

SHB 1168 - S COMM AMD

By Committee on Ways & Means

NOT CONSIDERED 12/23/2019

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

3 "NEW SECTION. **Sec. 1.** (1) This section is the tax preference
4 performance statement for this act. This performance statement is
5 only intended to be used for subsequent evaluation of the tax
6 preference. It is not intended to create a private right of action by
7 any part or be used to determine eligibility for a preferential tax
8 treatment.

9 (2) The legislature categorizes the tax preference as one
10 intended to induce certain designated behavior by taxpayers, as
11 indicated in RCW 82.32.808(2) (a).

12 (3) It is the legislature's specific public policy objective to
13 provide real estate excise tax relief to developers of self-help
14 housing to encourage continued development of self-help housing.

15 (4) The joint legislative audit and review committee is directed
16 to review:

17 (a) The total number of taxpayers that claimed the tax
18 preference; and

19 (b) The total amount of real estate excise tax revenue that was
20 exempt under this act, annually.

21 (5) In order to obtain this section, the joint legislative audit
22 and review committee may refer to department of revenue data, as well
23 as any other available data source.

24 **Sec. 2.** RCW 82.45.010 and 2018 c 223 s 3 and 2018 c 221 s 1 are
25 each reenacted and amended to read as follows:

26 (1) As used in this chapter, the term "sale" has its ordinary
27 meaning and includes any conveyance, grant, assignment, quitclaim, or
28 transfer of the ownership of or title to real property, including
29 standing timber, or any estate or interest therein for a valuable
30 consideration, and any contract for such conveyance, grant,

1 assignment, quitclaim, or transfer, and any lease with an option to
2 purchase real property, including standing timber, or any estate or
3 interest therein or other contract under which possession of the
4 property is given to the purchaser, or any other person at the
5 purchaser's direction, and title to the property is retained by the
6 vendor as security for the payment of the purchase price. The term
7 also includes the grant, assignment, quitclaim, sale, or transfer of
8 improvements constructed upon leased land.

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

13 (b) For the sole purpose of determining whether, pursuant to the
14 exercise of an option, a controlling interest was transferred or
15 acquired within a twelve-month period, the date that the option
16 agreement was executed is the date on which the transfer or
17 acquisition of the controlling interest is deemed to occur. For all
18 other purposes under this chapter, the date upon which the option is
19 exercised is the date of the transfer or acquisition of the
20 controlling interest.

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

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

30 (ii) When persons are not commonly owned or controlled, they must
31 be treated as acting in concert only when the unity with which the
32 purchasers have negotiated and will consummate the transfer of
33 ownership interests supports a finding that they are acting as a
34 single entity. If the acquisitions are completely independent, with
35 each purchaser buying without regard to the identity of the other
36 purchasers, then the acquisitions are considered separate
37 acquisitions.

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

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

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

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

6 (d) A cancellation or forfeiture of a vendee's interest in a
7 contract for the sale of real property, whether or not such contract
8 contains a forfeiture clause, or deed in lieu of foreclosure of a
9 mortgage.

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

12 (f) The assignment of property or interest in property from one
13 spouse or one domestic partner to the other spouse or other domestic
14 partner in accordance with the terms of a decree of dissolution of
15 marriage or state registered domestic partnership or in fulfillment
16 of a property settlement agreement.

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

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

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

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

29 (k) A conveyance to the federal housing administration or
30 veterans administration by an authorized mortgagee made pursuant to a
31 contract of insurance or guaranty with the federal housing
32 administration or veterans administration.

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

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

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

1 (o) A sale to a regional transit authority or public corporation
2 under RCW 81.112.320 under a sale/leaseback agreement under RCW
3 81.112.300.

4 (p) A transfer of real property, however effected, if it consists
5 of a mere change in identity or form of ownership of an entity where
6 there is no change in the beneficial ownership. These include
7 transfers to a corporation or partnership which is wholly owned by
8 the transferor and/or the transferor's spouse or domestic partner or
9 children of the transferor or the transferor's spouse or domestic
10 partner. However, if thereafter such transferee corporation or
11 partnership voluntarily transfers such real property, or such
12 transferor, spouse or domestic partner, or children of the transferor
13 or the transferor's spouse or domestic partner voluntarily transfer
14 stock in the transferee corporation or interest in the transferee
15 partnership capital, as the case may be, to other than (i) the
16 transferor and/or the transferor's spouse or domestic partner or
17 children of the transferor or the transferor's spouse or domestic
18 partner, (ii) a trust having the transferor and/or the transferor's
19 spouse or domestic partner or children of the transferor or the
20 transferor's spouse or domestic partner as the only beneficiaries at
21 the time of the transfer to the trust, or (iii) a corporation or
22 partnership wholly owned by the original transferor and/or the
23 transferor's spouse or domestic partner or children of the transferor
24 or the transferor's spouse or domestic partner, within three years of
25 the original transfer to which this exemption applies, and the tax on
26 the subsequent transfer has not been paid within sixty days of
27 becoming due, excise taxes become due and payable on the original
28 transfer as otherwise provided by law.

29 (q) (i) A transfer that for federal income tax purposes does not
30 involve the recognition of gain or loss for entity formation,
31 liquidation or dissolution, and reorganization, including but not
32 limited to nonrecognition of gain or loss because of application of
33 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
34 revenue code of 1986, as amended.

35 (ii) However, the transfer described in (q) (i) of this subsection
36 cannot be preceded or followed within a twelve-month period by
37 another transfer or series of transfers, that, when combined with the
38 otherwise exempt transfer or transfers described in (q) (i) of this
39 subsection, results in the transfer of a controlling interest in the
40 entity for valuable consideration, and in which one or more persons

1 previously holding a controlling interest in the entity receive cash
2 or property in exchange for any interest the person or persons acting
3 in concert hold in the entity. This subsection (3)(q)(ii) does not
4 apply to that part of the transfer involving property received that
5 is the real property interest that the person or persons originally
6 contributed to the entity or when one or more persons who did not
7 contribute real property or belong to the entity at a time when real
8 property was purchased receive cash or personal property in exchange
9 for that person or persons' interest in the entity. The real estate
10 excise tax under this subsection (3)(q)(ii) is imposed upon the
11 person or persons who previously held a controlling interest in the
12 entity.

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

16 (s)(i) A transfer of a qualified low-income housing development
17 or controlling interest in a qualified low-income housing
18 development, unless, due to noncompliance with federal statutory
19 requirements, the seller is subject to recapture, in whole or in
20 part, of its allocated federal low-income housing tax credits within
21 the four years prior to the date of transfer.

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

30 (iii) This subsection (3)(s) does not apply to transfers of a
31 qualified low-income housing development or controlling interest in a
32 qualified low-income housing development occurring on or after July
33 1, 2035.

34 (iv) The Washington state housing finance commission, in
35 consultation with the department, must gather data on: (A) The fiscal
36 savings, if any, accruing to transferees as a result of the exemption
37 provided in this subsection (3)(s); (B) the extent to which
38 transferors of qualified low-income housing developments receive
39 consideration, including any assumption of debt, as part of a
40 transfer subject to the exemption provided in this subsection (3)(s);

1 and (C) the continued use of the property for low-income housing. The
2 Washington state housing finance commission must provide this
3 information to the joint legislative audit and review committee. The
4 committee must conduct a review of the tax preference created under
5 this subsection (3)(s) in calendar year 2033, as required under
6 chapter 43.136 RCW.

7 (t)(i) A qualified transfer of residential property by a legal
8 representative of a person with developmental disabilities to a
9 qualified entity subject to the following conditions:

10 (A) The adult child with developmental disabilities of the
11 transferor of the residential property must be allowed to reside in
12 the residence or successor property so long as the placement is safe
13 and appropriate as determined by the department of social and health
14 services;

15 (B) The title to the residential property is conveyed without the
16 receipt of consideration by the legal representative of a person with
17 developmental disabilities to a qualified entity;

18 (C) The residential property must have no more than four living
19 units located on it; and

20 (D) The residential property transferred must remain in continued
21 use for fifty years by the qualified entity as supported living for
22 persons with developmental disabilities by the qualified entity or
23 successor entity. If the qualified entity sells or otherwise conveys
24 ownership of the residential property the proceeds of the sale or
25 conveyance must be used to acquire similar residential property and
26 such similar residential property must be considered the successor
27 for continued use. The property will not be considered in continued
28 use if the department of social and health services finds that the
29 property has failed, after a reasonable time to remedy, to meet any
30 health and safety statutory or regulatory requirements. If the
31 department of social and health services determines that the property
32 fails to meet the requirements for continued use, the department of
33 social and health services must notify the department and the real
34 estate excise tax based on the value of the property at the time of
35 the transfer into use as residential property for persons with
36 developmental disabilities becomes immediately due and payable by the
37 qualified entity. The tax due is not subject to penalties, fees, or
38 interest under this title.

39 (ii) For the purposes of this subsection (3)(t) the definitions
40 in RCW 71A.10.020 apply.

1 (iii) A "qualified entity" is:

2 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)
3 of the federal internal revenue code of 1986, as amended, as of June
4 7, 2018, or a subsidiary under the same taxpayer identification
5 number that provides residential supported living for persons with
6 developmental disabilities; or

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

9 (iv) In order to receive an exemption under this subsection
10 (3)(t) an affidavit must be submitted by the transferor of the
11 residential property and must include a copy of the transfer
12 agreement and any other documentation as required by the department.

13 (u)(i) The sale by an affordable homeownership facilitator of
14 self-help housing to a low-income household.

15 (ii) The definitions in this subsection (3)(u) apply to this
16 subsection (3)(u) unless the context clearly requires otherwise.

17 (A) "Affordable homeownership facilitator" means a nonprofit
18 community or neighborhood-based organization that is exempt from
19 income tax under Title 26 U.S.C. Sec. 501(c) of the internal revenue
20 code of 1986, as amended, as of the effective date of this section
21 and that is the developer of self-help housing.

22 (B) "Low-income" means household income as defined by the
23 department, provided that the definition may not exceed eighty
24 percent of median household income, adjusted for household size, for
25 the county in which the dwelling is located.

26 (C) "Self-help housing" means dwelling residences provided for
27 ownership by low-income individuals and families whose ownership
28 requirement includes labor participation. "Self-help housing" does
29 not include residential rental housing provided on a commercial basis
30 to the general public.

31 NEW SECTION. Sec. 3. This act takes effect October 1, 2019.

32 NEW SECTION. Sec. 4. Section 2 of this act expires January 1,
33 2030."

NOT CONSIDERED 12/23/2019

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

EFFECT: Replaces the sales and use tax exemptions with a real estate excise tax exemption.

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