

**WAC 458-61A-213 IRS "tax deferred" exchange. (1) Introduction.**

This rule describes the application of the real estate excise tax in transfers involving an exchange facilitator. An "exchange facilitator" is a person who acts as an agent on behalf of another person in connection with an exchange of real property under section 1031 of the Internal Revenue Code of 1986 (section 1031 tax deferred exchange).

(2) Acquisition of property by an exchange facilitator in connection with a section 1031 tax deferred exchange is subject to the real estate excise tax.

(3) The later transfer of the property by the facilitator in completion of the exchange is subject to real estate excise tax, unless the following requirements are met:

(a) The proper tax was paid on the initial transaction;

(b) A supplemental statement signed by the exchange facilitator, as provided by WAC 458-61A-304, is attached to the real estate excise tax affidavit indicating that the facilitator originally took title to the property for the sole purpose of effecting a section 1031 tax deferred exchange; and

(c) The funds used by the exchange facilitator to acquire the property were provided by the grantee and/or received from the proceeds of the sale of real property owned by the grantee.

(4) If the deeds for both transactions to and from the exchange facilitator are being recorded at the same time, the proper tax can be paid on either the first or the second transaction at the discretion of the exchange facilitator.

(5) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer of real property may or may not qualify for exemption under this rule. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Bob owns commercial real property in Princeton County worth \$400,000. Bob wants to exchange his property in Princeton County for other commercial property in Eagle County owned by Sally. Sally agrees to sell her Eagle County property to Bob for \$600,000. Bob places his commercial property in Princeton County for sale. John contacts Bob and agrees to purchase the Princeton County property for \$450,000. Bob contacts Ted, an exchange facilitator, to arrange for a transfer of his property as a section 1031 tax deferred exchange. Per Ted's instructions, Bob transfers the Princeton County property to Ted. Ted transfers the Princeton County property to John and receives \$450,000. Real estate excise tax is due on the transfer from Bob to Ted. No tax is due on the transfer from Ted to John. The Eagle County property is transferred from Sally to Ted for the \$600,000 sales price, \$450,000 of which was received from the Princeton County sale and \$150,000 from a new loan obtained by Bob. Ted transfers the Eagle County property to Bob. Tax is due on the transfer from Sally to Ted. No tax is due on the transfer from Ted to Bob.

(b) Bob is unable to find a buyer for his Princeton County property. Bob contacts Ted, the exchange facilitator, to arrange for a transfer of his property as a section 1031 tax deferred exchange. Per Ted's instructions, Bob transfers the Princeton County property to Ted. Ted holds the property until Bob can locate a buyer. Real estate excise tax is due on the transfer from Bob to Ted. The Eagle County property is transferred from Sally to Ted for the \$600,000 sales price, provided from a \$600,000 new loan obtained by Bob. Ted transfers the Eagle County property to Bob. Tax is due on the transfer from

Sally to Ted. No tax is due on the transfer from Ted to Bob. One month later, Joan agrees to purchase the Princeton County property. Ted transfers the property to Joan for \$350,000. Tax is due on the transfer from Ted to Joan, because the funds used by Ted to acquire the Princeton County property from Bob were not provided by Joan.

(6) **Documentation.** A real estate excise tax affidavit is required for each transfer in a section 1031 tax deferred exchange, including the transfers to and from an exchange facilitator. The affidavit reflecting the claim for tax exemption must show the affidavit number and date of the tax payment, and have attached the supplemental statement as provided by WAC 458-61A-304 and subsection (3)(b) of this section.

[Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060. WSR 14-06-060, § 458-61A-213, filed 2/28/14, effective 3/31/14. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. WSR 05-23-093, § 458-61A-213, filed 11/16/05, effective 12/17/05.]