

CERTIFICATION OF ENROLLMENT

**ENGROSSED HOUSE BILL 2444**

Chapter 221, Laws of 2018

65th Legislature  
2018 Regular Session

LOW-INCOME HOUSING DEVELOPMENT--REAL ESTATE EXCISE TAX EXEMPTION

EFFECTIVE DATE: July 1, 2018

Passed by the House March 8, 2018  
Yeas 98 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Passed by the Senate March 8, 2018  
Yeas 48 Nays 1

CYRUS HABIB

**President of the Senate**

Approved March 22, 2018 4:10 PM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2444** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

**Chief Clerk**

FILED

March 26, 2018

**Secretary of State  
State of Washington**

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ENGROSSED HOUSE BILL 2444

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AS AMENDED BY THE SENATE

Passed Legislature - 2018 Regular Session

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

**By** Representatives Slatter, Robinson, McBride, Clibborn, Appleton, Tharinger, Kloba, Doglio, and Tarleton

Read first time 01/09/18. Referred to Committee on Finance.

1            AN ACT Relating to providing a real estate excise tax exemption  
2 for certain transfers of low-income housing; amending RCW 82.45.010;  
3 creating a new section; and providing an effective date.

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

5            **Sec. 1.** RCW 82.45.010 and 2014 c 58 s 24 are each amended to  
6 read as follows:

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

20            (2)(a) The term "sale" also includes the transfer or acquisition  
21 within any twelve-month period of a controlling interest in any

1 entity with an interest in real property located in this state for a  
2 valuable consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (o) A sale to a regional transit authority or public corporation  
30 under RCW 81.112.320 under a sale/leaseback agreement under RCW  
31 81.112.300.

32 (p) A transfer of real property, however effected, if it consists  
33 of a mere change in identity or form of ownership of an entity where  
34 there is no change in the beneficial ownership. These include  
35 transfers to a corporation or partnership which is wholly owned by  
36 the 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. However, if thereafter such transferee corporation or  
39 partnership voluntarily transfers such real property, or such  
40 transferor, spouse or domestic partner, or children of the transferor

1 or the transferor's spouse or domestic partner voluntarily transfer  
2 stock in the transferee corporation or interest in the transferee  
3 partnership capital, as the case may be, to other than (i) the  
4 transferor and/or the transferor's spouse or domestic partner or  
5 children of the transferor or the transferor's spouse or domestic  
6 partner, (ii) a trust having the transferor and/or the transferor's  
7 spouse or domestic partner or children of the transferor or the  
8 transferor's spouse or domestic partner as the only beneficiaries at  
9 the time of the transfer to the trust, or (iii) a corporation or  
10 partnership wholly owned by the original transferor and/or the  
11 transferor's spouse or domestic partner or children of the transferor  
12 or the transferor's spouse or domestic partner, within three years of  
13 the original transfer to which this exemption applies, and the tax on  
14 the subsequent transfer has not been paid within sixty days of  
15 becoming due, excise taxes become due and payable on the original  
16 transfer as otherwise provided by law.

17 (q)(i) A transfer that for federal income tax purposes does not  
18 involve the recognition of gain or loss for entity formation,  
19 liquidation or dissolution, and reorganization, including but not  
20 limited to nonrecognition of gain or loss because of application of  
21 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal  
22 revenue code of 1986, as amended.

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

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

4 (s)(i) A transfer of a qualified low-income housing development  
5 or controlling interest in a qualified low-income housing  
6 development, unless, due to noncompliance with federal statutory  
7 requirements, the seller is subject to recapture, in whole or in  
8 part, of its allocated federal low-income housing tax credits within  
9 the four years prior to the date of transfer.

10 (ii) For purposes of this subsection (3)(s), "qualified low-  
11 income housing development" means real property and improvements in  
12 respect to which the seller or, in the case of a transfer of a  
13 controlling interest, the owner or beneficial owner, was allocated  
14 federal low-income housing tax credits authorized under 26 U.S.C.  
15 Sec. 42 or successor statute, by the Washington state housing finance  
16 commission or successor state-authorized tax credit allocating  
17 agency.

18 (iii) This subsection (3)(s) does not apply to transfers of a  
19 qualified low-income housing development or controlling interest in a  
20 qualified low-income housing development occurring on or after July  
21 1, 2035.

22 (iv) The Washington state housing finance commission, in  
23 consultation with the department, must gather data on: (A) The fiscal  
24 savings, if any, accruing to transferees as a result of the exemption  
25 provided in this subsection (3)(s); (B) the extent to which  
26 transferors of qualified low-income housing developments receive  
27 consideration, including any assumption of debt, as part of a  
28 transfer subject to the exemption provided in this subsection (3)(s);  
29 and (C) the continued use of the property for low-income housing. The  
30 Washington state housing finance commission must provide this  
31 information to the joint legislative audit and review committee. The  
32 committee must conduct a review of the tax preference created under  
33 this subsection (3)(s) in calendar year 2033, as required under  
34 chapter 43.136 RCW.

35 NEW SECTION. Sec. 2. This act applies with respect to transfers  
36 occurring before, on, or after the effective date of this section.  
37 However, this act may not be construed by the department of revenue,  
38 state board of tax appeals, or any court as authorizing the refund of  
39 any tax liability imposed or authorized under chapter 82.45 or 82.46

1 RCW and properly paid before the effective date of section 1 of this  
2 act with respect to a transfer of qualified low-income housing as  
3 defined in RCW 82.45.010(3)(s).

4 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2018.

Passed by the House March 8, 2018.

Passed by the Senate March 8, 2018.

Approved by the Governor March 22, 2018.

Filed in Office of Secretary of State March 26, 2018.

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