

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2444

65th Legislature
2018 Regular Session

Passed by the House March 8, 2018
Yeas 98 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 8, 2018
Yeas 48 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2444** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2444

AS AMENDED BY THE SENATE

Passed Legislature - 2018 Regular Session

State of Washington 65th Legislature 2018 Regular Session

By Representatives Slatter, Robinson, McBride, Clibborn, Appleton, Tharinger, Kloba, Doglio, and Tarleton

Read first time 01/09/18. Referred to Committee on Finance.

1 AN ACT Relating to providing a real estate excise tax exemption
2 for certain transfers of low-income housing; amending RCW 82.45.010;
3 creating a new section; and providing an effective date.

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

5 **Sec. 1.** RCW 82.45.010 and 2014 c 58 s 24 are each amended to
6 read as follows:

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

20 (2)(a) The term "sale" also includes the transfer or acquisition
21 within any twelve-month period of a controlling interest in any

1 entity with an interest in real property located in this state for a
2 valuable consideration.

3 (b) For the sole purpose of determining whether, pursuant to the
4 exercise of an option, a controlling interest was transferred or
5 acquired within a twelve-month period, the date that the option
6 agreement was executed is the date on which the transfer or
7 acquisition of the controlling interest is deemed to occur. For all
8 other purposes under this chapter, the date upon which the option is
9 exercised is the date of the transfer or acquisition of the
10 controlling interest.

11 (c) For purposes of this subsection, all acquisitions of persons
12 acting in concert must be aggregated for purposes of determining
13 whether a transfer or acquisition of a controlling interest has taken
14 place. The department must adopt standards by rule to determine when
15 persons are acting in concert. In adopting a rule for this purpose,
16 the department must consider the following:

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

20 (ii) When persons are not commonly owned or controlled, they must
21 be treated as acting in concert only when the unity with which the
22 purchasers have negotiated and will consummate the transfer of
23 ownership interests supports a finding that they are acting as a
24 single entity. If the acquisitions are completely independent, with
25 each purchaser buying without regard to the identity of the other
26 purchasers, then the acquisitions are considered separate
27 acquisitions.

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

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

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

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

35 (d) A cancellation or forfeiture of a vendee's interest in a
36 contract for the sale of real property, whether or not such contract
37 contains a forfeiture clause, or deed in lieu of foreclosure of a
38 mortgage.

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

1 (f) The assignment of property or interest in property from one
2 spouse or one domestic partner to the other spouse or other domestic
3 partner in accordance with the terms of a decree of dissolution of
4 marriage or state registered domestic partnership or in fulfillment
5 of a property settlement agreement.

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

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

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

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

18 (k) A conveyance to the federal housing administration or
19 veterans administration by an authorized mortgagee made pursuant to a
20 contract of insurance or guaranty with the federal housing
21 administration or veterans administration.

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

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

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

29 (o) A sale to a regional transit authority or public corporation
30 under RCW 81.112.320 under a sale/leaseback agreement under RCW
31 81.112.300.

32 (p) A transfer of real property, however effected, if it consists
33 of a mere change in identity or form of ownership of an entity where
34 there is no change in the beneficial ownership. These include
35 transfers to a corporation or partnership which is wholly owned by
36 the transferor and/or the transferor's spouse or domestic partner or
37 children of the transferor or the transferor's spouse or domestic
38 partner. However, if thereafter such transferee corporation or
39 partnership voluntarily transfers such real property, or such
40 transferor, spouse or domestic partner, or children of the transferor

1 or the transferor's spouse or domestic partner voluntarily transfer
2 stock in the transferee corporation or interest in the transferee
3 partnership capital, as the case may be, to other than (i) the
4 transferor and/or the transferor's spouse or domestic partner or
5 children of the transferor or the transferor's spouse or domestic
6 partner, (ii) a trust having the transferor and/or the transferor's
7 spouse or domestic partner or children of the transferor or the
8 transferor's spouse or domestic partner as the only beneficiaries at
9 the time of the transfer to the trust, or (iii) a corporation or
10 partnership wholly owned by the original transferor and/or the
11 transferor's spouse or domestic partner or children of the transferor
12 or the transferor's spouse or domestic partner, within three years of
13 the original transfer to which this exemption applies, and the tax on
14 the subsequent transfer has not been paid within sixty days of
15 becoming due, excise taxes become due and payable on the original
16 transfer as otherwise provided by law.

17 (q)(i) A transfer that for federal income tax purposes does not
18 involve the recognition of gain or loss for entity formation,
19 liquidation or dissolution, and reorganization, including but not
20 limited to nonrecognition of gain or loss because of application of
21 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
22 revenue code of 1986, as amended.

23 (ii) However, the transfer described in (q)(i) of this subsection
24 cannot be preceded or followed within a twelve-month period by
25 another transfer or series of transfers, that, when combined with the
26 otherwise exempt transfer or transfers described in (q)(i) of this
27 subsection, results in the transfer of a controlling interest in the
28 entity for valuable consideration, and in which one or more persons
29 previously holding a controlling interest in the entity receive cash
30 or property in exchange for any interest the person or persons acting
31 in concert hold in the entity. This subsection (3) (q)(ii) does not
32 apply to that part of the transfer involving property received that
33 is the real property interest that the person or persons originally
34 contributed to the entity or when one or more persons who did not
35 contribute real property or belong to the entity at a time when real
36 property was purchased receive cash or personal property in exchange
37 for that person or persons' interest in the entity. The real estate
38 excise tax under this subsection (3)(q)(ii) is imposed upon the
39 person or persons who previously held a controlling interest in the
40 entity.

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

4 (s)(i) A transfer of a qualified low-income housing development
5 or controlling interest in a qualified low-income housing
6 development, unless, due to noncompliance with federal statutory
7 requirements, the seller is subject to recapture, in whole or in
8 part, of its allocated federal low-income housing tax credits within
9 the four years prior to the date of transfer.

10 (ii) For purposes of this subsection (3)(s), "qualified low-
11 income housing development" means real property and improvements in
12 respect to which the seller or, in the case of a transfer of a
13 controlling interest, the owner or beneficial owner, was allocated
14 federal low-income housing tax credits authorized under 26 U.S.C.
15 Sec. 42 or successor statute, by the Washington state housing finance
16 commission or successor state-authorized tax credit allocating
17 agency.

18 (iii) This subsection (3)(s) does not apply to transfers of a
19 qualified low-income housing development or controlling interest in a
20 qualified low-income housing development occurring on or after July
21 1, 2035.

22 (iv) The Washington state housing finance commission, in
23 consultation with the department, must gather data on: (A) The fiscal
24 savings, if any, accruing to transferees as a result of the exemption
25 provided in this subsection (3)(s); (B) the extent to which
26 transferors of qualified low-income housing developments receive
27 consideration, including any assumption of debt, as part of a
28 transfer subject to the exemption provided in this subsection (3)(s);
29 and (C) the continued use of the property for low-income housing. The
30 Washington state housing finance commission must provide this
31 information to the joint legislative audit and review committee. The
32 committee must conduct a review of the tax preference created under
33 this subsection (3)(s) in calendar year 2033, as required under
34 chapter 43.136 RCW.

35 NEW SECTION. Sec. 2. This act applies with respect to transfers
36 occurring before, on, or after the effective date of this section.
37 However, this act may not be construed by the department of revenue,
38 state board of tax appeals, or any court as authorizing the refund of
39 any tax liability imposed or authorized under chapter 82.45 or 82.46

1 RCW and properly paid before the effective date of section 1 of this
2 act with respect to a transfer of qualified low-income housing as
3 defined in RCW 82.45.010(3)(s).

4 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2018.

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