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**HOUSE BILL 1168**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Representatives Leavitt, Barkis, Kilduff, Jinkins, MacEwen, Goodman, Macri, Pollet, Callan, Wylie, Chapman, Valdez, Fey, Doglio, and Kloba

Read first time 01/16/19. Referred to Committee on Finance.

1 AN ACT Relating to sales and use and excise tax exemptions for  
2 self-help housing development; reenacting and amending RCW 82.45.010;  
3 adding a new section to chapter 82.08 RCW; adding a new section to  
4 chapter 82.12 RCW; creating a new section; providing an effective  
5 date; and providing expiration dates.

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

7 NEW SECTION. **Sec. 1.** (1) This section is the tax preference  
8 performance statement for this act. This performance statement is  
9 only intended to be used for subsequent evaluation of the tax  
10 preference. It is not intended to create a private right of action by  
11 any part or be used to determine eligibility for a preferential tax  
12 treatment.

13 (2) The legislature categorizes the tax preference as one  
14 intended to induce certain designated behavior by taxpayers, as  
15 indicated in RCW 82.32.808(2)(a).

16 (3) It is the legislature's specific public policy objective to  
17 provide retail sales and use tax and real estate excise tax relief to  
18 developers of self-help housing to encourage continued development of  
19 self-help housing.

20 (4) The joint legislative audit and review committee is directed  
21 to review:

1 (a) The total number of taxpayers that claimed the tax  
2 preferences; and

3 (b) The total amount of retail sales and use tax and real estate  
4 excise tax revenue that was exempt under this act, annually.

5 (5) In order to obtain this section, the joint legislative audit  
6 and review committee may refer to department of revenue data, as well  
7 as any other available data source.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.08  
9 RCW to read as follows:

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

20 (2) The exemption provided in this section for self-help housing  
21 only applies if the housing is built to the current building code for  
22 single-family dwellings according to the state building code, chapter  
23 19.27 RCW.

24 (3) Any self-help housing built under this section must be used  
25 as provided in this section for at least twenty consecutive years  
26 from the date the housing is approved for occupancy, or the full  
27 amount of tax otherwise due is immediately due and payable together  
28 with interest, but not penalties, from the date the housing was  
29 approved for occupancy until the date of payment. If self-help  
30 housing ceases to be the primary dwelling of the initial low-income  
31 purchaser within the twenty consecutive years from the date the  
32 housing is approved for occupancy, the full amount of tax otherwise  
33 due is immediately due and payable with interest, but not penalties,  
34 from the date the housing ceases to be used as self-help housing  
35 until the date of payment. The amount due under this subsection is  
36 payable by the seller.

37 (4) The exemption provided in this section does not apply to  
38 housing built for the occupancy of an employee, family members of an

1 employee, or persons on the board of trustees or directors, of an  
2 affordable homeownership facilitator.

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

5 (a) "Affordable homeownership facilitator" means a nonprofit  
6 community or neighborhood-based organization that is exempt from  
7 income tax under Title 26 U.S.C. Sec. 501(c) of the internal revenue  
8 code of 1986, as amended, as of the effective date of this section  
9 and that is the developer of self-help housing.

10 (b) "Low-income" means household income as defined by the  
11 department, provided that the definition may not exceed eighty  
12 percent of median household income, adjusted for household size, for  
13 the county in which the dwelling is located.

14 (c) "Self-help housing" means dwelling residences provided for  
15 ownership by low-income individuals and families whose ownership  
16 requirement includes labor participation. "Self-help housing" does  
17 not include residential rental housing provided on a commercial basis  
18 to the general public.

19 (6) This section expires January 1, 2030.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12  
21 RCW to read as follows:

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

28 (2) The exemption provided in this section for self-help housing  
29 only applies if the housing is built to the current building code for  
30 single-family dwellings according to the state building code, chapter  
31 19.27 RCW.

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

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

1 (5) The definitions in section 2 of this act apply to this  
2 section.

3 (6) This section expires January 1, 2030.

4 **Sec. 4.** RCW 82.45.010 and 2018 c 223 s 3 and 2018 c 221 s 1 are  
5 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (k) A conveyance to the federal housing administration or  
40 veterans administration by an authorized mortgagee made pursuant to a

1 contract of insurance or guaranty with the federal housing  
2 administration or veterans administration.

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

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

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

10 (o) A sale to a regional transit authority or public corporation  
11 under RCW 81.112.320 under a sale/leaseback agreement under RCW  
12 81.112.300.

13 (p) A transfer of real property, however effected, if it consists  
14 of a mere change in identity or form of ownership of an entity where  
15 there is no change in the beneficial ownership. These include  
16 transfers to a corporation or partnership which is wholly owned by  
17 the transferor and/or the transferor's spouse or domestic partner or  
18 children of the transferor or the transferor's spouse or domestic  
19 partner. However, if thereafter such transferee corporation or  
20 partnership voluntarily transfers such real property, or such  
21 transferor, spouse or domestic partner, or children of the transferor  
22 or the transferor's spouse or domestic partner voluntarily transfer  
23 stock in the transferee corporation or interest in the transferee  
24 partnership capital, as the case may be, to other than (i) the  
25 transferor and/or the transferor's spouse or domestic partner or  
26 children of the transferor or the transferor's spouse or domestic  
27 partner, (ii) a trust having the transferor and/or the transferor's  
28 spouse or domestic partner or children of the transferor or the  
29 transferor's spouse or domestic partner as the only beneficiaries at  
30 the time of the transfer to the trust, or (iii) a corporation or  
31 partnership wholly owned by the original transferor and/or the  
32 transferor's spouse or domestic partner or children of the transferor  
33 or the transferor's spouse or domestic partner, within three years of  
34 the original transfer to which this exemption applies, and the tax on  
35 the subsequent transfer has not been paid within sixty days of  
36 becoming due, excise taxes become due and payable on the original  
37 transfer as otherwise provided by law.

38 (q) (i) A transfer that for federal income tax purposes does not  
39 involve the recognition of gain or loss for entity formation,  
40 liquidation or dissolution, and reorganization, including but not

1 limited to nonrecognition of gain or loss because of application of  
2 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal  
3 revenue code of 1986, as amended.

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

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

25 (s)(i) A transfer of a qualified low-income housing development  
26 or controlling interest in a qualified low-income housing  
27 development, unless, due to noncompliance with federal statutory  
28 requirements, the seller is subject to recapture, in whole or in  
29 part, of its allocated federal low-income housing tax credits within  
30 the four years prior to the date of transfer.

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

39 (iii) This subsection (3)(s) does not apply to transfers of a  
40 qualified low-income housing development or controlling interest in a

1 qualified low-income housing development occurring on or after July  
2 1, 2035.

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

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

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

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

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

29 (D) The residential property transferred must remain in continued  
30 use for fifty years by the qualified entity as supported living for  
31 persons with developmental disabilities by the qualified entity or  
32 successor entity. If the qualified entity sells or otherwise conveys  
33 ownership of the residential property the proceeds of the sale or  
34 conveyance must be used to acquire similar residential property and  
35 such similar residential property must be considered the successor  
36 for continued use. The property will not be considered in continued  
37 use if the department of social and health services finds that the  
38 property has failed, after a reasonable time to remedy, to meet any  
39 health and safety statutory or regulatory requirements. If the  
40 department of social and health services determines that the property

1 fails to meet the requirements for continued use, the department of  
2 social and health services must notify the department and the real  
3 estate excise tax based on the value of the property at the time of  
4 the transfer into use as residential property for persons with  
5 developmental disabilities becomes immediately due and payable by the  
6 qualified entity. The tax due is not subject to penalties, fees, or  
7 interest under this title.

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

10 (iii) A "qualified entity" is:

11 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)  
12 of the federal internal revenue code of 1986, as amended, as of June  
13 7, 2018, or a subsidiary under the same taxpayer identification  
14 number that provides residential supported living for persons with  
15 developmental disabilities; or

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

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

22 (u) The sale by an affordable homeownership facilitator of self-  
23 help housing to a low-income household. The definitions in section 2  
24 of this act apply to this subsection.

25 NEW SECTION. **Sec. 5.** This act takes effect October 1, 2019.

26 NEW SECTION. **Sec. 6.** Section 4 of this act expires January 1,  
27 2030.

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