

WAC 458-61A-107 Option to purchase. (1) **Introduction.** The real estate excise tax applies to a conveyance of real property upon the exercise of an option to purchase.

(2) **Taxability of sales of options.** The real estate excise tax does not apply to the grant or sale of an option and the real estate excise tax affidavit is not required for that transaction. However, the sale of an option is subject to business and occupation tax under the service and other category and should be reported on the combined excise tax return. RCW 82.04.290.

(3) Effective May 1, 2010, for the sole purpose of determining whether a transfer or acquisition of a controlling interest pursuant to the exercise of an option occurred within a twelve-month period, the date on which the option agreement was executed is deemed to be the date of the transfer or acquisition. For any other purpose; however, the date on which the option is exercised is the date of the transfer or acquisition. RCW 82.45.010 (2) (b). See WAC 458-61A-101.

(4) **Examples.**

(a) Joe acquires an option at a cost of \$100,000. The option, if exercised, allows Joe to purchase ten parcels of land for \$700,000. As individual parcels, these lots of land are uneconomical to develop. Joe "packages" the land, making it economically feasible to develop by either obtaining sufficient acreage or required studies. Buildup, a real estate development and construction company, purchases Joe's option on the property for \$2.3 million and subsequently exercises the option, paying \$700,000 for the land. The real estate excise tax does not apply to the sale of the option, however the \$2.3 million received for the option is subject to the business and occupation tax under the service and other category. The measure of the real estate excise tax is the \$700,000 purchase price paid on the transfer of the land.

(b) Consider the same initial facts as in the example in (a) of this subsection, but instead, Joe exercises the option, and subsequently sells the land to Buildup. The real estate excise tax applies to both the transfer to Joe and the subsequent transfer from Joe to Buildup.

[Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060. WSR 11-16-106, § 458-61A-107, filed 8/3/11, effective 9/3/11. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. WSR 05-23-093, § 458-61A-107, filed 11/16/05, effective 12/17/05.]