

EHB 2444 - S COMM AMD
By Committee on Ways & Means

ADOPTED AND ENGROSSED 3/8/18

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 82.45.010 and 2014 c 58 s 24 are each amended to
4 read as follows:

5 (1) As used in this chapter, the term "sale" has its ordinary
6 meaning and includes any conveyance, grant, assignment, quitclaim, or
7 transfer of the ownership of or title to real property, including
8 standing timber, or any estate or interest therein for a valuable
9 consideration, and any contract for such conveyance, grant,
10 assignment, quitclaim, or transfer, and any lease with an option to
11 purchase real property, including standing timber, or any estate or
12 interest therein or other contract under which possession of the
13 property is given to the purchaser, or any other person at the
14 purchaser's direction, and title to the property is retained by the
15 vendor as security for the payment of the purchase price. The term
16 also includes the grant, assignment, quitclaim, sale, or transfer of
17 improvements constructed upon leased land.

18 (2)(a) The term "sale" also includes the transfer or acquisition
19 within any twelve-month period of a controlling interest in any
20 entity with an interest in real property located in this state for a
21 valuable consideration.

22 (b) For the sole purpose of determining whether, pursuant to the
23 exercise of an option, a controlling interest was transferred or
24 acquired within a twelve-month period, the date that the option
25 agreement was executed is the date on which the transfer or
26 acquisition of the controlling interest is deemed to occur. For all
27 other purposes under this chapter, the date upon which the option is
28 exercised is the date of the transfer or acquisition of the
29 controlling interest.

30 (c) For purposes of this subsection, all acquisitions of persons
31 acting in concert must be aggregated for purposes of determining
32 whether a transfer or acquisition of a controlling interest has taken

1 place. The department must adopt standards by rule to determine when
2 persons are acting in concert. In adopting a rule for this purpose,
3 the department must consider the following:

4 (i) Persons must be treated as acting in concert when they have a
5 relationship with each other such that one person influences or
6 controls the actions of another through common ownership; and

7 (ii) When persons are not commonly owned or controlled, they must
8 be treated as acting in concert only when the unity with which the
9 purchasers have negotiated and will consummate the transfer of
10 ownership interests supports a finding that they are acting as a
11 single entity. If the acquisitions are completely independent, with
12 each purchaser buying without regard to the identity of the other
13 purchasers, then the acquisitions are considered separate
14 acquisitions.

15 (3) The term "sale" does not include:

16 (a) A transfer by gift, devise, or inheritance.

17 (b) A transfer by transfer on death deed, to the extent that it
18 is not in satisfaction of a contractual obligation of the decedent
19 owed to the recipient of the property.

20 (c) A transfer of any leasehold interest other than of the type
21 mentioned above.

22 (d) A cancellation or forfeiture of a vendee's interest in a
23 contract for the sale of real property, whether or not such contract
24 contains a forfeiture clause, or deed in lieu of foreclosure of a
25 mortgage.

26 (e) The partition of property by tenants in common by agreement
27 or as the result of a court decree.

28 (f) The assignment of property or interest in property from one
29 spouse or one domestic partner to the other spouse or other domestic
30 partner in accordance with the terms of a decree of dissolution of
31 marriage or state registered domestic partnership or in fulfillment
32 of a property settlement agreement.

33 (g) The assignment or other transfer of a vendor's interest in a
34 contract for the sale of real property, even though accompanied by a
35 conveyance of the vendor's interest in the real property involved.

36 (h) Transfers by appropriation or decree in condemnation
37 proceedings brought by the United States, the state or any political
38 subdivision thereof, or a municipal corporation.

39 (i) A mortgage or other transfer of an interest in real property
40 merely to secure a debt, or the assignment thereof.

1 (j) Any transfer or conveyance made pursuant to a deed of trust
2 or an order of sale by the court in any mortgage, deed of trust, or
3 lien foreclosure proceeding or upon execution of a judgment, or deed
4 in lieu of foreclosure to satisfy a mortgage or deed of trust.

5 (k) A conveyance to the federal housing administration or
6 veterans administration by an authorized mortgagee made pursuant to a
7 contract of insurance or guaranty with the federal housing
8 administration or veterans administration.

9 (l) A transfer in compliance with the terms of any lease or
10 contract upon which the tax as imposed by this chapter has been paid
11 or where the lease or contract was entered into prior to the date
12 this tax was first imposed.

13 (m) The sale of any grave or lot in an established cemetery.

14 (n) A sale by the United States, this state or any political
15 subdivision thereof, or a municipal corporation of this state.

16 (o) A sale to a regional transit authority or public corporation
17 under RCW 81.112.320 under a sale/leaseback agreement under RCW
18 81.112.300.

19 (p) A transfer of real property, however effected, if it consists
20 of a mere change in identity or form of ownership of an entity where
21 there is no change in the beneficial ownership. These include
22 transfers to a corporation or partnership which is wholly owned by
23 the transferor and/or the transferor's spouse or domestic partner or
24 children of the transferor or the transferor's spouse or domestic
25 partner. However, if thereafter such transferee corporation or
26 partnership voluntarily transfers such real property, or such
27 transferor, spouse or domestic partner, or children of the transferor
28 or the transferor's spouse or domestic partner voluntarily transfer
29 stock in the transferee corporation or interest in the transferee
30 partnership capital, as the case may be, to other than (i) the
31 transferor and/or the transferor's spouse or domestic partner or
32 children of the transferor or the transferor's spouse or domestic
33 partner, (ii) a trust having the transferor and/or the transferor's
34 spouse or domestic partner or children of the transferor or the
35 transferor's spouse or domestic partner as the only beneficiaries at
36 the time of the transfer to the trust, or (iii) a corporation or
37 partnership wholly owned by the original transferor and/or the
38 transferor's spouse or domestic partner or children of the transferor
39 or the transferor's spouse or domestic partner, within three years of
40 the original transfer to which this exemption applies, and the tax on

1 the subsequent transfer has not been paid within sixty days of
2 becoming due, excise taxes become due and payable on the original
3 transfer as otherwise provided by law.

4 (q)(i) A transfer that for federal income tax purposes does not
5 involve the recognition of gain or loss for entity formation,
6 liquidation or dissolution, and reorganization, including but not
7 limited to nonrecognition of gain or loss because of application of
8 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
9 revenue code of 1986, as amended.

10 (ii) However, the transfer described in (q)(i) of this subsection
11 cannot be preceded or followed within a twelve-month period by
12 another transfer or series of transfers, that, when combined with the
13 otherwise exempt transfer or transfers described in (q)(i) of this
14 subsection, results in the transfer of a controlling interest in the
15 entity for valuable consideration, and in which one or more persons
16 previously holding a controlling interest in the entity receive cash
17 or property in exchange for any interest the person or persons acting
18 in concert hold in the entity. This subsection (3) (q)(ii) does not
19 apply to that part of the transfer involving property received that
20 is the real property interest that the person or persons originally
21 contributed to the entity or when one or more persons who did not
22 contribute real property or belong to the entity at a time when real
23 property was purchased receive cash or personal property in exchange
24 for that person or persons' interest in the entity. The real estate
25 excise tax under this subsection (3)(q)(ii) is imposed upon the
26 person or persons who previously held a controlling interest in the
27 entity.

28 (r) A qualified sale of a manufactured/mobile home community, as
29 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
30 but before December 31, 2018.

31 (s)(i) A transfer of a qualified low-income housing development
32 or controlling interest in a qualified low-income housing
33 development, unless, due to noncompliance with federal statutory
34 requirements, the seller is subject to recapture, in whole or in
35 part, of its allocated federal low-income housing tax credits within
36 the four years prior to the date of transfer.

37 (ii) For purposes of this subsection (3)(s), "qualified low-
38 income housing development" means real property and improvements in
39 respect to which the seller or, in the case of a transfer of a
40 controlling interest, the owner or beneficial owner, was allocated

1 federal low-income housing tax credits authorized under 26 U.S.C.
2 Sec. 42 or successor statute, by the Washington state housing finance
3 commission or successor state-authorized tax credit allocating
4 agency.

5 (iii) This subsection (3)(s) does not apply to transfers of a
6 qualified low-income housing development or controlling interest in a
7 qualified low-income housing development occurring on or after July
8 1, 2035.

9 (iv) The Washington state housing finance commission, in
10 consultation with the department, must gather data on: (A) The fiscal
11 savings, if any, accruing to transferees as a result of the exemption
12 provided in this subsection (3)(s); (B) the extent to which
13 transferors of qualified low-income housing developments receive
14 consideration, including any assumption of debt, as part of a
15 transfer subject to the exemption provided in this subsection (3)(s);
16 and (C) the continued use of the property for low-income housing. The
17 Washington state housing finance commission must provide this
18 information to the joint legislative audit and review committee. The
19 committee must conduct a review of the tax preference created under
20 this subsection (3)(s) in calendar year 2033, as required under
21 chapter 43.136 RCW.

22 NEW SECTION. Sec. 2. This act applies with respect to transfers
23 occurring before, on, or after the effective date of this section.
24 However, this act may not be construed by the department of revenue,
25 state board of tax appeals, or any court as authorizing the refund of
26 any tax liability imposed or authorized under chapter 82.45 or 82.46
27 RCW and properly paid before the effective date of section 1 of this
28 act with respect to a transfer of qualified low-income housing as
29 defined in RCW 82.45.010(3)(s).

30 NEW SECTION. Sec. 3. This act takes effect July 1, 2018."

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1 On page 1, line 2 of the title, after "housing;" strike the
2 remainder of the title and insert "amending RCW 82.45.010; creating a
3 new section; and providing an effective date."

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