

WAC 458-61A-202 Inheritance or devise. (1) **Introduction.** Transfers of real property through a devise by will or inheritance are not subject to the real estate excise tax. For the purpose of this exemption, it does not matter whether the real property transferred was encumbered by underlying debt at the time it was inherited or devised.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) "Heir" means a person, including the surviving spouse or surviving domestic partner, who is entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate;

(b) "Lack of probate affidavit" means a signed and notarized document declaring that the affiant or affiants are the rightful heir or heirs to the property and containing the following information:

(i) The names of the affiant or affiants;

(ii) The relationship of the affiant or affiants to the decedent;

(iii) The names of all other heirs of the decedent living at the time of the decedent's death;

(iv) A description of the real property;

(v) Whether the decedent left a will that includes a devise of real property; and

(vi) Any other information the department may require.

(c) "Nonpro rata distribution" is a distribution in which the transfer of real property to the heirs or devisees may not be in proportion to their interests.

(3) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(4) **Nonpro rata distributions.** A nonpro rata distribution made by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if:

(a) The transfer is authorized under the nonintervention powers of a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15); and

(b) If no consideration is given to the personal representative or the trustee for the transfer.

For the purpose of this rule, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.

(c) **Example 1.** Aunt Mary wills her entire estate equally to her three nieces, Meg, Beth, and Jo. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo.

(5) **Subsequent transfers.** A transfer of property from an heir to a third party is subject to the real estate excise tax.

(a) **Example 2.** Steve inherits real property from his mother's estate. He sells the property to his son for \$50,000. The transfer of the property from the estate to Steve is exempt from real estate excise tax. The subsequent sale of the property to his son is a taxable event, and real estate excise tax is due based upon the full sales price of \$50,000.

(b) **Example 3.** Susan inherits real property from her father's estate. She decides to sell it to a friend on a real estate contract for \$100,000. Real estate excise tax is due on the \$100,000.

(c) **Example 4.** Sheri and her two sisters inherit their father's home, valued at \$180,000, in equal portions. Sheri wants sole ownership of the home, but there are not "in-kind" assets of sufficient value to be distributed by the personal representative to her two sisters in a nonpro rata distribution. In order to take title directly from the personal representative, Sheri pays each of her sisters \$60,000, and they quitclaim their right to the property under the will. Real estate excise tax is due on the total of \$120,000 paid for the property.

(6) **Exemptions and required documentation.** A transfer of real property through a devise by will or inheritance is exempt from the real estate excise tax for the following types of transfers. Refer to WAC 458-61A-303 (Affidavit) to determine if a real estate excise tax affidavit is required to document the exempt transfers. Additional documentation may be required to substantiate each exemption, and must be provided to the county treasurer of the county in which the real property is located and recorded with the county auditor:

(a) **Community property agreement or right of survivorship.** If the transfer of real property to a surviving spouse or surviving domestic partner is in accordance with a community property agreement or right of survivorship clause, copies of the recorded agreement and a certified copy of the death certificate are required.

(b) **Joint tenants with rights of survivorship and remainder interests.** If real property is transferred upon the death of a joint tenant to the remaining joint tenants under right of survivorship, a certified copy of the death certificate is required.

(c) **Life estates and remainder interests.** The transfer of a life estate to the grantor with a remainder interest to another party is not a taxable transfer if no consideration passes.

Example 5. Nate and Libby convey their property to their son, Rex, and retain a life estate. The transaction is not subject to real estate excise tax because Rex pays no consideration. Upon the deaths of Nate and Libby, the title will vest in Rex and no real estate excise tax is due. However, if Nate and Libby convey their property to Rex, while retaining a life estate, and Rex pays any consideration for his future interest, the transaction is taxable. Real estate excise tax is due on the total consideration paid.

(d) **Transfer on death deeds.** If the transfer of real property is pursuant to a previously recorded transfer on death deed, upon the death of the transferor to the beneficiary(ies) named in the transfer on death deed, a certified copy of the death certificate is required. However, if the transfer of real property pursuant to a transfer on death deed satisfies a contractual obligation of the transferor owed to the beneficiary(ies) designated in the transfer on death deed, real estate excise tax is due on the transfer.

(e) **Trusts.** If real property is transferred under the terms of a trust instrument, a certified copy of the death certificate and a copy of that portion of the trust instrument showing the authority of the grantor are required. For additional information on the application of real estate excise tax to transfers of real property under the terms of a trust, see WAC 458-61A-210 (Irrevocable trusts) and WAC 458-61A-211 (Mere change in identity or form—Family corporations and partnerships).

(f) **Probate.** For real property transferred under a probated will, a certified copy of the letters testamentary, or in the case of intestate administration, a certified copy of the letters of administration, showing that the grantor is the court appointed executor/executrix or administrator is required.

(g) **Court order.** If real property is transferred pursuant to a court order, a certified copy of the court order requiring the transfer of property and confirming that the grantor is required to do so under the terms of the order is required.

(h) **Community property interest.** If the community property interest of the decedent is transferred to a surviving spouse or surviving domestic partner absent the documentation described in (a), (b), (e), (f), or (g) of this subsection, a certified copy of the death certificate and a signed lack of probate affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir to the property are required. Refer to the department's website at dor.wa.gov for an example of the lack of probate affidavit that may be used.

(i) **Nonprobated will or operation of law.** If the property is transferred to one or more heirs by operation of law, or transferred under a will that has not been probated, but absent the documentation described in (a), (b), (e), (f), or (g) of this subsection, a certified copy of the death certificate and a signed lack of probate affidavit affirming that the affiant or affiants are the sole and rightful heirs to the property are required. When the property is transferred and the decedent-transferor also inherited the property from his or her spouse or domestic partner, but never transferred title to the property into the decedent-transferor's name, the transferee(s) must provide:

(i) A certified copy of the death certificate for the decedent-transferor;

(ii) A certified copy of the death certificate for the spouse or domestic partner from whom the decedent-transferor inherited the real property; and

(iii) A lack of probate affidavit affirming that the affiant or affiants are the rightful heirs to the property.

[Statutory Authority: RCW 82.45.150 and 82.01.060(2). WSR 17-04-042, § 458-61A-202, filed 1/25/17, effective 2/25/17. Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060(2). WSR 15-02-018, § 458-61A-202, filed 12/29/14, effective 1/29/15. Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060. WSR 14-06-060, § 458-61A-202, filed 2/28/14, effective 3/31/14. Statutory Authority: 2009 c 521. WSR 10-09-050, § 458-61A-202, filed 4/15/10, effective 5/16/10. Statutory Authority: RCW 82.45.150. WSR 08-24-095, § 458-61A-202, filed 12/2/08, effective 1/2/09. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. WSR 05-23-093, § 458-61A-202, filed 11/16/05, effective 12/17/05.]