WAC 458-61A-219 Developmentally disabled persons—Housing—Transfers and improvements. (1) **Introduction.** A transfer of real property by a legal representative of a person with a developmental disability to a qualified entity as defined in RCW 82.45.010 (3)(t)(iii) is not subject to the real estate excise tax if certain conditions are met and no consideration passes in the transfer. This rule explains the eligibility and continued use requirements, and provides documentation requirements for persons who make qualifying transfers of real property described in RCW 82.45.010 (3)(t).

(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including:

(a) WAC 458-61A-100 Real estate excise tax—Overview.

(b) WAC 458-61A-102 Definitions.

(c) WAC 458-61A-201 Gifts.

(3) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(4) **Definitions.** The following definitions apply throughout this rule:

(a) The definitions in chapter 82.45 RCW.

(b) The definitions in RCW 71A.10.020.

(c) "Affordable housing program" defined in RCW 43.185A.020.

(d) "Qualified entity" is:

(i) A nonprofit organization under 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

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

(5) **Required conditions.** The transfer of residential property by a legal representative of a person with developmental disabilities to a qualified entity is not subject to real estate excise tax if the following conditions are met:

(a) The transferor's adult child (or otherwise legally represented person) with developmental disabilities retains a life estate in the property and must be allowed to reside in the residence or successor residence so long as the placement is safe and appropriate, as determined by the department of social and health services.

(b) The title of the property is conveyed by the legal representative of a person with developmental disabilities to a qualified entity without any consideration. Consideration may include money or anything of value, the performance of services, or assumption of debt.

(c) The residential property must have no more than four living units located on it.

(d) The residential property transferred to the qualified entity must remain in continued use as supported living for persons with developmental disabilities for a period of at least fifty years by the qualified entity or successor entity.

(6) **Additional continued use requirements.**

(a) 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.

(i) 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 becomes immediately due and payable by the qualified entity.

(ii) The measure of the tax is the value of the property at the time of its initial transfer into use as residential property for persons with developmental disabilities.

(iii) The tax due is not subject to penalties, fees, or interest.

(b) If the qualified entity sells or otherwise conveys ownership of the residential property, including the conveyance of the residential property as a result of casualty, 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 exemption from real estate excise tax is limited to the initial transfer to the qualified entity. Any subsequent sale or conveyance of the real property is subject to real estate excise tax.

(7) **Documentation requirements.**

(a) In order to receive the exemption under this rule, a real estate excise tax affidavit must be provided to the county treasurer of the county in which the real property is located and recorded with the county auditor, by the transferor of the residential property and must include:

(i) A copy of the transfer agreement; and

(ii) A copy of the property tax assessment for the real property parcel issued by the applicable county in the same year as the initial qualifying transfer.

(b) A copy of all documentation required under this subsection will be retained indefinitely by the Washington office of the secretary of state, Washington state archives branch.

(8) **Examples.**

Example 1. Pamela Sutton is the legal representative of Susan Park, a person with developmental disabilities. Pamela owns a single family residential property with a county assessed value of $250,000. The property is encumbered by an outstanding mortgage of $150,000. On August 1, 2019, Pamela transfers 100 percent of her interest in the real property to Helping Homes of Washington, a qualified nonprofit adult family home. As part of the transfer, Helping Homes of Washington agrees to assume the property's $150,000 encumbrance of debt. In this example, the transfer is not eligible for the exemption because it includes consideration in the form of assumption of debt.

Example 2. Patrick Sampson is the legal representative of Andrew Sampson, his adult child with developmental disabilities. Patrick owns a single family residential property with a county assessed value of $300,000. The property is not encumbered by debt. On July 1, 2019, Patrick transfers 100 percent of his interest in the real property to Helping Homes of Washington, a qualified nonprofit adult family home. Andrew is allowed to reside in the residence and the department of social and health services has determined the placement is safe and appropriate. Assuming the eligibility requirements under subsections (5)(c) and (d) of this rule are also met, the transfer is exempt from real estate excise tax.

Example 3. Assume the facts from Example 2. On December 31, 2029, Helping Homes of Washington sells the residential property for $450,000. A similar property is purchased shortly thereafter. Andrew will reside in the new residence. In this example, the initial transfer remains exempt from real estate excise tax because the requirements for continued use are met. However, Helping Homes of Washington is subject to real estate excise tax on the subsequent sale of the residential property because the exemption is limited to the initial transfer.

Example 4. Assume the facts from Example 2. On April 1, 2025, the department of social and health services finds that Helping Homes of Washington has failed, after a reasonable time to remedy, to meet certain health regulatory requirements for the property. The department of social and health services notifies the department of revenue. In this example, the initial transfer no longer qualifies for the exemption and is now subject to real estate excise tax, which is due immediately. The measure of the tax is the county assessed value of $300,000 at the time of its initial transfer. The initial transfer is not subject to penalties, fees, or interest.

Example 5. Assume the facts from Example 2. On July 1, 2025, the property is destroyed by fire. The qualifying entity receives casualty insurance proceeds of $350,000 for the loss of real property improvements. On July 1, 2026, the remaining unimproved property is sold for $100,000. On December 1, 2026, the casualty insurance proceeds and proceeds from sale are used to purchase a similar residential property. Andrew will reside in the newly purchased residential property. The conditions for continued use are met, and the initial transfer remains exempt from real estate excise tax. While real estate excise tax is due from the qualified entity on the $100,000 sale of the unimproved property parcel, it is not due on the proceeds from casualty insurance.

Example 6. Assume the facts from Example 2. On August 1, 2019, the department of social and health services determines the residential property requires improvements to meet building codes before Andrew is able to safely reside in the home. Helping Homes of Washington is an eligible entity under RCW 43.185A.040 and the residential property was transferred in accordance with the required conditions in subsection (5) of this rule. Helping Homes of Washington is eligible to seek funding in the form of grants and loans through the affordable housing program, administered by the department of commerce, in order to bring the residential property into compliance with building codes. If Helping Homes of Washington fails to meet the building standards required by the department of social and health services within a reasonable period of time, real estate excise tax will become due immediately and payable by Helping Homes of Washington. The tax is not subject to penalties, fees, or interest.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. WSR 19-05-070, § 458-61A-219, filed 2/19/19, effective 3/22/19.]