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**SUBSTITUTE SENATE BILL 5998**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Nguyen, Lovelett, Hasegawa, Salomon, and Hunt)

AN ACT Relating to establishing a graduated real estate excise tax; amending RCW 82.45.060, 82.45.033, 43.07.390, and 82.45.220; reenacting and amending RCW 82.45.010; adding new sections to chapter 82.45 RCW; creating a new section; and providing an effective date.

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

**Sec.**  RCW 82.45.060 and 2017 3rd sp.s. c 10 s 13 are each amended to read as follows:

(1) There is imposed an excise tax upon each sale of real property ((~~at the rate of one and twenty-eight one-hundredths percent of the selling price. Beginning July 1, 2013, and ending June 30, 2023,~~)). Through December 31, 2019, the rate of this tax is one and twenty-eight one-hundredths percent of the selling price. Beginning January 1, 2020, the tax under this section is computed based on the selling price, or portion thereof, multiplied by the applicable rate or rates provided in subsection (3) of this section.

(2)(a) Beginning July 1, 2013, through December 31, 2019, the proceeds of the tax under this section must be deposited as follows:

(i) An amount equal to two percent of the proceeds of this tax must be deposited in the public works assistance account created in RCW 43.155.050((~~, and~~));

(ii) An amount equal to four and one-tenth percent must be deposited in the education legacy trust account created in RCW 83.100.230((~~. Thereafter, an amount equal to six and one-tenth percent of the proceeds of this tax to the state treasurer must be deposited in the public works assistance account created in RCW 43.155.050. Except as otherwise provided in this section,~~));

(iii) An amount equal to one and six-tenths percent of the proceeds of this tax to the state treasurer must be deposited in the city-county assistance account created in RCW 43.08.290; and

(iv) The remainder of this tax must be deposited in the general fund.

(b) Beginning January 1, 2020, the proceeds of the tax imposed in this section must be deposited as provided in section 2 of this act.

(3) Beginning January 1, 2020, the rate of the tax imposed under this section is as follows:

(a) For the sale of real property that is classified as undeveloped land, timberland, agricultural land, or water or mineral rights, one and twenty-eight one-hundredths percent of the selling price.

(b) For the sale of real property with any classification other than those provided in (a) of this subsection:

(i) If the selling price is equal to or less than four hundred fifty thousand dollars, one percent of the selling price;

(ii) If the selling price is greater than four hundred fifty thousand dollars:

(A) One and one-half percent of any portion of the selling price that is greater than four hundred fifty thousand dollars and equal to or less than nine hundred thousand dollars;

(B) Two percent of any portion of the selling price that is greater than nine hundred thousand dollars and equal to or less than one million eight hundred thousand dollars;

(C) Two and one-half percent of any portion of the selling price that is greater than one million eight hundred thousand dollars and equal to or less than three million six hundred thousand dollars; and

(D) Three percent of any portion of the selling price that is greater than three million six hundred thousand dollars.

(4) Beginning July 1, 2022, and every fourth year thereafter:

(a) The department must adjust the selling price threshold in subsection (3)(b)(i) of this section to reflect the lesser of the growth of the consumer price index for shelter or five percent. If the growth is equal to or less than zero percent, the current selling price threshold continues to apply.

(b) The department must adjust the selling price thresholds in subsection (3)(b)(ii)(A) through (C) of this section by the dollar amount of the selling price threshold in subsection (3)(b)(i) of this section if increased under (a) of this subsection (4).

(c) The department must publish updated selling price thresholds by September 1, 2022, and September 1st of every fourth year thereafter. Updated selling price thresholds will apply beginning January 1st of every fourth year, beginning January 1, 2023. Adjusted selling price thresholds must be rounded to the nearest one thousand dollars. No changes may be made to adjusted selling price thresholds once such adjustments take effect.

(d) The most recent selling price threshold becomes the base for subsequent adjustments.

(e) The department must report the updated selling price thresholds to the fiscal committees of the legislature within six months of publication.

(5)(a) The department must publish guidance to assist sellers in properly classifying real property on the real estate excise tax affidavit for purposes of determining the proper amount of tax due under this section. Real property with multiple uses must be classified according to the property's predominant use. The department's guidance must include factors for use in determining the predominant use of real property.

(b) County treasurers are not responsible for verifying that the seller has properly classified real property reported on a real estate excise tax affidavit. The department is solely responsible for such verification as part of its audit responsibilities under RCW 82.45.150.

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

(a) "Agricultural land" means farm and agricultural land and farm and agricultural conservation land, as those terms are defined in RCW 84.34.020, including any structures on such land.

(b) "Consumer price index for shelter" means the most current seasonally adjusted index for the shelter expenditure category of the consumer price index for all urban consumers (CPI-U) as published by July 31st by the bureau of labor statistics of the United States department of labor.

(c) "Development" means any improvement, alteration, modification, maintenance, or use of land that requires a permit or approval from a state or local government permitting authority including, but not limited to, a building permit, grading permit, shoreline substantial development permit, conditional use permit, special use permit, zoning variance or reclassification, subdivision, short subdivision, urban planned development, binding site plan, site development permit, right-of-way use permit, or hydraulic project approval.

(d) "Growth of the consumer price index for shelter" means the percentage increase in the consumer price index for shelter as measured from data published by the bureau of labor statistics of the United States department of labor by July 31st for the most recent three-year period for the selling price threshold adjustment in 2022, and the most recent four-year period for subsequent selling price threshold adjustments.

(e) "Impervious surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions before development or that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions before development. "Impervious surface" includes, but is not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, areas that are paved, graveled, or made of packed or oiled earthen materials, or other surfaces that similarly impede the natural infiltration of surface water or stormwater. "Impervious surfaces" include areas covered with any type of permeable pavement, such as porous asphalt, pervious concrete, permeable interlocking concrete pavers, and other permeable pavers.

(f) "Open space land" means land classified as open space land under chapter 84.34 RCW, including any structures on such land.

(g) "Timberland" means land classified under chapter 84.34 RCW or designated under chapter 84.33 RCW, including any structures on such land, and standing timber sold apart from the land upon which it sits.

(h) "Undeveloped land" means any land unaltered from the natural state by the construction, creation, or addition of structures or impervious surfaces.

NEW SECTION. **Sec.**  A new section is added to chapter 82.45 RCW to read as follows:

(1)(a) By December 1st of each year, beginning January 1, 2020, the department must calculate:

(i) The proceeds of tax imposed pursuant to RCW 82.45.060 generated during the most recently completed fiscal year; and

(ii) The estimated amount of proceeds the tax imposed pursuant to RCW 82.45.060 would have generated during the most recently completed fiscal year, if the rate of this tax had been one and twenty-eight one-hundredths percent for all taxable transactions during the most recently completed fiscal year.

(b) By December 31st of each year, beginning January 1, 2020, the department must notify the state treasurer of the calculations under this subsection (1) and the proceeds of the tax imposed under RCW 82.45.060 must be distributed as provided in subsections (2) and (3) of this section.

(2) For the amount of proceeds equal to the amount calculated in subsection (1)(a)(ii) of this section, the funds must be distributed as follows:

(a) Beginning January 1, 2020, through June 30, 2023, an amount equal to:

(i) Two percent of the proceeds calculated in subsection (1)(a)(ii) of this section must be deposited in the public works assistance account created in RCW 43.155.050;

(ii) Four and one-tenth percent of the proceeds calculated in subsection (1)(a)(ii) of this section must be deposited in the education legacy trust account created in RCW 83.100.230; and

(iii) The remaining proceeds must be deposited in the general fund.

(b)(i) Beginning July 1, 2023, an amount equal to six and one-tenth percent of the proceeds calculated in subsection (1)(a)(ii) of this section must be deposited in the public works assistance account created in RCW 43.155.050; and

(ii) The remaining proceeds must be deposited in the general fund.

(3) The remaining proceeds that were not distributed in subsection (2) of this section must be deposited into the education legacy trust account created in RCW 83.100.230.

**Sec.**  RCW 82.45.010 and 2018 c 223 s 3 and 2018 c 221 s 1 are each reenacted and 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-~~)) thirty-six 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-~~)) thirty-six 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-~~)) thirty-six 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)(i) A transfer of a qualified low-income housing development or controlling interest in a qualified low-income housing development, unless, due to noncompliance with federal statutory requirements, the seller is subject to recapture, in whole or in part, of its allocated federal low-income housing tax credits within the four years prior to the date of transfer.

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

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

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

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

(A) The adult child with developmental disabilities of the transferor of the residential property must be allowed to reside in the residence or successor property so long as the placement is safe and appropriate as determined by the department of social and health services;

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

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

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

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

(iii) A "qualified entity" is:

(A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of June 7, 2018, or a subsidiary under the same taxpayer identification number that provides residential supported living for persons with developmental disabilities; or

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

(iv) In order to receive an exemption under this subsection (3)(t) an affidavit must be submitted by the transferor of the residential property and must include a copy of the transfer agreement and any other documentation as required by the department.

**Sec.**  RCW 82.45.033 and 2010 1st sp.s. c 23 s 208 are each amended to read as follows:

(1) As used in this chapter, the term "controlling interest" has the following meaning:

(a) In the case of a profit corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(b) In the case of any other corporation, or a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such corporation, partnership, association, trust, or other entity.

(2) The department may, at the department's option, enforce the obligation of the seller under this chapter as provided in this subsection (2):

(a) In the transfer or acquisition of a controlling interest as defined in subsection (1)(a) of this section, either against the corporation in which a controlling interest is transferred or acquired, against the person or persons who acquired the controlling interest in the corporation or, when the corporation is not a publicly traded company, against the person or persons who transferred the controlling interest in the corporation; and

(b) In the transfer or acquisition of a controlling interest as defined in subsection (1)(b) of this section, either against the entity in which a controlling interest is transferred or acquired or against the person or persons who transferred or acquired the controlling interest in the entity.

NEW SECTION. **Sec.**  A new section is added to chapter 82.45 RCW to read as follows:

The legislature recognizes that in adopting a graduated tax rate structure providing for increased tax rates for sales of highly valued property, while also exempting certain types of property from the increased tax rates, some taxpayers will attempt to avoid or reduce the tax imposed in this chapter by structuring transactions in a way that serves no meaningful purpose other than to reduce tax due under this chapter.

(1)(a) When necessary to deny the tax benefit that would otherwise accrue from engaging in one or more related transactions designed to avoid tax under this chapter, the department is authorized to disregard the form of the transaction or series of transactions and determine the proper tax treatment under this chapter based on the substance of the transaction or transactions. In exercising this authority, the department may consider the factors described in RCW 82.32.655(2) (a), (b), (c), and (f).

(b) The authority provided in this subsection includes, but is not limited to, treating multiple sales as a single sale as necessary to prevent the parties from reducing the tax liability under this chapter when it appears that the parties have engaged in a concerted plan intended from the outset to achieve a reduced effective tax rate than had the parties collapsed the separate sales into a single sale at the outset.

(2) The department is encouraged to provide guidance to the public concerning the department's implementation of this section, whether by rule or otherwise.

**Sec.**  RCW 43.07.390 and 2010 1st sp.s. c 23 s 213 are each amended to read as follows:

(1)(a) The secretary of state must adopt rules requiring any entity that is required to file an annual report with the secretary of state, including entities under Titles 23, 23B, 24, and 25 RCW, to disclose: (i) Any transfer of the controlling interest in the entity or an interest that amounts to at least one-third of a controlling interest in the entity; and (ii) the granting of any option to acquire an interest ((~~in the entity if the exercise of the option would result in a sale as defined in RCW 82.45.010(2)~~)) described in (a)(i) of this subsection.

(b) The disclosure requirement in this subsection only applies to entities owning an interest in real property located in this state.

(2) This information must be made available to the department of revenue upon request for the purposes of tracking the transfer of the controlling interest in entities owning real property and to determine when the real estate excise tax is applicable in such cases.

(3) For the purposes of this section, "controlling interest" has the same meaning as provided in RCW 82.45.033.

**Sec.**  RCW 82.45.220 and 2010 1st sp.s. c 23 s 212 are each amended to read as follows:

(1) An organization that fails to report ((~~a transfer of the controlling interest in the organization under RCW 43.07.390 to the secretary of state and is later determined to be subject to real estate excise taxes due to the transfer,~~)) to the secretary of state a transfer of an interest in the organization as required under RCW 43.07.390 and the transfer results in a sale as defined in RCW 82.45.010(2) is subject to the provisions of RCW 82.45.100 as well as the evasion penalty in RCW 82.32.090(7).

(2) Subsection (1) of this section also applies to the failure to report to the secretary of state the granting of an option to acquire an interest in the organization if the exercise of the option would result in a sale as defined in RCW 82.45.010(2).

NEW SECTION. **Sec.**  The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec.**  This act takes effect January 1, 2020.

**--- END ---**