STATE OF VERMONT
COMMISSIONER OF TAXES

IN RE: [Taxpayer]
Personal Income Tax
ATC #15-66

DETERMINATION

Introduction

A hearing was held [Date], on the taxpayer's appeal of the Department's assessment of personal income tax. [Deleted]

[Deleted]

Findings of Fact

1. On [Date], Taxpayer purchased a parcel of 100 acres in the Town of [Town], Vermont, for [$], as shown on the Department record of the Property Transfer Tax Return (PTTR) for the transfer. State's Exhibit ("Ex.") 2.

2. On [Date], Taxpayer sold the parcel of 100 acres to [Buyer] for [$], as shown on the [Year 10] PTTR. State's Ex. 1. Taxpayer reported no gain from [Taxpayer's] sale of the 100 acres on [Taxpayer's] Federal or Vermont income tax returns.

3. The Department Examiner notified Taxpayer on [Date] that no gain from the property sale was reported on [Taxpayer's] Federal or State income tax returns, and asked for clarification. State's Ex. 4. Taxpayer responded that the transfer was a like-kind exchange, and no tax was due. *See* State's Ex. 5. The Examiner requested that Taxpayer submit a copy of the Federal Form 8824, documenting the like-kind (tax-deferred) exchange. State's Ex. 5. Taxpayer has never submitted a Form 8824 to the Department.

4. Based on the [Year 1] and [Year 10] PTTRs, the Department calculated Taxpayer's gain as [$]. On [Date] the Department issued Taxpayer an assessment for [$] income tax, [$] interest and [$] penalty. State's Ex. 15.

5. The [Year 10] Statewide Grand List printout for the property showed the property with the status "homestead," indicating that Taxpayer had declared it as his homestead, that is, [Taxpayer's] primary residence. State's Ex. 6. The [Year 10] Grand List printout shows the property as "[Property description]," including three acres of land. Id.

6. The Examiner concluded that the exchange could not have qualified under Federal law as "like-kind" because a primary residence is not eligible for like-kind exchange treatment. The Examiner wrote Taxpayer on [Date], again asking for supporting documentation of [Taxpayer's] like-kind exchange. State's Ex. 7. · Taxpayer did not submit supporting documentation of a like-kind exchange.

7. Taxpayer submitted a confusing variety of letters and documents purported to be related to [Taxpayer's] property transfer. State's Ex. 10, 11, 12, 13, 16.

8. Taxpayer also submitted to the Department a self-prepared amended Federal income tax return for [Year 10], dated [Date]. State's Ex. 14. Schedule D of this return shows the cost of [Taxpayer's] 100 acres as [$], the sale proceeds as [$], and a capital loss of [$]. Id.

9. On [Date], an attorney for Taxpayer submitted a "corrected Vermont Real Property transfer tax return, correcting the purchase price from [$] to [$]." State's Ex. 17. This PTTR showed Taxpayer's transfer of land to [Buyer] for [$]. The entire transfer was described as the sale of the land at [$], plus [$] cash from Taxpayer, for the [Property]. This meant that the gain on Taxpayer's transfer of [Taxpayer's] 100 acres was the [$] shown on the amended PTTR, minus the original acquisition cost shown on the [Year 1] PTTR of [$], or [$] gain.

10. The Department accepted the amended PTTR as the correct description of the transfer. The Department recalculated Taxpayer's capital gain as [$], and issued a revised assessment on [Date], for [$] in income tax, [$] interest, and [$] penalty. State's Ex. 18.

11. At the hearing, Taxpayer described the facts surrounding [Taxpayer's] property transfer. [Taxpayer] stated that the [Property] had been abandoned for two years and sold in foreclosure to [Purchaser] for [$]. [Taxpayer] also testified that the Department's calculation of [Taxpayer's] gross gain on the exchange was correct, at [$], but that [Taxpayer] had had expenses for [Taxpayer's] acquisition of the property and for improvements to it. [Taxpayer] described the [Property] [Taxpayer] acquired as "completely burnt, torn up, [and] abandoned for two years." [Taxpayer] described various expenses for improvements to property, including costs for deed revisions, excavations, and "fees for restoring the waterway." It was not clear whether these expenses were for improvements to the 100 acres, to the [Property] or to both. [Taxpayer] had no receipts for [Taxpayer's] expenses.

Discussion and Conclusions of Law

The Department has accepted Taxpayer's revised property transfer tax return, showing that [Taxpayer] transferred [Taxpayer's] 100 acres for [$]. Taxpayer described this at the hearing as [Taxpayer's] transfer of the 100 acres plus [$] cash to [Purchaser] for a [Property] plus three acres.

The Department used the [$] sale price on the amended PTTR, and subtracted the [$] acquisition cost on the [Year 1] PTTR, to calculate taxable gain at [$]. The resulting assessment was for [$] in income tax, plus interest and penalty.

Taxpayer did not produce evidence that [Taxpayer's] transfer of [Taxpayer's] 100 acres qualified for like-kind exchange treatment under Federal income tax law.

Taxpayer testified that [Taxpayer] had various expenses for improvements to property. [Taxpayer's] amended [Year 10] Federal tax return was signed in [Month] of [Year 12], and there was no evidence that this return was actually filed. In that return, [Taxpayer] showed a basis of [$] in [Taxpayer's] 100 acres, which presumably included the expenses [Taxpayer] referred to in [Taxpayer's] testimony. Although Taxpayer producedno receipts to document these expenses, [Taxpayer] is given the benefit of the doubt. The basis shown on [Taxpayer's] amended Federal return would reduce [Taxpayer's] gain on the transfer by [$], that is, from [$] to [$].

The Department will recalculate Taxpayer's income tax assessment based on capital gain of [$], taking into account any available capital gain exclusion, and issue a new assessment on that basis.

Dated this [redacted], at Montpelier, County of Washington, State of Vermont.

State of Vermont
Department of Taxes

Bergquist
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APPROVED BY:

Date: