H-3776.1

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**HOUSE BILL 2875**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives McBride, Jinkins, Muri, Fey, Ryu, Kilduff, Sawyer, McDonald, Tharinger, Barkis, Stambaugh, Wilcox, Wylie, Kirby, Ortiz-Self, Clibborn, and Chapman

AN ACT Relating to sales, use, and excise tax exemptions for self-help housing development; amending RCW 82.45.010; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to charges made for labor and services rendered by any affordable homeownership facilitator in respect to the constructing, repairing, decorating, or improving of new or existing self-help housing, or to sales of tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the self-help housing. The exemption under this section is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

(2) The exemption provided in this section for self-help housing only applies if the housing is built to the current building code for single-family dwellings according to the state building code, chapter 19.27 RCW.

(3) Any self-help housing built under this section must be used according to this section for at least five consecutive years from the date the housing is approved for occupancy, or the full amount of tax otherwise due is immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment. If at any time self-help housing ceases to be the primary dwelling of the initial low-income purchaser, the full amount of tax otherwise due is immediately due and payable with interest, but not penalties, from the date the housing ceases to be used as self-help housing until the date of payment.

(4) The exemption provided in this section does not apply to housing built for the occupancy of an employee, family member of an employee, or person on the board of trustees or directors, of an affordable homeownership facilitator.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Affordable homeownership facilitator" means a nonprofit community or neighborhood-based organization that is exempt from federal income tax under Title 26 U.S.C. Sec. 50l(c) of the internal revenue code of 1986, as amended, as of the effective date of this section that acts as a developer of self-help housing;

(b) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median family income adjusted for family size, for the county in which the property is located, as reported by the United States department of housing and urban development; and

(c) "Self-help housing" means dwelling residences provided for ownership by low-income individuals and families whose equity in the housing is substantially derived from their labor. "Self-help housing" does not include residential rental housing provided on a commercial basis to the general public.

NEW SECTION. **Sec.**  A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply in respect of the use of tangible personal property that becomes an ingredient or component of buildings or structures used as self-help housing by any affordable homeownership facilitator during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person.

(2) The exemption provided in this section for self-help housing only applies if the housing is built to the current building code for single-family dwellings according to the state building code in chapter 19.27 RCW.

(3) Any self-help housing built under this section must be used as the primary dwelling of the initial low-income purchaser for at least five consecutive years from the date the housing is approved for occupancy.

(4) The exemption provided in this section does not apply to housing built for the occupancy of an employee, family member of an employee, or person on the board of trustees or directors, of an affordable homeownership facilitator.

(5) The definitions in section 1 of this act apply to this section.

**Sec.**  RCW 82.45.010 and 2014 c 58 s 24 are each amended to read as follows:

(1) As used in this chapter, the term "sale" has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2)(a) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.

(b) For the sole purpose of determining whether, pursuant to the exercise of an option, a controlling interest was transferred or acquired within a twelve-month period, the date that the option agreement was executed is the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this chapter, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

(c) For purposes of this subsection, all acquisitions of persons acting in concert must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department must adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department must consider the following:

(i) Persons must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(ii) When persons are not commonly owned or controlled, they must be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions are considered separate acquisitions.

(3) The term "sale" does not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer by transfer on death deed, to the extent that it is not in satisfaction of a contractual obligation of the decedent owed to the recipient of the property.

(c) A transfer of any leasehold interest other than of the type mentioned above.

(d) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(e) The partition of property by tenants in common by agreement or as the result of a court decree.

(f) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

(g) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(h) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(i) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(j) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(k) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration.

(l) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(m) The sale of any grave or lot in an established cemetery.

(n) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(o) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

(p) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

(q)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal revenue code of 1986, as amended.

(ii) However, the transfer described in (q)(i) of this subsection cannot be preceded or followed within a twelve-month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (q)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3) (q)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(q)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(r) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after June 12, 2008, but before December 31, 2018.

(s) The sale by an affordable homeownership facilitator of self-help housing to a low-income household. The definitions in section 1 of this act apply to this subsection (3)(s).

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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