

WAC 458-61A-306 Date of sale, interest, and penalties. (1) **Introduction.** This rule explains how to determine the date of sale and explains the application of interest and penalties when the tax is not paid within one month of the date of sale. See WAC 458-61A-101 for procedures pertaining to transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) **Date of sale.** Real estate excise tax is due and payable to the county on the date of sale, regardless of the date on which the contract of sale or instrument of conveyance is recorded.

(a) **Conditions to be fulfilled prior to completing sale.** When a contract of sale or instrument of conveyance is signed and delivered by the seller to an escrow agent licensed under chapter 18.44 RCW (Escrow Agent Registration Act), a title company, a title insurance company, or an attorney acting as an escrow agent, with instructions to deliver the instrument to the buyer upon the fulfillment of one or more conditions that had prevented the sale from being completed, the date of sale will be presumed to be the date that the instrument is presented for recording, subject to the following:

(i) A statement, signed by the seller's agent, is attached to the affidavit indicating the specific conditions that had to be met in order for the sale to be completed;

(ii) The date shown on the instrument cannot be more than ninety days prior to the date the affidavit is presented to the county treasurer for filing; and

(iii) All documentation required by the department must be provided to the county agent when submitting the affidavit claiming an exemption from interest and penalty pursuant to this rule.

(b) **Sale of mining property.** A conditional sale of mining property in which the buyer has the right to terminate the contract at any time, and a lease and option to buy mining property in which the lessee-buyer has the right to terminate the lease and option at any time, is taxable at the time of execution only on the consideration received by the seller or lessor for execution of such contract. The tax due on any additional consideration received by the seller is paid to the county at:

(i) The time of termination;

(ii) The time that all of the consideration due to the seller has been paid and the transaction is completed except for delivery of the deed to the buyer; or

(iii) The time when the buyer exercises an option to purchase the property.

For further information regarding mineral rights and mining claims, see WAC 458-61A-112.

(c) In all other cases, the date of sale will be presumed to be the date shown on the instrument. A taxpayer alleging a date of sale other than the instrument date has the burden of proving that delivery of title or ownership of the property in exchange for consideration occurred on the date alleged.

(3) **Interest.** Payment of the real estate excise tax is due on the date of sale. If the tax is not paid within one month of the date of sale, interest will be imposed on the total amount of the unpaid tax (both the state and local components) from the date of sale to the date of full payment. RCW 82.45.100(1) and 82.46.010(5). Interest is calculated on a monthly basis with a full month's interest accruing at the beginning of each month. A list of annual interest rates is available on the department's website at dor.wa.gov.

(a) Interest is computed in accordance with the provisions of RCW 82.32.050(2). The interest rate is adjusted annually on January 1. The rate applied to any given month or portion of a month is the annual variable interest rate in effect at the beginning of that month, divided by twelve. Any interest imposed for a month or portion of a month that starts in December will be imposed at the interest rate effective in December, even though the interest rate may change on January 1. For example:

(i) Tyler sold real property located in Mayberry to Dustin on April 20, 2004. Tyler does not file a Real Estate Excise Tax Affidavit until August 15, 2004, at which time he pays \$1,530 in tax. The interest rate for 2004 is 4%, and interest is due on the transfer from April 20, 2004, through August 15, 2004, the date the tax was paid. Interest would be due as follows:

April 20 to May 20, 2004	\$1,530 tax at 0.33% per month	\$5.05
May 21 to June 20, 2004	\$1,530 tax at 0.33% per month	\$5.05
June 21 to July 20, 2004	\$1,530 tax at 0.33% per month	\$5.05
July 21 to August 15, 2004	\$1,530 tax at 0.33% per month	\$5.05
Total interest due with August 15, 2004 payment		\$20.20

In this example, note that a full month's interest applies from July 21 to August 15, 2004, even though it is less than a full month.

(ii) Tara sells her house in Sun City to Chris on March 5, 2004. Real estate excise tax of \$1,780 is due on April 5, 2004, but is not paid until June 16, 2004. Interest applies from March 5, 2004, through June 16, 2004, the date of full payment. Again, a full month's interest applies from June 5 to June 16, 2004, even though it is less than a full month.

March 5 to April 4, 2004	\$1,780 tax at 0.33% per month	\$5.87
April 5 to May 4, 2004	\$1,780 tax at 0.33% per month	\$5.87
May 5 to June 4, 2004	\$1,780 tax at 0.33% per month	\$5.87
June 5 to June 16, 2004	\$1,780 tax at 0.33% per month	\$5.87
Total additional interest due with June 16, 2004 payment		\$23.48

(b) When interest must be calculated in a shorter month that does not have a day corresponding to the original date of sale, interest is computed on the first day of the following calendar month.

For example, Kevin sells land located in unincorporated Sparkle County to Jim and Anita on January 30, 2004. Tax of \$3,560 is due on February 28, 2004. Since February has only twenty-eight days (assuming it is not a leap year) and February 28 most closely corresponds to the January 30 date of sale. The tax is not paid until May 10, 2004. The interest is computed as follows:

January 30 to February 28, 2004	\$3,560 tax at 0.33% per month	\$11.75
March 1 to March 30, 2004	\$3,560 tax at 0.33% per month	\$11.75
March 31 to April 30, 2004	\$3,560 tax at 0.33% per month	\$11.75
May 1 to May 10, 2004	\$3,560 tax at 0.33% per month	\$11.75
Total interest due with May 10, 2004 payment		\$47.00

(4) **Delinquent penalty.** If payment of real estate excise tax is not received by the county within one month of the date of sale, a delinquent penalty is imposed on the total amount of the unpaid tax. RCW 82.45.100(2) and 82.46.010(5).

(a) If tax is not paid:

(i) Within one month of the date of sale, a penalty of five percent of the amount of the tax will be added to the tax due;

(ii) Within two months of the date of sale, a penalty of ten percent shall be added to the tax due; and

(iii) Within three months of the date of sale, a penalty of twenty percent will be added to the tax due.

(b) Penalties are assessed against the seller only and will not be included in a lien arising under RCW 82.45.070.

(5) **State assessment penalty.** Any tax determined to be due and assessed by the department will include an assessment penalty of five percent of the tax assessed by the department. RCW 82.32.090(2).

(a) If payment of the tax assessment is not received by the department by the due date specified in the notice, or any extension thereof, a penalty of fifteen percent of the amount of the tax under this subsection will be assessed; and

(b) If payment of the tax assessment is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, a penalty of twenty-five percent of the amount of the tax under this subsection will be assessed; and

(c) This penalty will be no less than five dollars.

(6) **Evasion penalty.**

(a) The department may add a penalty equal to fifty percent of the underpaid excise tax due on transfers where an intent to evade the payment of the excise tax is demonstrated.

(b) An "intent to evade" includes, but is not limited to, knowingly stating a false sales price or knowingly claiming a tax exemption for which the transfer does not qualify.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. WSR 05-23-093, § 458-61A-306, filed 11/16/05, effective 12/17/05.]