

SHB 2448 - S COMM AMD
By Committee on Ways & Means

ADOPTED 03/07/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** The legislature finds that there is need
4 to expand housing opportunities for persons with developmental
5 disabilities. The legislature finds it is often preferable for
6 persons with developmental disabilities to remain residing in their
7 home, when it is safe and appropriate, to foster ongoing stability.
8 The legislature recognizes that securing a child's future housing and
9 services provides the parents of persons with developmental
10 disabilities peace of mind. The legislature further finds that
11 providing a new mechanism for the transfer of residential property
12 into housing for persons with developmental disabilities expands the
13 state's housing capacity and helps meet demand. The legislature
14 further finds that utilizing existing residential property will
15 reduce the demands on the housing trust fund. The legislature finds
16 that there is an opportunity and need, for advocates and the
17 supporters of the developmental disabilities community to work
18 together, to develop model transfer agreements that will provide
19 peace of mind and assist parents of children with developmental
20 disabilities more readily access this program.

21 NEW SECTION. **Sec. 2.** (1) This section is the tax preference
22 performance statement for the tax preference contained in section 3,
23 chapter . . . , Laws of 2018 (section 3 of this act). This performance
24 statement is only intended to be used for subsequent evaluation of
25 the tax preference. It is not intended to create a private right of
26 action by any party or to be used to determine eligibility for
27 preferential tax treatment.

28 (2) The legislature categorizes this tax preference as one
29 intended to induce certain designated behavior by taxpayers, as
30 indicated in RCW 82.32.808(2)(a).

1 (3) It is the legislature's specific public policy objective to
2 reduce the tax burden on individuals and businesses imposed by the
3 existing real estate excise tax rates.

4 (4) If a review finds that there is an increase of residential
5 property transfers by parents of a person with developmental
6 disabilities to a qualified entity as a result of the relief from
7 this tax preference, then the legislature intends to extend the
8 expiration date of this tax preference.

9 (5) In order to obtain the data necessary to perform the review
10 in subsection (4) of this section, the joint legislative audit and
11 review committee may refer to any data collected by the state.

12 **Sec. 3.** RCW 82.45.010 and 2014 c 58 s 24 are each amended to
13 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (o) A sale to a regional transit authority or public corporation
22 under RCW 81.112.320 under a sale/leaseback agreement under RCW
23 81.112.300.

24 (p) A transfer of real property, however effected, if it consists
25 of a mere change in identity or form of ownership of an entity where
26 there is no change in the beneficial ownership. These include
27 transfers to a corporation or partnership which is wholly owned by
28 the transferor and/or the transferor's spouse or domestic partner or
29 children of the transferor or the transferor's spouse or domestic
30 partner. However, if thereafter such transferee corporation or
31 partnership voluntarily transfers such real property, or such
32 transferor, spouse or domestic partner, or children of the transferor
33 or the transferor's spouse or domestic partner voluntarily transfer
34 stock in the transferee corporation or interest in the transferee
35 partnership capital, as the case may be, to other than (i) the
36 transferor and/or the transferor's spouse or domestic partner or
37 children of the transferor or the transferor's spouse or domestic
38 partner, (ii) a trust having the transferor and/or the transferor's
39 spouse or domestic partner or children of the transferor or the
40 transferor's spouse or domestic partner as the only beneficiaries at

1 the time of the transfer to the trust, or (iii) a corporation or
2 partnership wholly owned by the original transferor and/or the
3 transferor's spouse or domestic partner or children of the transferor
4 or the transferor's spouse or domestic partner, within three years of
5 the original transfer to which this exemption applies, and the tax on
6 the subsequent transfer has not been paid within sixty days of
7 becoming due, excise taxes become due and payable on the original
8 transfer as otherwise provided by law.

9 (q)(i) A transfer that for federal income tax purposes does not
10 involve the recognition of gain or loss for entity formation,
11 liquidation or dissolution, and reorganization, including but not
12 limited to nonrecognition of gain or loss because of application of
13 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
14 revenue code of 1986, as amended.

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

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

36 (s)(i) A qualified transfer of residential property by a legal
37 representative of a person with developmental disabilities to a
38 qualified entity subject to the following conditions:

39 (A) The adult child with developmental disabilities of the
40 transferor of the residential property must be allowed to reside in

1 the residence or successor property so long as the placement is safe
2 and appropriate as determined by the department of social and health
3 services;

4 (B) The title to the residential property is conveyed without the
5 receipt of consideration by the legal representative of a person with
6 developmental disabilities to a qualified entity;

7 (C) The residential property must have no more than four living
8 units located on it; and

9 (D) The residential property transferred must remain in continued
10 use for fifty years by the qualified entity as supported living for
11 persons with developmental disabilities by the qualified entity or
12 successor entity. If the qualified entity sells or otherwise conveys
13 ownership of the residential property the proceeds of the sale or
14 conveyance must be used to acquire similar residential property and
15 such similar residential property must be considered the successor
16 for continued use. The property will not be considered in continued
17 use if the department of social and health services finds that the
18 property has failed, after a reasonable time to remedy, to meet any
19 health and safety statutory or regulatory requirements. If the
20 department of social and health services determines that the property
21 fails to meet the requirements for continued use, the department of
22 social and health services must notify the department and the real
23 estate excise tax based on the value of the property at the time of
24 the transfer into use as residential property for persons with
25 developmental disabilities becomes immediately due and payable by the
26 qualified entity. The tax due is not subject to penalties, fees, or
27 interest under this title.

28 (ii) For the purposes of this subsection (3)(s) the definitions
29 in RCW 71A.10.020 apply.

30 (iii) A "qualified entity" is:

31 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)
32 of the federal internal revenue code of 1986, as amended, as of the
33 effective date of this section, or a subsidiary under the same
34 taxpayer identification number that provides residential supported
35 living for persons with developmental disabilities; or

36 (B) A nonprofit adult family home, as defined in RCW 70.128.010,
37 that exclusively serves persons with developmental disabilities.

38 (iv) In order to receive an exemption under this subsection
39 (3)(s) an affidavit must be submitted by the transferor of the

1 residential property and must include a copy of the transfer
2 agreement and any other documentation as required by the department.

3 **Sec. 4.** RCW 43.185.050 and 2017 3rd sp.s. c 12 s 13 are each
4 amended to read as follows:

5 (1) The department must use moneys from the housing trust fund
6 and other legislative appropriations to finance in whole or in part
7 any loans or grant projects that will provide housing for persons and
8 families with special housing needs and with incomes at or below
9 fifty percent of the median family income for the county or standard
10 metropolitan statistical area where the project is located. At least
11 thirty percent of these moneys used in any given funding cycle
12 (~~shall~~) must be for the benefit of projects located in rural areas
13 of the state as defined by the department. If the department
14 determines that it has not received an adequate number of suitable
15 applications for rural projects during any given funding cycle, the
16 department may allocate unused moneys for projects in nonrural areas
17 of the state.

18 (2) Activities eligible for assistance from the housing trust
19 fund and other legislative appropriations include, but are not
20 limited to:

21 (a) New construction, rehabilitation, or acquisition of low and
22 very low-income housing units;

23 (b) Rent subsidies;

24 (c) Matching funds for social services directly related to
25 providing housing for special-need tenants in assisted projects;

26 (d) Technical assistance, design and finance services and
27 consultation, and administrative costs for eligible nonprofit
28 community or neighborhood-based organizations;

29 (e) Administrative costs for housing assistance groups or
30 organizations when such grant or loan will substantially increase the
31 recipient's access to housing funds other than those available under
32 this chapter;

33 (f) Shelters and related services for the homeless, including
34 emergency shelters and overnight youth shelters;

35 (g) Mortgage subsidies, including temporary rental and mortgage
36 payment subsidies to prevent homelessness;

37 (h) Mortgage insurance guarantee or payments for eligible
38 projects;

1 (i) Down payment or closing cost assistance for eligible first-
2 time home buyers;

3 (j) Acquisition of housing units for the purpose of preservation
4 as low-income or very low-income housing; (~~and~~)

5 (k) Projects making housing more accessible to families with
6 members who have disabilities; and

7 (l) Remodeling and improvements as required to meet building
8 code, licensing requirements, or legal operations to residential
9 properties owned and operated by an entity eligible under RCW
10 43.185A.040, which were transferred as described in RCW
11 82.45.010(3)(s) by the parent of a child with developmental
12 disabilities.

13 (3) Preference (~~shall~~) must be given for projects that include
14 an early learning facility.

15 (4) Legislative appropriations from capital bond proceeds may be
16 used only for the costs of projects authorized under subsection
17 (2)(a), (i), and (j) of this section, and not for the administrative
18 costs of the department.

19 (5) Moneys from repayment of loans from appropriations from
20 capital bond proceeds may be used for all activities necessary for
21 the proper functioning of the housing assistance program except for
22 activities authorized under subsection (2)(b) and (c) of this
23 section.

24 (6) Administrative costs associated with application,
25 distribution, and project development activities of the department
26 may not exceed three percent of the annual funds available for the
27 housing assistance program. Reappropriations must not be included in
28 the calculation of the annual funds available for determining the
29 administrative costs.

30 (7) Administrative costs associated with compliance and
31 monitoring activities of the department may not exceed one-quarter of
32 one percent annually of the contracted amount of state investment in
33 the housing assistance program."

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1 On page 1, line 2 of the title, after "persons;" strike the
2 remainder of the title and insert "amending RCW 82.45.010 and
3 43.185.050; and creating new sections."

EFFECT: Removes the requirement that the adult child must retain
a life estate in the residence to qualify for the REET exemption.

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