr. (CCH) ¶203-326 (WTAC May 1, 1992). A similar situation is present in this case, in that the Petitioner never reported a transfer from the partnership upon its dissolution in 1999, and instead reported the transfer as being from the partnership to the LLC in 2003. The Department issued the assessment in this case based upon the Petitioner's own report of the transaction.

Under applicable law, the Commission must look at the recorded conveyance on its face. By its terms, the 2003 Quit Claim Deed conveyed property from the partnership to the LLC. Prior cases dealing with conveyances from partnerships to LLC's and corporations, including *Dale Schuler and Roy Schuler, d/b/a Schuler Dairy Farms v. Wisconsin Dept. of Revenue*, Wis. Tax Rptr. (CCH) ¶400-200 (WTAC March 13, 1996); *Wolter v. Wisconsin Dept. of Revenue*, 231 Wis.2d 651, 605 N.W.2d 283 (Ct. App. 1999); and *F.M. Management Co. Ltd. Partnership v. Wisconsin Dept. of Revenue*, 269 Wis.2d 526, 674 N.W.2d 922 (Ct. App. 2003), have not allowed the exemption claimed by the Petitioner in this case. As in those cases, the Commission must strictly construe the

exemption statute in question, and the transfer at issue does not fit within the terms of that exemption.

The Petitioner has not met the burden of showing that he qualified for the exemption claimed under Wis. Stat. § 77.25(15s), or any other exemption under Wis. Stat. § 77.25. The Commission affirms the assessment of the transfer fee in this case, along with interest of \$2,036.12 and penalty of \$975.00 pursuant to Wis. Stats. § 77.26(3) and (8).

IT IS ORDERED

The Department's action on the Petitioner's petition for redetermination in this matter is affirmed.

Dated at Madison, Wisconsin, this 26th day of November, 2008.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"