

SSB 5998 - S AMD 805
By Senator Nguyen

ADOPTED 04/25/2019

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

3 **"Sec. 1.** RCW 82.45.060 and 2017 3rd sp.s. c 10 s 13 are each
4 amended to read as follows:

5 (1) There is imposed an excise tax upon each sale of real
6 property ((at the rate of one and twenty-eight one-hundredths percent
7 of the selling price. Beginning July 1, 2013, and ending June 30,
8 2023)).

9 (a) Through December 31, 2019, the rate of the tax imposed under
10 this section is 1.28 percent of the selling price.

11 (b) Beginning January 1, 2020, except as provided in (c) of this
12 subsection, the rate of the tax imposed under this section is as
13 follows:

14 (i) 1.1 percent of the portion of the selling price that is less
15 than or equal to five hundred thousand dollars;

16 (ii) 1.28 percent of the portion of the selling price that is
17 greater than five hundred thousand dollars and equal to or less than
18 one million five hundred thousand dollars;

19 (iii) 2.75 percent of the portion of the selling price that is
20 greater than one million five hundred thousand dollars and equal to
21 or less than three million dollars;

22 (iv) Three percent of the portion of the selling price that is
23 greater than three million dollars.

24 (c) The sale of real property that is classified as timberland or
25 agricultural land is subject to the tax imposed under this section at
26 a rate of 1.28 percent of the selling price.

27 (2) Beginning July 1, 2022, and every fourth year thereafter:

28 (a) The department must adjust the selling price threshold in
29 subsection (1)(b)(i) of this section to reflect the lesser of the
30 growth of the consumer price index for shelter or five percent. If
31 the growth is equal to or less than zero percent, the current selling
32 price threshold continues to apply.

1 (b) The department must adjust the selling price thresholds in
2 subsection (1)(b)(ii) through (iv) of this section by the dollar
3 amount of any increase in the selling price threshold in subsection
4 (1)(b)(i) of this section.

5 (c) The department must publish updated selling price thresholds
6 by September 1, 2022, and September 1st of every fourth year
7 thereafter. Updated selling price thresholds will apply beginning
8 January 1, 2023, and January 1st every fourth year thereafter.
9 Adjusted selling price thresholds must be rounded to the nearest one
10 thousand dollars. No changes may be made to adjusted selling price
11 thresholds once such adjustments take effect.

12 (d) The most recent selling price threshold becomes the base for
13 subsequent adjustments.

14 (e) The department must report adjustments to the selling price
15 thresholds to the fiscal committees of the legislature, beginning
16 December 1, 2022, and December 1st every fourth year thereafter.

17 (3)(a) The department must publish guidance to assist sellers in
18 properly classifying real property on the real estate excise tax
19 affidavit for purposes of determining the proper amount of tax due
20 under this section. Real property with multiple uses must be
21 classified according to the property's predominant use. The
22 department's guidance must include factors for use in determining the
23 predominant use of real property.

24 (b) County treasurers are not responsible for verifying that the
25 seller has properly classified real property reported on a real
26 estate excise tax affidavit. The department is solely responsible for
27 such verification as part of its audit responsibilities under RCW
28 82.45.150.

29 (4)(a) Beginning July 1, 2013, and ending December 31, 2019, an
30 amount equal to two percent of the proceeds of this tax must be
31 deposited in the public works assistance account created in RCW
32 43.155.050, ((and)) an amount equal to four and one-tenth percent
33 must be deposited in the education legacy trust account created in
34 RCW 83.100.230((. Thereafter, an amount equal to six and one-tenth
35 percent of the proceeds of this tax to the state treasurer must be
36 deposited in the public works assistance account created in RCW
37 43.155.050. Except as otherwise provided in this section)), an amount
38 equal to one and six-tenths percent ((of the proceeds of this tax to
39 the state treasurer)) must be deposited in the city-county assistance

1 account created in RCW 43.08.290, and the remainder must be deposited
2 in the general fund.

3 (b) Beginning January 1, 2020, amounts collected from the tax
4 imposed under this section must be deposited as provided in section 2
5 of this act.

6 (5) The definitions in this subsection apply throughout this
7 section unless the context clearly requires otherwise.

8 (a) "Agricultural land" means farm and agricultural land and farm
9 and agricultural conservation land, as those terms are defined in RCW
10 84.34.020, including any structures on such land.

11 (b) "Consumer price index for shelter" means the most current
12 seasonally adjusted index for the shelter expenditure category of the
13 consumer price index for all urban consumers (CPI-U) as published by
14 July 31st by the bureau of labor statistics of the United States
15 department of labor.

16 (c) "Growth of the consumer price index for shelter" means the
17 percentage increase in the consumer price index for shelter as
18 measured from data published by the bureau of labor statistics of the
19 United States department of labor by July 31st for the most recent
20 three-year period for the selling price threshold adjustment in 2022,
21 and the most recent four-year period for subsequent selling price
22 threshold adjustments.

23 (d) "Timberland" means land classified under chapter 84.34 RCW or
24 designated under chapter 84.33 RCW, including any structures and
25 standing timber on such land, and standing timber sold apart from the
26 land upon which it sits.

27 NEW SECTION. Sec. 2. A new section is added to chapter 82.45
28 RCW to read as follows:

29 (1) Beginning January 1, 2020, and ending June 30, 2023, the
30 amounts received for the tax imposed on each sale of real property
31 under RCW 82.45.060 must be deposited as follows:

32 (a) 1.7 percent must be deposited into the public works
33 assistance account created in RCW 43.155.050;

34 (b) 1.4 percent must be deposited into the city-county assistance
35 account created in RCW 43.08.290;

36 (c) 79.4 percent must be deposited into the general fund; and

37 (d) The remainder must be deposited into the educational legacy
38 trust account created in RCW 83.100.230.

1 (2) Beginning July 1, 2023, and thereafter, the amounts received
2 for the tax imposed on each sale of real property under RCW 82.45.060
3 must be deposited as follows:

4 (a) 5.2 percent must be deposited into the public works
5 assistance account created in RCW 43.155.050;

6 (b) 1.4 percent must be deposited into the city-county assistance
7 account created in RCW 43.08.290;

8 (c) 79.4 percent must be deposited into the general fund; and

9 (d) The remainder must be deposited into the education legacy
10 trust account created in RCW 83.100.230.

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

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

26 (2)(a) The term "sale" also includes the transfer or acquisition
27 within any (~~twelve~~) thirty-six month period of a controlling
28 interest in any entity with an interest in real property located in
29 this state for a valuable consideration.

30 (b) For the sole purpose of determining whether, pursuant to the
31 exercise of an option, a controlling interest was transferred or
32 acquired within a (~~twelve~~) thirty-six month period, the date that
33 the option agreement was executed is the date on which the transfer
34 or acquisition of the controlling interest is deemed to occur. For
35 all other purposes under this chapter, the date upon which the option
36 is exercised is the date of the transfer or acquisition of the
37 controlling interest.

38 (c) For purposes of this subsection, all acquisitions of persons
39 acting in concert must be aggregated for purposes of determining

1 whether a transfer or acquisition of a controlling interest has taken
2 place. The department must adopt standards by rule to determine when
3 persons are acting in concert. In adopting a rule for this purpose,
4 the department must consider the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (o) A sale to a regional transit authority or public corporation
19 under RCW 81.112.320 under a sale/leaseback agreement under RCW
20 81.112.300.

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

1 or the transferor's spouse or domestic partner, within three years of
2 the original transfer to which this exemption applies, and the tax on
3 the subsequent transfer has not been paid within sixty days of
4 becoming due, excise taxes become due and payable on the original
5 transfer as otherwise provided by law.

6 (q)(i) A transfer that for federal income tax purposes does not
7 involve the recognition of gain or loss for entity formation,
8 liquidation or dissolution, and reorganization, including but not
9 limited to nonrecognition of gain or loss because of application of
10 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
11 revenue code of 1986, as amended.

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

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

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

39 (ii) For purposes of this subsection (3)(s), "qualified low-
40 income housing development" means real property and improvements in

1 respect to which the seller or, in the case of a transfer of a
2 controlling interest, the owner or beneficial owner, was allocated
3 federal low-income housing tax credits authorized under 26 U.S.C.
4 Sec. 42 or successor statute, by the Washington state housing finance
5 commission or successor state-authorized tax credit allocating
6 agency.

7 (iii) This subsection (3)(s) does not apply to transfers of a
8 qualified low-income housing development or controlling interest in a
9 qualified low-income housing development occurring on or after July
10 1, 2035.

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

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

27 (A) The adult child with developmental disabilities of the
28 transferor of the residential property must be allowed to reside in
29 the residence or successor property so long as the placement is safe
30 and appropriate as determined by the department of social and health
31 services;

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

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

37 (D) The residential property transferred must remain in continued
38 use for fifty years by the qualified entity as supported living for
39 persons with developmental disabilities by the qualified entity or
40 successor entity. If the qualified entity sells or otherwise conveys

1 ownership of the residential property the proceeds of the sale or
2 conveyance must be used to acquire similar residential property and
3 such similar residential property must be considered the successor
4 for continued use. The property will not be considered in continued
5 use if the department of social and health services finds that the
6 property has failed, after a reasonable time to remedy, to meet any
7 health and safety statutory or regulatory requirements. If the
8 department of social and health services determines that the property
9 fails to meet the requirements for continued use, the department of
10 social and health services must notify the department and the real
11 estate excise tax based on the value of the property at the time of
12 the transfer into use as residential property for persons with
13 developmental disabilities becomes immediately due and payable by the
14 qualified entity. The tax due is not subject to penalties, fees, or
15 interest under this title.

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

18 (iii) A "qualified entity" is:

19 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)
20 of the federal internal revenue code of 1986, as amended, as of June
21 7, 2018, or a subsidiary under the same taxpayer identification
22 number that provides residential supported living for persons with
23 developmental disabilities; or

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

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

30 **Sec. 4.** RCW 82.45.033 and 2010 1st sp.s. c 23 s 208 are each
31 amended to read as follows:

32 (1) As used in this chapter, the term "controlling interest" has
33 the following meaning:

34 (a) In the case of a profit corporation, either fifty percent or
35 more of the total combined voting power of all classes of stock of
36 the corporation entitled to vote, or fifty percent of the capital,
37 profits, or beneficial interest in the voting stock of the
38 corporation; and

1 (b) In the case of any other corporation, or a partnership,
2 association, trust, or other entity, fifty percent or more of the
3 capital, profits, or beneficial interest in such corporation,
4 partnership, association, trust, or other entity.

5 (2) The department may, at the department's option, enforce the
6 obligation of the seller under this chapter as provided in this
7 subsection (2):

8 (a) In the transfer or acquisition of a controlling interest as
9 defined in subsection (1)(a) of this section, either against the
10 corporation in which a controlling interest is transferred or
11 acquired, against the person or persons who acquired the controlling
12 interest in the corporation or, when the corporation is not a
13 publicly traded company, against the person or persons who
14 transferred the controlling interest in the corporation; and

15 (b) In the transfer or acquisition of a controlling interest as
16 defined in subsection (1)(b) of this section, either against the
17 entity in which a controlling interest is transferred or acquired or
18 against the person or persons who transferred or acquired the
19 controlling interest in the entity.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.45
21 RCW to read as follows:

22 The legislature recognizes that in adopting a graduated tax rate
23 structure providing for increased tax rates for sales of highly
24 valued property, while also exempting certain types of property from
25 the increased tax rates, some taxpayers will attempt to avoid or
26 reduce the tax imposed in this chapter by structuring transactions in
27 a way that serves no meaningful purpose other than to reduce tax due
28 under this chapter.

29 (1)(a) When necessary to deny the tax benefit that would
30 otherwise accrue from engaging in one or more related transactions
31 designed to avoid tax under this chapter, the department is
32 authorized to disregard the form of the transaction or series of
33 transactions and determine the proper tax treatment under this
34 chapter based on the substance of the transaction or transactions. In
35 exercising this authority, the department may consider the factors
36 described in RCW 82.32.655(2) (a), (b), (c), and (f).

37 (b) The authority provided in this subsection includes, but is
38 not limited to, treating multiple sales as a single sale as necessary
39 to prevent the parties from reducing the tax liability under this

1 chapter when it appears that the parties have engaged in a concerted
2 plan intended from the outset to achieve a reduced effective tax rate
3 than had the parties collapsed the separate sales into a single sale
4 at the outset.

5 (2) The department is encouraged to provide guidance to the
6 public concerning the department's implementation of this section,
7 whether by rule or otherwise.

8 **Sec. 6.** RCW 43.07.390 and 2010 1st sp.s. c 23 s 213 are each
9 amended to read as follows:

10 (1)(a) The secretary of state must adopt rules requiring any
11 entity that is required to file an annual report with the secretary
12 of state, including entities under Titles 23, 23B, 24, and 25 RCW, to
13 disclose: (i) Any transfer of the controlling interest in the entity
14 or an interest that amounts to at least one-third of a controlling
15 interest in the entity; and (ii) the granting of any option to
16 acquire an interest (~~((in the entity if the exercise of the option~~
17 ~~would result in a sale as defined in RCW 82.45.010(2))~~) described in
18 (a)(i) of this subsection.

19 (b) The disclosure requirement in this subsection only applies to
20 entities owning an interest in real property located in this state.

21 (2) This information must be made available to the department of
22 revenue upon request for the purposes of tracking the transfer of the
23 controlling interest in entities owning real property and to
24 determine when the real estate excise tax is applicable in such
25 cases.

26 (3) For the purposes of this section, "controlling interest" has
27 the same meaning as provided in RCW 82.45.033.

28 **Sec. 7.** RCW 82.45.220 and 2010 1st sp.s. c 23 s 212 are each
29 amended to read as follows:

30 (1) An organization that fails to report (~~((a transfer of the~~
31 ~~controlling interest in the organization under RCW 43.07.390 to the~~
32 ~~secretary of state and is later determined to be subject to real~~
33 ~~estate excise taxes due to the transfer,))~~) to the secretary of state
34 a transfer of an interest in the organization as required under RCW
35 43.07.390 and the transfer results in a sale as defined in RCW
36 82.45.010(2) is subject to the provisions of RCW 82.45.100 as well as
37 the evasion penalty in RCW 82.32.090(7).

1 (2) Subsection (1) of this section also applies to the failure to
2 report to the secretary of state the granting of an option to acquire
3 an interest in the organization if the exercise of the option would
4 result in a sale as defined in RCW 82.45.010(2).

5 NEW SECTION. **Sec. 8.** The provisions of RCW 82.32.805 and
6 82.32.808 do not apply to this act.

7 NEW SECTION. **Sec. 9.** This act takes effect January 1, 2020."

SSB 5998 - S AMD 805
By Senator Nguyen

ADOPTED 04/25/2019

8 On page 1, line 2 of the title, after "tax;" strike the remainder
9 of the title and insert "amending RCW 82.45.060, 82.45.033,
10 43.07.390, and 82.45.220; reenacting and amending RCW 82.45.010;
11 adding new sections to chapter 82.45 RCW; creating a new section; and
12 providing an effective date."

EFFECT: Revises the language with regard to rate structure and
selling price thresholds; modifies distributions to revert back to a
percentage based approach; and adds "standing timber" to the
definition of "timberland."

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