
SUBSTITUTE SENATE BILL 5424

State of Washington

61st Legislature

2009 Regular Session

By Senate Ways & Means (originally sponsored by Senators Parlette and Sheldon)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to interest rate and penalty provisions in the
2 current use program; amending RCW 84.34.108 and 84.34.070; and creating
3 a new section.

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

5 **Sec. 1.** RCW 84.34.108 and 2007 c 54 s 25 are each amended to read
6 as follows:

7 (1) When land has once been classified under this chapter, a
8 notation of the classification shall be made each year upon the
9 assessment and tax rolls and the land shall be valued pursuant to RCW
10 84.34.060 or 84.34.065 until removal of all or a portion of the
11 classification by the assessor upon occurrence of any of the following:

12 (a) Receipt of notice from the owner to remove all or a portion of
13 the classification;

14 (b) Sale or transfer to an ownership, except a transfer that
15 resulted from a default in loan payments made to or secured by a
16 governmental agency that intends to or is required by law or regulation
17 to resell the property for the same use as before, making all or a
18 portion of the land exempt from ad valorem taxation;

1 (c) Sale or transfer of all or a portion of the land to a new
2 owner, unless the new owner has signed a notice of classification
3 continuance, except transfer to an owner who is an heir or devisee of
4 a deceased owner shall not, by itself, result in removal of
5 classification. The notice of continuance shall be on a form prepared
6 by the department. If the notice of continuance is not signed by the
7 new owner and attached to the real estate excise tax affidavit, all
8 additional taxes calculated pursuant to subsection (4) of this section
9 shall become due and payable by the seller or transferor at time of
10 sale. The auditor shall not accept an instrument of conveyance
11 regarding classified land for filing or recording unless the new owner
12 has signed the notice of continuance or the additional tax has been
13 paid, as evidenced by the real estate excise tax stamp affixed thereto
14 by the treasurer. The seller, transferor, or new owner may appeal the
15 new assessed valuation calculated under subsection (4) of this section
16 to the county board of equalization in accordance with the provisions
17 of RCW 84.40.038. Jurisdiction is hereby conferred on the county board
18 of equalization to hear these appeals;

19 (d) Determination by the assessor, after giving the owner written
20 notice and an opportunity to be heard, that all or a portion of the
21 land no longer meets the criteria for classification under this
22 chapter. The criteria for classification pursuant to this chapter
23 continue to apply after classification has been granted.

24 The granting authority, upon request of an assessor, shall provide
25 reasonable assistance to the assessor in making a determination whether
26 the land continues to meet the qualifications of RCW 84.34.020 (1) or
27 (3). The assistance shall be provided within thirty days of receipt of
28 the request.

29 (2) Land may not be removed from classification because of:

30 (a) The creation, sale, or transfer of forestry riparian easements
31 under RCW 76.13.120; or

32 (b) The creation, sale, or transfer of a fee interest or a
33 conservation easement for the riparian open space program under RCW
34 76.09.040.

35 (3) Within thirty days after such removal of all or a portion of
36 the land from current use classification, the assessor shall notify the
37 owner in writing, setting forth the reasons for the removal. The

1 seller, transferor, or owner may appeal the removal to the county board
2 of equalization in accordance with the provisions of RCW 84.40.038.

3 (4) Unless the removal is reversed on appeal, the assessor shall
4 revalue the affected land with reference to its true and fair value on
5 January 1st of the year of removal from classification. Both the
6 assessed valuation before and after the removal of classification shall
7 be listed and taxes shall be allocated according to that part of the
8 year to which each assessed valuation applies. Except as provided in
9 subsection (6) of this section, an additional tax, applicable interest,
10 and penalty shall be imposed which shall be due and payable to the
11 treasurer thirty days after the owner is notified of the amount of the
12 additional tax. As soon as possible, the assessor shall compute the
13 amount of additional tax, applicable interest, and penalty and the
14 treasurer shall mail notice to the owner of the amount thereof and the
15 date on which payment is due. The amount of the additional tax,
16 applicable interest, and penalty shall be determined as follows:

17 (a) The amount of additional tax shall be equal to the difference
18 between the property tax paid as "open space land," "farm and
19 agricultural land," or "timber land" and the amount of property tax
20 otherwise due and payable for the seven years last past had the land
21 not been so classified;

22 (b) ~~The amount of applicable interest ((shall be equal to the~~
23 ~~interest upon the amounts of the additional tax paid at the same~~
24 ~~statutory rate charged on delinquent property taxes from the dates on~~
25 ~~which the additional tax could have been paid without penalty if the~~
26 ~~land had been assessed at a value without regard to this chapter)) to~~
27 ~~be charged on the amount of additional tax imposed under (a) of this~~
28 ~~subsection must equal an average of the federal short-term rate as~~
29 ~~defined in Title 26 U.S.C. Sec. 1274(d) plus two percentage points.~~
30 The rate set for each new year must be computed by taking an
31 arithmetical average to the nearest percentage point of the federal
32 short-term rate, compounded annually. That average must be calculated
33 using the rates from four months: January, April, and July of the
34 calendar year immediately preceding the new year, and October of the
35 previous preceding year. The department of revenue must publish this
36 rate every year by rule by December 31st. The annual rate of interest
37 in effect at the time of removal must be applied to the total amount of
38 additional tax due;

1 (c) The amount of the penalty shall be as provided in RCW
2 84.34.080. The penalty shall not be imposed if the removal satisfies
3 the conditions of RCW 84.34.070.

4 (5) Additional tax, applicable interest, and penalty, shall become
5 a lien on the land which shall attach at the time the land is removed
6 from classification under this chapter and shall have priority to and
7 shall be fully paid and satisfied before any recognizance, mortgage,
8 judgment, debt, obligation or responsibility to or with which the land
9 may become charged or liable. This lien may be foreclosed upon
10 expiration of the same period after delinquency and in the same manner
11 provided by law for foreclosure of liens for delinquent real property
12 taxes as provided in RCW 84.64.050. Any additional tax unpaid on its
13 due date shall thereupon become delinquent. From the date of
14 delinquency until paid, interest shall be charged at the same rate
15 applied by law to delinquent ad valorem property taxes.

16 (6) The additional tax, applicable interest, and penalty specified
17 in subsection (4) of this section shall not be imposed if the removal
18 of classification pursuant to subsection (1) of this section resulted
19 solely from:

20 (a) Transfer to a government entity in exchange for other land
21 located within the state of Washington;

22 (b)(i) A taking through the exercise of the power of eminent
23 domain, or (ii) sale or transfer to an entity having the power of
24 eminent domain in anticipation of the exercise of such power, said
25 entity having manifested its intent in writing or by other official
26 action;

27 (c) A natural disaster such as a flood, windstorm, earthquake, or
28 other such calamity rather than by virtue of the act of the landowner
29 changing the use of the property;

30 (d) Official action by an agency of the state of Washington or by
31 the county or city within which the land is located which disallows the
32 present use of the land;

33 (e) Transfer of land to a church when the land would qualify for
34 exemption pursuant to RCW 84.36.020;

35 (f) Acquisition of property interests by state agencies or agencies
36 or organizations qualified under RCW 84.34.210 and 64.04.130 for the
37 purposes enumerated in those sections. At such time as these property

1 interests are not used for the purposes enumerated in RCW 84.34.210 and
2 64.04.130 the additional tax specified in subsection (4) of this
3 section shall be imposed;

4 (g) Removal of land classified as farm and agricultural land under
5 RCW 84.34.020(2)(e);

6 (h) Removal of land from classification after enactment of a
7 statutory exemption that qualifies the land for exemption and receipt
8 of notice from the owner to remove the land from classification;

9 (i) The creation, sale, or transfer of forestry riparian easements
10 under RCW 76.13.120;

11 (j) The creation, sale, or transfer of a fee interest or a
12 conservation easement for the riparian open space program under RCW
13 76.09.040; (~~(e)~~)

14 (k) The sale or transfer of land within two years after the death
15 of the owner of at least a fifty percent interest in the land if the
16 land has been assessed and valued as classified forest land, designated
17 as forest land under chapter 84.33 RCW, or classified under this
18 chapter continuously since 1993. The date of death shown on a death
19 certificate is the date used for the purposes of this subsection
20 (6)(k); or

21 (l)(i) The discovery that the land was classified under this
22 chapter in error through no fault of the owner. For purposes of this
23 subsection (6)(l), "fault" means a knowingly false or misleading
24 statement, or other act or omission not in good faith, that contributed
25 to the approval of classification under this chapter or the failure of
26 the assessor to remove the land from classification under this chapter.

27 (ii) For purposes of this subsection (6), the discovery that land
28 was classified under this chapter in error through no fault of the
29 owner is not the sole reason for removal of classification pursuant to
30 subsection (1) of this section if an independent basis for removal
31 exists. Examples of an independent basis for removal include the owner
32 changing the use of the land or failing to meet any applicable income
33 criteria required for classification under this chapter.

34 **Sec. 2.** RCW 84.34.070 and 1992 c 69 s 10 are each amended to read
35 as follows:

36 (1) When land has once been classified under this chapter, it shall
37 remain under such classification and shall not be applied to other use

1 except as provided by subsection (2) of this section for at least ten
2 years from the date of classification and shall continue under such
3 classification until and unless withdrawn from classification after
4 notice of request for withdrawal shall be made by the owner. (~~During~~
5 ~~any year~~) After (~~eight years of~~) the initial ten-year classification
6 period (~~have~~) has elapsed, notice of request for withdrawal of all or
7 a portion of the land may be given by the owner to the assessor or
8 assessors of the county or counties in which such land is situated. In
9 the event that a portion of a parcel is removed from classification,
10 the remaining portion must meet the same requirements as did the entire
11 parcel when such land was originally granted classification pursuant to
12 this chapter unless the remaining parcel has different income criteria.
13 Within seven days the assessor shall transmit one copy of such notice
14 to the legislative body which originally approved the application. The
15 assessor or assessors, as the case may be, shall (~~, when two assessment~~
16 ~~years have elapsed following the date of receipt of such notice,~~)
17 withdraw such land from such classification and the land shall be
18 subject to the additional tax and applicable interest due under RCW
19 84.34.108. Agreement to tax according to use shall not be considered
20 to be a contract and can be abrogated at any time by the legislature in
21 which event no additional tax or penalty shall be imposed.

22 (2) The following reclassifications are not considered withdrawals
23 or removals and are not subject to additional tax under RCW 84.34.108:

- 24 (a) Reclassification between lands under RCW 84.34.020 (2) and (3);
- 25 (b) Reclassification of land classified under RCW 84.34.020 (2) or
- 26 (3) or chapter 84.33 RCW to open space land under RCW 84.34.020(1);
- 27 (c) Reclassification of land classified under RCW 84.34.020 (2) or
- 28 (3) to forest land classified under chapter 84.33 RCW; and
- 29 (d) Reclassification of land classified as open space land under
- 30 RCW 84.34.020(1)(c) and reclassified to farm and agricultural land
- 31 under RCW 84.34.020(2) if the land had been previously classified as
- 32 farm and agricultural land under RCW 84.34.020(2).

33 (3) Applications for reclassification shall be subject to
34 applicable provisions of RCW 84.34.037, 84.34.035, 84.34.041, and
35 chapter 84.33 RCW.

36 (4) The income criteria for land classified under RCW 84.34.020(2)
37 (b) and (c) may be deferred for land being reclassified from land

1 classified under RCW 84.34.020 (1)(c) or (3), or chapter 84.33 RCW into
2 RCW 84.34.020(2) (b) or (c) for a period of up to five years from the
3 date of reclassification.

4 NEW SECTION. **Sec. 3.** This act applies to taxes levied for
5 collection in 2010 and thereafter.

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