
March 5, 2003

Connecticut Real Estate Conveyance Tax Imposed on a Transfer to a QPRT Established for the Benefit of a Transferee Spouse

This memorandum discusses the Connecticut Superior Court's recent holding in the unpublished opinion of Jones v. Commissioner of Revenue Services, 2002 WL 31954847 (Conn.Super. 2002), wherein the court held that the exemption from Connecticut real estate conveyance tax ("conveyance tax") does not apply to a transfer of a personal residence from the transferor spouse to a qualified personal residency trust ("QPRT") established for the benefit of the transferee spouse. Although this opinion only involves tax on the sale of property by a spouse to his spouse's QPRT, it may eventually have important tax ramifications on transfers between a grantor and his or her own QPRT.

Facts

On April 30, 1991, the plaintiff purchased property located at 25 Sherwood Avenue in Greenwich, Connecticut (the "1st Greenwich Property"), which he and his wife thereafter occupied as their personal residence. On December 5, 1994, the plaintiff purchased another residential property located at 92 Harbor Drive in Greenwich (the "2nd Greenwich Property").

On May 14, 1996, the plaintiff transferred the 1st Greenwich Property to his wife in a transfer exempt from conveyance tax under C.G.S. §12-498(a)(14)(exempting from conveyance tax "deeds between spouses"). On the same day, the plaintiff's wife created a QPRT and transferred the title to the 1st Greenwich Property to the trustee of the QPRT. No mention was made in the case whether conveyance tax was paid on this transfer, but one can assume that no tax was paid.

On April 22, 1998, the trustee sold the 1st Greenwich Property to

a third-party and paid a conveyance tax of \$96,500 on the sale. The trustee kept the remaining \$9,869,313 from the sale of the 1st Greenwich Property in liquid assets in the trust account. On March 24, 1999, the plaintiff gave his wife \$8,630,687, which she then transferred as a gift to the QPRT, so that at this point the trust had a total of \$18,500,000 in liquid assets. The plaintiff then transferred the 2nd Greenwich Property to the trustee of the QPRT in exchange for a cash payment of \$18,500,000.

The plaintiff claimed that no conveyance tax was due on the transfer of the 2nd Greenwich Property to the QPRT since the conveyance was in reality a transfer between the plaintiff and his spouse and was therefore exempt from conveyance tax under C.G.S. §12-498(a)(14). However, DRS disagreed that the conveyance from the plaintiff to the trustee of the QPRT was exempt from conveyance tax and levied a tax of \$181,000 against the plaintiff. The plaintiff thereafter paid the tax in full and filed a request for full or partial refund with DRS claiming that the QPRT “should be treated as the spouse herself for purposes of application of the conveyance tax.” Both the audit and appellate divisions of DRS denied the plaintiff’s refund claims and the plaintiff filed an appeal from such denials with the Superior Court.

Issue

The issue in the Jones case was whether the transfer of ownership of the 2nd Greenwich Property by the plaintiff to the QPRT created for the benefit of the plaintiff’s wife and her remainder persons was a transfer “between spouses” exempt from conveyance tax under C.G.S. §12-498(a)(14).

Analysis

In general, C.G.S. §12-494 imposes a conveyance tax upon the transfer of real property, unless such transfer is otherwise exempted from tax. One such exception is found in C.G.S. §12-498(a)(14), which provides that the conveyance tax does not apply to “deeds between spouses.” At the time of the transfer, there was no specific exemption for transfers from a grantor to his or her trust.¹ Therefore, whether the plaintiff’s transfer of the 2nd

¹ There is currently an exemption in C.G.S. §12-498(17) for transfers to effect a mere change in beneficial ownership, although it is unclear whether such exemption would apply to transfers to split interest trusts.

Greenwich Property was subject to conveyance tax necessarily depended upon whether the court found that such transfer was between the plaintiff and his spouse.

In finding that the transfer at issue was not between spouses, the court noted that the creation of the QPRT was not simply a trust in which the plaintiff's wife had sole beneficial interest, but rather a split trust in which others besides the plaintiff's wife (*i.e.*, the QPRT's remainder persons) had an interest in which could only be defeated by the spouse's death prior to the end of her 35-year interest in the QPRT. Accordingly, the court found that the QPRT's remainder persons (*i.e.*, the plaintiff's and his wife's children), as present beneficiaries, had a significant interest in the QPRT. Based on this premise, the court turned to the plain language of C.G.S. §12-498(a)(14) and noted that the statute only exempts deeds between spouses.² "Where a statute is clear on its face, we cannot expand upon the language of this statutory exemption to include a trust in which the spouse may or may not have a beneficial interest in the residence." Jones at *2 (citations omitted). Thus, the court found that the exemption from conveyance tax provided by C.G.S. §14-498(a)(14) did not apply to the plaintiff's transfer of the principal residence to the QPRT established for the benefit of his wife, because other persons had a remainder interest in the QPRT.

The plaintiff also made an alternative claim that he should be entitled to a partial refund of the conveyance tax. The plaintiff argued that at the time of the transfer of the 2nd Greenwich Property that the QPRT had a retention term of 32 years and 2 months, with the children as contingent remainder persons and, therefore, the valuation of his wife's interest in the 2nd Greenwich Property was 86.522%. See IRC §7520; Treas. Reg. §25-7520-1. As a result, the plaintiff argued that he should be entitled to a refund of 86.522% of the \$181,000 of conveyance tax. The court, in finding against the plaintiff on his alternative claim, noted again that the plain language of C.G.S. §12-478(a)(14) "leaves no

² The court did mention that several other states statutorily exempt from conveyance tax transfers by one spouse to a trust where the other spouse is the beneficial owner of the trust. See, e.g., Del. Code Ann. title 30 §5401(1)(j); Me. Rev. Stat. title 36 § 4641 C(15); 72 Pa. Consol. Stat. Ann. § 8102-C.3(8); Vt. Stat. Ann. title 32 §9603(5).

room to consider a portion of the transfer to the trust to be exempt.” Thus, the court found that the plaintiff’s transfer to the QPRT was not exempt from conveyance tax as it was not solely a conveyance between spouses.

Practical Considerations

The scope of the Jones is presently unclear. While, the Jones case involved the transfer of a personal residence to a QPRT established for the benefit of the transferor’s spouse, the rationale of this case may be applied by DRS or a court to the transfer of a personal residence to a transferor’s own QPRT. Specifically, following the logic of the Jones case, since a QPRT is by definition a split trust in that it has remainder person(s), the conveyance tax would therefore seem to apply to the transfer of a personal residence to the transferor’s own QPRT. Additionally, the exemption from conveyance tax provided by C.G.S. 12-498(17) for mere changes in identity or form of ownership would not seem to apply to a transfer to a QPRT due to the split interests created by a QPRT. Thus, persons contemplating the use of a QPRT as an estate planning tool should generally be aware of the Jones case and “stay tuned” for future developments.

Nothing in this Client Alert constitutes legal advice, which can only be obtained as a result of personal consultation with an attorney. The information published here is believed to be accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

For more information please contact:

Peter H. Gruen, Esq. – (203) 498-4357 or pgruen@wiggin.com

Jedd B. Vertman, Esq. – (203) 498-4344 or jvertman@wiggin.com