

WAC 458-61A-214 Nominee. (1) **Introduction.** This rule describes the application of the real estate excise tax in transfers involving a nominee. A "nominee" is a person who acts as an agent on behalf of another person in the purchase of real property.

(a) This rule includes examples that identify a set of facts and then state a conclusion. These examples are only a general guide. The department of revenue (department) will evaluate each case on its particular facts and circumstances.

(b) In addition to this rule, readers may want to refer to WAC 458-61A-213 IRS "tax deferred" exchange.

(2) **Initial acquisition.** The initial acquisition of property by a nominee on behalf of a third-party purchaser (third party) is subject to the real estate excise tax.

(3) **Subsequent transfer.** The subsequent transfer of the property by the nominee to the third-party purchaser is subject to real estate excise tax, unless all of the following requirements are met indicating the transaction is not a sale as defined in RCW 82.45.010 (nominee exclusion):

(a) The proper tax was paid on the initial purchase of the property by the nominee;

(b) The funds used by the nominee to acquire the property were provided by the third party;

(c) The agreement between the nominee and the third party existed at the time of the initial acquisition of the real property by the nominee;

(d) In cases where the third party is a corporation, partnership, association, trust or other entity, the third party legally existed at the time of the initial acquisition of the real property by the nominee; and

(e)(i) The subsequent transfer from the nominee to the third party is not for a greater consideration than that of the initial acquisition and the nominee does not receive any consideration in exchange for acting as an agent of the third party; or

(ii) In the case where the nominee is a licensed contractor and the subsequent transfer to the third party reflects the completed construction contract, the retail sales tax is collected on the construction contract and remitted to the department. See also WAC 458-61A-104 Assignments.

(4) **Proof of payment.** If the nominee is a licensed contractor transferring to the third party at the completion of a construction contract, proof of the payment to the department of retail sales tax on the construction contract must be attached to the affidavit.

Example 1. Bill contracted with ABC Construction (ABC) to build a home for him on an unimproved parcel of real property ABC will acquire. ABC purchases the parcel of real property from Kevin, an unrelated individual, using funds provided entirely by Bill. Real estate excise tax is paid on the sale from Kevin to ABC. ABC builds the home and collects retail sales tax from Bill on the total construction contract, which is then remitted to the department. ABC files a real estate excise tax affidavit with the county, together with proof that retail sales tax has been paid. Bill pays the full price for the new home and the parcel of land it was built upon. The transfer of real property, including the home and the parcel of land it was built upon, from ABC to Bill is exempt from real estate excise tax, as ABC acted as a nominee on behalf of Bill.

(5) **Documentation.** Parties to a nominee arrangement must provide documentation that they have met all the requirements necessary to

claim the nominee exclusion. Acceptable documentation includes a notarized statement, dated on or before the date of the initial purchase, that the nominee acquired the property on behalf of the third party, or other documentation clearly demonstrating the requirements of subsection (3) of this section have been satisfied. Such documentation may include, but is not limited to, financial documentation evidencing the nominee/third-party relationship existed from the time of the original transfer, and confirming the source of the funds used to purchase the property.

Example 2. Diana finds a home to buy in Tacoma. However, Diana, a member of the military, is called to active duty outside of the country. Before deploying, Diana provides the funds necessary to purchase the home, including the down payment, earnest money, and closing costs, to a friend, Brent, who agrees to act as a nominee on behalf of Diana. Brent finalizes the purchase of the home and takes title in his name. REET is paid on this initial acquisition of the real property. When Diana returns from overseas, Brent transfers the home to Diana. Diana does not provide Brent any consideration for the services provided. This transfer meets the nominee exclusion requirements because:

- Real estate excise tax was paid on the initial transaction (acquisition of the real property by Brent, the nominee);
- The funds used by Brent, as the nominee, to acquire the real property were provided entirely by Diana, the third party;
- The agreement between Brent, as the nominee, and Diana, the third party, existed at the time of the initial acquisition of the real property by Brent; and
- The subsequent transfer of the real property from Brent to Diana was not for a greater consideration than that of the initial acquisition.

(6) **Prior affidavit.** The real estate excise tax affidavit reflecting the claim that the transfer is excluded from the definition of a sale of real property must show the prior real estate excise tax affidavit for the nominee's initial acquisition, including the real estate excise tax affidavit receipt and date of the tax payment.

[Statutory Authority: RCW 82.04.060(2) and 82.45.150. WSR 22-07-070, § 458-61A-214, filed 3/18/22, effective 4/18/22. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. WSR 05-23-093, § 458-61A-214, filed 11/16/05, effective 12/17/05.]