

Chapter 458-61A WAC

REAL ESTATE EXCISE TAX

WAC

GENERAL INFORMATION AND TAXABILITY OF TRANSFERS

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GENERAL INFORMATION AND TAXABILITY OF TRANSFERS

WAC 458-61A-100 Real estate excise tax—Overview. (1) **Introduction.** Chapter 82.45 RCW imposes an excise tax on every sale of real estate in the state of Washington. All sales of real property in this state are subject to the real estate excise tax unless specifically exempted by chapter 82.45 RCW and these rules. The general provisions for the administration of the state's excise taxes contained in chapter

82.32 RCW apply to the real estate excise tax, except as provided in RCW 82.45.150. This chapter provides applicable definitions, describes procedures for payment, collection, and reporting of the tax, explains when penalties and interest are imposed on late payment, describes those transactions exempted from imposition of the tax, and explains the procedures for refunds and appeals.

Legislation adopted in 2010. Effective May 1, 2010, chapter 23, Laws of 2010 sp. sess. established new requirements regarding:

(a) Sales of real estate that result from the transfer of a controlling interest in an entity that owns real property. See WAC 458-61A-101.

(b) Enforcement of tax liability. See WAC 458-61A-301.

(2) Imposition of tax.

(a) The taxes imposed are due at the time the sale occurs, are the obligation of the seller, and, in most instances, are collected by the county upon presentation of the documents of sale for recording in the public records.

(b) If there is a sale of the controlling interest in an entity that owns real property in this state, the tax is paid to the department at the time the interest is transferred. See WAC 458-61A-101.

(3) **Rate of tax.** The rate of the tax is set forth in RCW 82.45.060. Counties, cities, and towns may impose additional taxes on sales of real property on the same incidences, collection, and reporting methods authorized under chapter 82.45 RCW. See chapter 82.46 RCW.

(4) **Nonprofit organizations.** Transfers to or from an organization exempt from ad valorem property taxes under chapter 84.36 RCW, or from federal income tax, because of the organization's nonprofit or charitable status are nevertheless subject to the real estate excise tax unless specifically exempt under chapter 82.45 RCW or these rules.

(5) **Sales in Indian country.** A sale of real property located in Indian country by an enrolled tribe or tribal member is not subject to real estate excise tax. See WAC 458-20-192 for complete information regarding the taxability of transactions involving Indians and Indian country.

[Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060. 11-16-106, § 458-61A-100, filed 8/3/11, effective 9/3/11. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-100, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-101 Taxability of the transfer or acquisition of the controlling interest of an entity with an interest in real property located in this state. (1) **Introduction.** The transfer of a controlling interest in an entity that has an interest in real property in this state is considered a taxable sale of the entity's real property for purposes of the real estate excise tax under chapter 82.45 RCW. This rule explains the application of the tax on those transfers.

Legislation adopted in 2010. Effective May 1, 2010, chapter 23, Laws of 2010 1st sp. sess. established new requirements regarding option agreements and regarding enforcement of tax liability. See subsections (3) and (6) through (8) of this section.

(2) **Definitions.** For the purposes of this chapter, the following definitions apply unless the context requires otherwise.

(a) **"Controlling interest"** means:

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

(ii) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such partnership, association, trust, or other entity.

Examples. The following examples, while not exhaustive, illustrate some of the circumstances in which the transfer of an interest in an entity may or may not be taxable. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(A) Able and Baker each own 40% of the voting shares of a corporation, Flyaway, Inc. Charlie, Delta, Echo, and Frank each own 5% voting shares. Charlie acquires Baker's 40% interest, and Delta's and Echo's 5% interests. This is a taxable acquisition because a controlling interest (50% or more) was acquired by Charlie (40% from Baker plus 5% from Delta and 5% from Echo). However, if Charlie, Delta, and Echo were to transfer their shares (totaling 15%) to Able, those transfers would not be taxable. Although Able would own 55% of the corporation, only a 15% interest was transferred and acquired, so the acquisition by Able is not taxable.

(B) Melody LLC consists of a general partner and three limited partners, each possessing a 25% interest. Even though the general partner controls the management and daily operations, a 25% interest is not a controlling interest. If someone were to acquire a 50% or greater interest from any of the existing partners, there would be a taxable acquisition of a controlling interest. If one partner acquires an additional 25% interest from another partner for a total of a 50% interest, no transfer or acquisition of a controlling interest occurs because less than 50% is transferred and acquired.

(C) Anne, Bobby, Chelsea, and David each own 25% of the voting shares of a corporation. The corporation redeems the shares of Bobby, Chelsea, and David. Anne now owns all the outstanding shares of the corporation. A taxable transfer occurred when the corporation redeemed the shares of Bobby, Chelsea, and David.

(D) Andrew owns 75% of the voting shares of a corporation. Andrew transfers all of his stock by 25% portions of the shares in three separate and unrelated transactions to Betsy, Carolyn, and Daniel, who are not acting in concert. A taxable transfer of a controlling interest occurs when Andrew transfers 75% of the voting shares of the corporation, even though no one has subsequently acquired a controlling interest.

(E) Big Corporation has two stockholders, Adrian and Britain. Adrian owns 90 shares of stock (90%) and Britain owns 10 shares of stock (10%). Big Corporation owns 60%

of the stock of Little Corporation, which owns real property. Adrian, by virtue of owning 90% of Big Corporation's stock, has a 54% interest in Little Corporation (90% interest in Big multiplied by the 60% interest Big has in Little equals the 54% interest Adrian has in Little). Adrian sells his 90 shares of stock in Big to Britain. Adrian, by selling his 90 shares of Big stock, has transferred a controlling interest (54%) in an entity that owns real property (Little). This transfer is subject to the real estate excise tax.

(F) Assume the same facts as in Example (E) of this subsection, except that Big owns only 50% of Little's stock. Since Adrian has not transferred and Britain has not acquired a controlling interest in Little (90% x 50% = 45%), the real estate excise tax does not apply. If, however, Big had transferred its 50% interest in Little, that would be a transfer of a controlling interest and it would be subject to the real estate excise tax.

(b) The terms **"person"** or **"company"** mean any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state of Washington or any political subdivision thereof, corporation, limited liability company association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any agency or instrumentality thereof.

(c) **"True and fair value"** means market value, which is the amount of money that a willing, but unobliged, buyer would pay a willing, but unobligated, owner for real property, taking into consideration all reasonable, possible uses of the property.

(d) **"Twelve-month period"** is any period of twelve consecutive months and may span two calendar years.

(e) **"Acting in concert"** occurs:

(i) When one or more persons have a relationship with each other such that one person influences or controls the actions of another through common ownership. For example, if a parent corporation and a wholly owned subsidiary each purchase a 25% interest in an entity, the two corporations have acted in concert and acquired a controlling (i.e., at least 50%) interest in the entity.

(ii) Where buyers are not commonly controlled or owned, but the unity of purpose with which they have negotiated and will complete the acquisition of ownership interests, indicates that they are acting together. For example, three separate individuals who decide together to acquire control of a company jointly through separate purchases of 20% interests in the company act in concert when they acquire the interests.

(3) **In general.** In order for the tax to apply when the controlling interest in an entity that owns real property is transferred, the following must have occurred:

(a) The transfer or acquisition of the controlling interest occurred within a twelve-month period.

Effective May 1, 2010, solely for the purpose of determining whether a transfer or acquisition pursuant to the exercise of an option occurred within a twelve-month period, the date on which the option agreement was executed is deemed to be the date of the transfer or acquisition;

(b) The controlling interest was transferred in a single transaction or series of transactions by a single person or acquired by a single person or a group of persons acting in concert;

(c) The entity has an interest in real property located in this state;

(d) The transfer is not otherwise exempt under chapters 82.45 RCW and 458-61A WAC; and

(e) The transfer was made for valuable consideration.

(4) **Measure of the tax.** The measure of the tax is the "selling price." For the purpose of this rule, "selling price" means the true and fair value of the real property owned by the entity at the time the controlling interest is transferred.

(a) If the true and fair value of the property cannot reasonably be determined, one of the following methods may be used to determine the true and fair value:

(i) A fair market value appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made pursuant to section 1060 of the Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2005.

(b) If the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained on the county property tax rolls at the time of the sale will be used as the selling price.

(c) **Examples.**

(i) A partnership owns real property and consists of two partners, Amy and Beth. Each has a 50% partnership interest. The true and fair value of the real property owned by the partnership is \$100,000. Amy transfers her 50% interest in the partnership to Beth for valuable consideration. The taxable selling price is the true and fair value of the real property owned by the partnership, or \$100,000.

(ii) A corporation consists of two shareholders, Chris and Dilbert. The assets of the corporation include real property, tangible personal property, and other intangible assets (goodwill, cash, licenses, etc.). An appraisal of the corporation's assets determines that the values of the assets are as follows: \$250,000 for real property; \$130,000 for tangible personal property; and \$55,000 for miscellaneous intangible assets. Chris transfers his 50% interest to Ellie for valuable consideration. The taxable selling price is the true and fair value of the real property owned by the corporation, or \$250,000.

(iii) An LLC owns real property and consists of two members, Frances and George. Each has a 50% LLC interest. Frances transfers her 50% interest to George. In exchange for the transfer, George pays Frances \$100,000. The true and fair value of the real property owned by the LLC is unknown. There is no debt on the real property. A fair market value appraisal is not available. The market value assessment for the property maintained on the county property tax rolls is \$275,000. The taxable selling price is the market value assessment, or \$275,000.

(5) **Persons acting in concert.** The tax applies to acquisitions made by persons acting in concert, as defined in subsection (2)(f) of this section.

(a) Where persons are not commonly controlled or influenced, factors that indicate whether persons are acting in concert include:

(i) A close relation in time of the transfers or acquisitions;

(ii) A small number of purchasers;

(iii) Mutual terms contained in the contracts of sale; and

(iv) Additional agreements to the sales contract that bind the purchasers to a course of action with respect to the transfer or acquisition.

(b) If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the persons are not acting in concert, and the acquisitions will be considered separate acquisitions.

(c) **Example.** Able owns 100% of Emerald Corporation, which owns real property. As a group, Baker, Charlie, Delta, and Echo negotiate to acquire all of Able's interest in Emerald. Baker, Charlie, Delta, and Echo each acquire 25% of Able's interest. The contracts of Baker, Charlie, Delta, and Echo are identical and the purchases occur simultaneously. Baker, Charlie, Delta, and Echo also negotiated an agreement binding themselves to a course of action with respect to the acquisition of Emerald and the terms of the shareholders agreement that will govern their relationship as owners of Emerald. Baker, Charlie, Delta, and Echo are acting in concert and their acquisitions from Able are treated as a single acquisition of a controlling interest that is subject to the real estate excise tax.

(6) **Date of sale.**

(a) When the controlling interest is acquired in one transaction, the actual date control is transferred is the date of sale. Examples of when an interest in an entity is transferred include when payment is received by the seller and the shares of stock are delivered to the buyer, or when payment is received by the seller and partnership documents are signed, etc.

(b) When the parties enter into an agreement to acquire or transfer a controlling interest over time through a series of transactions, the date of sale is deemed the date of the agreement arranging the transactions. The agreement results in the transfer of both a present interest and a beneficial interest in the entity, the sum of which results in a controlling interest, regardless of whether the first of the successive transactions is more than twelve months prior to the final transaction.

(c) When the controlling interest is transferred or acquired pursuant to the exercise of an option, the date upon which the option is exercised is the date of sale.

(d) **Examples.**

(i) Andrew owns 100% of the voting shares of Topaz Corporation. Andrew signs a binding agreement to transfer 51% of his shares in the corporation to Ted. The agreement states that the transfer will occur as follows: 49% of the shares will be transferred on January 1st, and the remaining 2% of the shares will be transferred on February 1st of the following year. Andrew has contractually agreed to sell 51% of the voting shares in Topaz within a twelve-month period, even though the shares will not actually be transferred to Ted until later. The date of sale is the date of the agreement, and REET is due upon the true and fair value of the property as of the date of the agreement.

(ii) Matt acquires a 10% interest in an entity which owns an apartment building under construction worth \$500,000 from Simon on January 30th. On July 30th Matt acquires a 30% interest in the same entity from Mary, but the building is

now worth \$900,000. On September 30th Matt acquires a 10% interest in the same entity from Ruth, but the building is now worth \$1,000,000. These are three separate and completely independent transfers. The final transfer allowed Matt to acquire, within twelve months, a controlling interest in an entity that owns real property. September 30th is the date of sale.

To determine the sellers' proportional tax liability in the example above, the series of transactions is viewed as a whole. Note both the individual and the total interests transferred. Here, Simon and Mary each conveyed 10% interests, while Ruth conveyed a 30% interest, with a total of a 50% interest being conveyed. To determine the liability percentage for each seller, divide the interest each conveyed by the total interest conveyed (Here, Simon and Mary: $10/50 = 20\%$; Ruth: $30/50 = 60\%$). This results in tax liability percentages here for Simon and Mary of 20% each and for Ruth, 60%.

To determine the amount of tax owed, the percentage is applied to the value of the property at the time of conveyance. In the example above, the value of the property to which the percentage applies is dependent on the time of each transfer (i.e., Simon's 20% on the \$500,000; Mary's 60% on the \$900,000; Ruth's 20% on the \$1,000,000).

(7) Tax liability. When there is a transfer or acquisition of a controlling interest in an entity that has an interest in real property, the seller of the interest is generally liable for the tax.

(a) Prior to May 1, 2010, when the seller had not paid the tax by the due date and neither the buyer nor the seller notified the department of the sale within thirty days of the sale, the buyer was also liable for the tax. When the buyer notified the department of the sale within thirty days of the sale, the buyer was not held personally liable for any tax due. Effective May 1, 2010, however, notice to the department by either the seller or the buyer does not exempt the buyer from liability for the tax, if the department cannot collect the tax from the seller.

(b) Effective May 1, 2010, the department may, at the department's option, enforce the obligation of the seller.

(i) If the entity is a corporation;

(A) Against the corporation;

(B) Against the person or persons who acquired the controlling interest; or

(C) When the corporation is not a publicly traded company, against the person or persons who transferred the controlling interest.

(ii) If the entity is a partnership, association, trust, or other entity that is not a corporation;

(A) Against the entity; or

(B) Against the person or persons who transferred or acquired the controlling interest.

(c) Unpaid tax is a specific lien on each parcel of real property in this state owned by an entity in which a controlling interest has been transferred or acquired. The lien attaches from the time of sale until the tax is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages.

(8) Reporting requirements.

(a) The transfer of a controlling interest in real property must be reported to the department when no instrument is

recorded in the official real property records of the county in which the property is located. If the transfer is not taxable due to an exemption, that exemption should be stated on the affidavit.

(i) The sale must be reported by the seller to the department within five days from the date of the sale on the department of revenue affidavit form, DOR Form 84-0001B. The affidavit form must be signed by both the seller and the buyer, or their agent, and must be accompanied by payment of the tax due.

(ii) The affidavit form may also be used to disclose the sale, in which case:

(A) It must be signed by the person making the disclosure; and

(B) It must be accompanied by payment of the tax due only when submitted by a seller reporting a taxable sale.

(iii) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter is subject to penalty of perjury.

(iv) Examples. The following examples, while not exhaustive, illustrate some of the circumstances in which the transfer of an interest in an entity must be reported to the department. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(A) Simon and Peter each own 40% of the voting shares of a corporation. Paul, Matthew, Mark, and John each own 5% voting shares. Paul acquires Peter's 40% interest, and Matthew's and Mark's 5% interests. This is a taxable acquisition because a controlling interest (50% or more) was acquired by Paul (40% from Peter plus 5% from Matthew and 5% from Mark). This transaction must be reported.

(B) Assume same facts as in example (iv)(A) of this subsection. Paul files an affidavit to disclose the sale to the department within thirty days of the date of sale. Peter, Matthew, and Mark go on vacation and the affidavit and required tax payment is not sent to the department. The department notifies Peter, Matthew, and Mark of their tax liability, which now includes interest and penalties. Effective May 1, 2010, Paul is not relieved of personal liability for the tax, interest, or penalties, if the department cannot collect from Peter, Matthew, and Mark.

(C) Assume the same facts as in example (iv)(A) of this subsection, except Paul only acquires Peter's 40% interest and Matthew's 5% interest. This is not a taxable acquisition because a controlling interest (50% or more) was not acquired by Paul. This transaction does not need to be reported.

(b) Under RCW 43.07.390, an entity must report the transfer of a controlling interest to the secretary of state, and, effective May 1, 2010, also the granting of any option that, if exercised, would result in a transfer or acquisition of a controlling interest. Failure to report a taxable transfer subjects the entity to interest and penalties.

(9) Due date, interest and penalties. The tax imposed is due and payable immediately on the date of sale. See WAC 458-61A-306 for interest and penalties that may apply.

(10) Transfers after tax has been paid. When there is a transfer or acquisition of a controlling interest in an entity and the real estate excise tax is paid on the transfer, and there is a subsequent acquisition of an additional interest in the

same entity within the same twelve-month period by a person acting in concert with the previous buyer(s), the subsequent seller is liable for its proportional portion of the tax. After payment by the subsequent seller of its proportional share, the person(s) who previously paid the tax may apply to the department for a refund of the amount overpaid because of the new proportional amount paid as a result of the subsequent transfer or acquisition.

(11) **Exemptions.** Because transfer and acquisition of a controlling interest in an entity that owns real estate in this state is statutorily defined as a "sale" of the real property owned by the entity, the exemptions of chapter 82.45 RCW and this chapter also apply to the sale of a controlling interest.

Examples.

(a) The merger of a wholly owned subsidiary owning real property located in this state with another subsidiary wholly owned by the same parent is a transfer of a controlling interest. However, this transfer may be exempt from taxation on two grounds. First, it may be exempt because it is a mere change in form or identity (see WAC 458-61A-211). Second, it may be exempt if it qualifies under the nonrecognition of gain or loss provisions of the Internal Revenue Code for entity formation, liquidation and dissolution, and reorganization. (See WAC 458-61A-212.)

(b) Taki owns 100% of a corporation. Taki wants her child, Mieko, and corporate manager, Sage, to be co-owners with her in the corporation. Taki makes a gift of 50% of the voting stock to Mieko and sells 33 1/3% to Sage. Although a controlling interest in the corporation has been transferred to and acquired by Mieko, it is not taxed because a gift is an exempt transfer and not considered for purposes of determining whether a controlling interest has transferred. The sale of the 33 1/3% interest to Sage is not a controlling interest, and is not taxed.

(c) Richard owns 75% of the voting stock of a corporation that owns real estate located in this state. Richard pledges all of his corporate stock to secure a loan with a bank. When Richard defaults on the loan and the bank forecloses on Richard's stock in the corporation, the transfer and acquisition of the controlling interest of the entity is not a taxable transaction because foreclosures of mortgages and other security devices are exempt transfers. (See WAC 458-61A-208.)

[Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060. 11-16-106, § 458-61A-101, filed 8/3/11, effective 9/3/11. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-101, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-102 Definitions. For the purposes of chapter 458-61A WAC, the following definitions apply unless the context requires otherwise:

(1) **"Affidavit"** means the real estate excise tax affidavit provided by the department for use by taxpayers in reporting transfers of real property. Both the seller/grantor and the buyer/grantee, or their agents, sign the affidavit under penalty of perjury. The term also includes the form used to report to the department transfers and acquisitions of a controlling interest in an entity owning real property in this state under WAC 458-61A-101.

(2) **"Consideration"** means money or anything of value, either tangible or intangible, paid or delivered, or con-

tracted to be paid or delivered, including performance of services, in return for the transfer of real property. The term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale. For example, Lee purchases a home for \$250,000. He puts down \$50,000, and finances the balance of \$200,000. The full consideration paid for the house is \$250,000.

(a) "Consideration" includes the issue of an ownership interest in any entity in exchange for a transfer of real property to the entity. For example, if Julie transfers title to 20 acres of commercial property to Smith Development, LLC in exchange for a 50% ownership interest in the company, that constitutes consideration for the transfer. In the case of partnerships, consideration includes the increase in the capital account of the partner made as a result of the partner's transfer of real property to the partnership, unless the transfer is otherwise specifically exempt under WAC 458-61A-211 or 458-61A-212.

(b) "Consideration" includes the assumption of an underlying debt on the property by the buyer at the time of transfer. For example, Ben buys a residence, valued at \$300,000, from Liza. Liza was purchasing the property on a real estate contract that has an outstanding balance of \$175,000. Ben gives Liza \$125,000 in cash and he assumes the obligation on the real estate contract, which Liza assigns to him. Real estate excise tax is due on \$300,000, which is the total consideration for the sale.

(c) "Consideration" does not include the amount of any outstanding lien or encumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements. For example, Mel buys residential property for \$300,000. The title is encumbered by a lien for unpaid property taxes in the amount of \$12,000, and a lien for municipal sidewalk improvements in the amount of \$6,000. Although Mel will become liable for those liens in order to take title to the property, they are not considered part of the purchase price for the purpose of calculating real estate excise tax. The real estate excise tax is due only on the purchase price of \$300,000.

(3) **"Controlling interest"** means:

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

(b) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity.

(4) **"County"** means the county treasurer or its agent.

(5) **"Date of sale"** means the date (normally shown on the instrument of conveyance or sale) that ownership of or title to real property, or control of the controlling interest in an entity that has a beneficial interest in real property, is delivered to the buyer/transferee in exchange for valuable consideration. In the case of a lease with option to purchase, the date of sale is the date when the purchase option is exercised and the property is transferred. "Date of sale," "date of transfer," "conveyance date," and "transaction date" all have

the same meaning and may be used interchangeably in this chapter. The real estate excise tax is due on the date of sale.

(6) **"Department"** means the department of revenue.

(7) **"Domestic partner"** has the same meaning as defined in chapter 26.60 RCW.

(8) **"Floating home"** means a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self-propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located.

(9) **"Governmental entity"** means the United States, any agency or instrumentality of the United States, the state of Washington ("state"), any government agency, commission, college, university, or other department of the state, any political subdivision of the state, counties, any county agency, council, instrumentality, commission, office, or department, any Washington taxing district, municipal corporations of this state, and any office, council, department, or instrumentality of a Washington municipal corporation.

(10) **"Mining property"** is property containing or believed to contain metallic or nonmetallic minerals, and sold or leased under terms that require the buyer or lessee to conduct exploration or mining work thereon, and for no other purpose.

(11) **"Mobile home"** means a mobile home as defined by RCW 46.04.302.

(12) **"Mortgage"** has its ordinary meaning, and includes a "deed of trust" for the purposes of this chapter, unless the context clearly indicates otherwise. The term "underlying debt" may also be used to refer to a mortgage or other security interest.

(13) **"Park model trailer"** means a park model trailer as defined in RCW 46.04.622.

(14) **"Real estate"** or **"real property"** means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity that owns land, or anything affixed to land, including standing timber and crops. The term includes condominiums and individual apartments for which the buyer receives a warranty deed. The term includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land. The term also includes any part of an irrigation system that is underground or affixed to the land. The term does not include irrigation equipment that is above the ground or that is not affixed to land. See RCW 82.12.020 for the tax treatment of sales of irrigation equipment that is not included in the definition of "real estate."

(15) **"Real estate contract"** or **"contract"** means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for the payment of the purchase price. The term does not include earnest money agreements or options to purchase real property.

(16) **"Sale"** means:

(a) Any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such a conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under

which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term includes the grant, relinquishment, or assignment of a life estate in property. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(b) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration. For the purposes of this chapter, all acquisitions of persons acting in concert are aggregated for the purpose of determining whether a transfer or acquisition of a controlling interest has taken place. For purposes of establishing the applicable twelve-month period for a transfer or acquisition pursuant to the exercise of an option, see WAC 458-61A-101.

(c) The term "sale" also applies to successive sales of the same property. An owner of real property is subject to payment of the real estate excise tax upon the entry of each successive contract for the sale of the same parcel of property. For example, Bob owns a house that he sells to Sam on a real estate contract. Real estate excise tax is paid on the transfer from Bob to Sam. Sam makes several payments, until he becomes unemployed. Since Sam can no longer make payments on the property, he conveys it back to Bob. Bob then makes a subsequent sale of the house to Sally. Real estate excise tax is due on the transfer from Bob to Sally. See WAC 458-61A-209 for the tax implications on the conveyance from Sam back to Bob.

(d) The term "sale" does not include:

(i) Those real property transfers that are excluded from the definition of "sale" and exempted from the real estate excise tax under RCW 82.45.010(3) and this chapter, including transfers without valuable consideration.

(ii) The transfer of lots or graves in an established cemetery. An established cemetery is one that meets the requirements for ad valorem property tax exemption under chapter 84.36 RCW.

(iii) The transfer of an interest in real property merely to secure a debt or the assignment of a security interest, release of a security interest, satisfaction of a mortgage, or reconveyance under the terms of a mortgage or deed of trust.

(iv) A deed given to a purchaser under a real estate contract upon fulfillment of the terms of the contract provided that the proper tax was paid on the original transaction. The fulfillment deed must be stamped by the county treasurer as required by WAC 458-61A-301, and the stamp must show the affidavit number of the sale for which the deed is fulfilling.

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

(e) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not be taxable. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) John paid off his home mortgage and wants to get a loan to make improvements and buy a new car. John obtains

an equity loan, secured by his home as collateral. This transaction is not subject to the real estate excise tax.

(ii) Bob purchased real property from Sam pursuant to a real estate contract. Real estate excise tax was paid on the purchase price at the time of the sale. Bob has now paid off the property, and Sam is issuing a fulfillment deed to Bob indicating that the real estate contract has been satisfied. The fulfillment deed from Sam to Bob is not subject to the real estate excise tax.

(iii) Diane has made the final payment on her mortgage, and the bank issues a full reconveyance of her property, indicating that the mortgage is paid in full. The reconveyance is not subject to the real estate excise tax.

(iv) Bill is refinancing his mortgage for a lower interest rate. There is a balloon payment on the new loan that will require that he refinance again in five years. Neither transaction is subject to the real estate excise tax.

(17) **"Seller"** means any individual, receiver, assignee, trustee for a deed of trust, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, limited liability company, business trust, municipal corporation, quasi municipal corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, but it does not include the United States or the state of Washington. The term "grantor" is used interchangeably with the term "seller" in this chapter and has the same meaning for purposes of the real estate excise tax.

(18) **"Selling price"** means the true and fair value of the property conveyed. There is a rebuttable presumption that the true and fair value is equal to the total consideration paid or contracted to be paid to the seller or to another person for the seller's benefit.

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

(i) A fair market appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made under section 1060 of the Internal Revenue Code of 1986, as amended.

(b) When the true and fair value of the property at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained in the county property tax rolls at the time of sale will be used as the selling price. RCW 82.45.030.

(c) When the sale is of a partial interest in real property, the principal balance of any debt remaining unpaid at the time of sale will be multiplied by the percentage of ownership transferred, and that amount added to any other consideration to determine the selling price.

(d) In the case of a lease with option to purchase, the selling price is the true and fair value of the property conveyed at the time the option is exercised.

[Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060. 11-16-106, § 458-61A-102, filed 8/3/11, effective 9/3/11. Statutory Authority: RCW 82.45.150, 08-24-095, § 458-61A-102, filed 12/2/08, effective 1/2/09. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-102, filed 11/16/05, effective 12/17/05.]

(8/3/11)

WAC 458-61A-103 Transfers involving an underlying debt. (1) Introduction. The real estate excise tax applies to transfers of real property when the grantee relieves the grantor from an underlying debt on the property or makes payments on the grantor's debt. The measure of the tax is the combined amount of the underlying debt on the property and any other consideration.

For example, Yen transfers property to Lee that is subject to an underlying debt. Yen is personally liable for the debt, meaning that if Yen does not make the payments the lender may foreclose on the property and obtain a judgment against Yen if the value of the property is insufficient to pay the debt. Lee agrees to make all future payments on Yen's debt but gives no other consideration for the property. Yen owes real estate excise tax on the amount of the underlying debt. Lee's payments on the underlying debt relieve Yen of her debt obligation. Therefore, Yen receives consideration.

(2) Transfers where grantor has no personal liability for the underlying debt. Real estate excise tax does not apply to transfers of real property subject to an underlying debt when the grantor has no personal liability for the debt and receives no other consideration for the transfer.

For example, Yen purchases property with funds obtained from PSP Corporation and secured only by the property. Yen has no personal liability for this debt. If Yen fails to make payments on the debt, PSP may foreclose on the property but it may not obtain a judgment against Yen. Yen transfers the property to Lee subject to the underlying debt. Lee takes the property subject to the underlying debt, and does not give any other consideration for the property. If Lee fails to make payments, PSP may foreclose on the property but it may not obtain a judgment against Lee (who, like Yen before, has no personal liability for the debt). Because Yen is not personally liable for the debt, Lee's payments on the underlying debt to PSP do not relieve Yen of any liability for the debt. The real estate excise tax does not apply to this transfer because there is no consideration.

(3) Documentation. In order to avoid the incidence of the tax, the grantor must present and maintain proper documentation to verify the type of debt and to confirm that fact that the grantor is not personally liable for the debt.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-103, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-104 Assignments. (1) Purchasers.

(a) The real estate excise tax does not apply to an assignment of a purchaser's interest in an earnest money agreement if neither the earnest money agreement nor its assignment results in a change of title to or ownership of the real property.

(b) The real estate excise tax does apply to transfers when the purchaser of real property under a real estate contract assigns the purchaser's interest in the contract for consideration. The tax is based on all consideration paid or contracted to be paid to the grantor for the assignment, including any unpaid principal balance due on the assigned real estate contract.

(2) Sellers. The real estate excise tax does not apply when a seller of real property under a real estate contract assigns any interest in the contract to a third party.

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(3) **Documentation.** The real estate excise tax affidavit is not required for exempt assignments; however, the instrument of assignment must be stamped by the county treasurer as required by WAC 458-61A-301. The stamp will cross-reference the number of the affidavit relating to the contract being assigned.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-104, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-105 Mobile and floating home sales.

(1) **Mobile homes.** The transfer of a mobile home is subject to either real estate excise tax or sales/use tax, depending on the characteristics of the transfer, regardless of whether the mobile home is classified as real or personal property on the assessment rolls.

(2) **Application of real estate excise tax.** The real estate excise tax applies to the transfer of a mobile home that:

(a) Is affixed to land by a foundation (post or blocks) and has connections for utilities;

(b) Is not required to be removed from the land as a condition of sale; and

(c) Has been subject to retail sales or use tax during a previous sale.

(3) **Sales or use tax.** Mobile home sales are subject to retail sales or use tax in the following instances:

(a) The initial retail sale of the mobile home;

(b) The sale from a dealer's lot of either a new or used mobile home;

(c) If the removal of the mobile from the land is a condition of the sale; or

(d) The mobile home is not affixed to the land by a foundation and does not have connections for utilities.

(4) **Floating homes.** The real estate excise tax applies to the transfer of a floating home that is:

(a) Constructed on a float used in whole or in part for human habitation as a single-family dwelling;

(b) Not designed for self-propulsion by mechanical means or for propulsion by means of wind; and

(c) Listed on the real property tax rolls of the county in which it is located and in respect to which tax has been paid under chapter 82.08 or 82.12 RCW.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-105, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-106 Sales of improvements to land, leases, and leases with option. (1) Introduction.

(a) The sale of improvements constructed on real property is subject to the real estate excise tax if the contract of sale does not require that the improvements be removed at the time of sale.

(b) The transfer of a lessee's interest in a leasehold for valuable consideration is taxable to the extent the transfer includes any improvement constructed on leased land. If the selling price of an improvement is not separately stated, or cannot otherwise be reasonably determined, the assessed value of the improvement as entered on the assessment rolls of the county assessor will be used.

(2) **Lease with option to purchase.** The real estate excise tax applies to a lease with option to purchase at the time the purchase option is exercised and the property is

transferred. The measure of the tax is the true and fair value of the property conveyed at the time the option is exercised.

(3) **Improvements removed from land.** The real estate excise tax does not apply to the sale of improvements if the terms of the sales contract require that the improvements be removed from the land. In this case the improvements are considered personal property and their use by the purchaser is subject to the use tax under chapter 82.12 RCW.

(4) **Documentation.** Completion of the affidavit is required for all of the above transfers except a transfer described in subsection (3) of this section, in which case the purchaser must file a use tax return with the department.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-106, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-107 Option to purchase. (1) Introduction. The real estate excise tax applies to a conveyance of real property upon the exercise of an option to purchase.

(2) **Taxability of sales of options.** The real estate excise tax does not apply to the grant or sale of an option and the real estate excise tax affidavit is not required for that transaction. However, the sale of an option is subject to business and occupation tax under the service and other category and should be reported on the combined excise tax return. RCW 82.04.290.

(3) Effective May 1, 2010, for the sole purpose of determining whether a transfer or acquisition of a controlling interest pursuant to the exercise of an option occurred within a twelve-month period, the date on which the option agreement was executed is deemed to be the date of the transfer or acquisition. For any other purpose; however, the date on which the option is exercised is the date of the transfer or acquisition. RCW 82.45.010 (2)(b). See WAC 458-61A-101.

(4) Examples.

(a) Joe acquires an option at a cost of \$100,000. The option, if exercised, allows Joe to purchase ten parcels of land for \$700,000. As individual parcels, these lots of land are uneconomical to develop. Joe "packages" the land, making it economically feasible to develop by either obtaining sufficient acreage or required studies. Buildup, a real estate development and construction company, purchases Joe's option on the property for \$2.3 million and subsequently exercises the option, paying \$700,000 for the land. The real estate excise tax does not apply to the sale of the option, however the \$2.3 million received for the option is subject to the business and occupation tax under the service and other category. The measure of the real estate excise tax is the \$700,000 purchase price paid on the transfer of the land.

(b) Consider the same initial facts as in the example in (a) of this subsection, but instead, Joe exercises the option, and subsequently sells the land to Buildup. The real estate excise tax applies to both the transfer to Joe and the subsequent transfer from Joe to Buildup.

[Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060. 11-16-106, § 458-61A-107, filed 8/3/11, effective 9/3/11. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-107, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-108 Contractor. (1) In general. If land is deeded to a contractor with an agreement to reconvey the property after construction of an improvement, the real

estate excise tax does not apply to either the first conveyance or to the reconveyance if:

(a) The land is deeded for the sole purpose of enabling the contractor to obtain financing for the construction of the improvement on the property conveyed; and

(b) The agreement to reconvey is contained in a written statement made prior to the original conveyance.

(2) **Tax treatment.** When both of the requirements of subsection (1) of this section have been met, the deed to the contractor, although absolute on its face, will be treated as creating a security interest only. However, the sales price of the improvement is subject to retail sales tax under chapter 82.08 RCW and business and occupation tax under chapter 82.04 RCW.

(3) **Documentation.** Real estate excise tax affidavits are required for both the original conveyance and the reconveyance. The affidavit must contain wording to the effect that the purpose of the transfers is for construction and security purposes only. The affidavit for reconveyance must refer to the date and number of the original affidavit.

(4) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples are provided as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) Jill owns an unimproved lot. She contracts with Sapphire Construction to build a residence on her lot. The contract provides that the lot will be deeded to Sapphire to obtain financing. The contract also states the property will be deeded back to Jill when the residence is completed. No real estate excise tax is due on the transfer of the vacant lot from Jill to Sapphire. Six months later, the residence is completed. Sapphire Construction transfers the property (land plus improvement) to Jill. No real estate excise tax is due on this transfer. The sales price of the improvement is subject to retail sales tax under chapter 82.08 RCW and business and occupation tax under chapter 82.04 RCW.

(b) Eleanor owns a house on 20 acres. She contracts with Ruby Development to sell 19 of her acres, but keeps ownership of her house and one acre that it sits on. The price is \$20,000 per acre. Since the property is not subdivided, she must convey all of her property to Ruby Development, under the condition that the house and the one acre will be deeded back to her when the property is subdivided. Eleanor transfers the 20-acre parcel to Ruby Development. Real estate excise tax is due on the \$380,000 contract price (19 acres x \$20,000 per acre). After one year, Ruby Development has the property subdivided into 20 one-acre parcels. Ruby Development transfers to Eleanor the house and one acre per the original contract. No real estate excise tax is due on the transfer from Ruby Development to Eleanor.

(c) Next to Eleanor, Bob owns 25 acres. He contracts with Ruby Development to sell his 25 acres for \$400,000, with the agreement that two lots will be transferred back to him after the development is completed. Real estate excise tax is due on the \$400,000 contract price. The reconveyance of two lots back to Bob is not subject to real estate excise tax.

(5) If a contractor, acting under the terms of a contract, purchases land on behalf of a customer for the purposes of constructing an improvement, the later conveyance of the property to the customer is not subject to the real estate excise

tax provided the requirements of WAC 458-61A-214 (Nominee) are met. The sales price of the improvement is subject to retail sales tax under chapter 82.08 RCW and business and occupation tax under chapter 82.04 RCW.

(6) When the owner of a lot contracts to have an improvement built upon the lot and retains title to the land, or when a lessee contracts to have an improvement built upon the lot and retains the leasehold interest, the real estate excise tax does not apply to the purchase of the improvement. The sales price of the improvement is subject to retail sales tax under chapter 82.08 RCW and business and occupation tax under chapter 82.04 RCW.

(7) When a speculative builder owns a lot and builds an improvement upon it, the subsequent sale of land and improvement is subject to the real estate excise tax. When a speculative builder sells a parcel of property with a partially constructed improvement with the understanding that the builder will complete the improvement, the real estate excise tax applies to the percentage of the project complete at the time of transfer. The retail sales tax applies to that portion of the selling price representing the construction to be completed after transfer.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-108, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-109 Trading/exchanging property and boundary line adjustments. (1) **Trading/exchanging property.** The real estate excise tax applies when real property is conveyed in exchange for other real property or any other valuable property. The real estate excise tax is due on the true and fair value for each individual property.

(2) **Boundary line adjustments.**

(a) **Introduction.** A boundary line adjustment is a legal method to make minor changes to existing property lines between two or more contiguous parcels. Real estate excise tax may apply depending upon the specific circumstances of the transaction. Boundary line adjustments include, but are not limited to, the following:

(i) Moving a property line to follow an existing fence line;

(ii) Moving a property line around a structure to meet required setbacks;

(iii) Moving a property line to remedy a boundary line dispute;

(iv) Moving a property line to adjust property size and/or shape for owner convenience; and

(v) Selling a small section of property to an adjacent property owner.

(b) **Boundary line adjustments in settlement of dispute.** Boundary line adjustments made solely to settle a boundary line dispute are not subject to real estate excise tax if no other consideration is present.

(c) **Taxable boundary line adjustments.** In all cases, real estate excise tax applies to boundary line adjustments if there is consideration (other than resolution of the dispute), such as in the case of a sale or trade of property.

(3) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples are provided as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) Mr. Jehnsen and Mr. Smith own adjoining parcels of land separated by a fence. During a survey to confirm the property boundary of Mr. Smith's parcel, the parties discover that the true property line actually extends five feet over on Mr. Jehnsen's side of the fence. Mr. Jehnsen does not want to move the fence. He has paved, landscaped and maintained this section of land and if he gave it up he would lose his parking area. After numerous discussions regarding the property line, Mr. Smith agrees to quitclaim the five-foot section of land to Mr. Jehnsen. Real estate excise tax does not apply since there is no consideration other than resolution of the dispute.

(b) Mr. Smith will only agree to transfer the five-foot section of land to Mr. Jehnsen if he is paid \$1,000. Mr. Smith owes real estate excise tax on \$1,000.

(c) Mr. Smith will cede the five-foot parcel only if Mr. Jehnsen gives him a narrow strip of land in exchange. Mr. Jehnsen agrees to exchange a ten-foot section of his parcel for the five-foot section of Mr. Smith's parcel solely to resolve the boundary line dispute. Real estate excise tax does not apply. It is irrelevant that the property involved in the transfer is not equal since the sole purpose of the transfer is to settle a boundary line dispute.

(d) Mr. Smith and Mr. Jehnsen are unable to resolve their dispute over the five-foot parcel. Mr. Jehnsen agrees to trade his lake front cabin for Mr. Smith's entire parcel. Mr. Jehnsen will owe real estate excise tax on the fair market value of the lake front cabin. Mr. Smith owes real estate excise tax on the fair market value of his parcel.

(e) Mr. Smith wants something in exchange for giving the five-foot parcel to Mr. Jehnsen. Mr. Jehnsen agrees to give Mr. Smith his tractor in exchange for the five-foot section of land. Mr. Smith will owe real estate excise tax on the fair market value of the five-foot section of his parcel and use tax on the value of the tractor (see WAC 458-20-178).

(f) Mr. Robbins owns 18 acres of land adjacent to Ms. Pemberton's 22-acre parcel. Mr. Robbins would like to develop his 18 acres, but he needs two more acres to develop the land. Ms. Pemberton agrees to give Mr. Robbins two acres of land. In exchange Mr. Robbins agrees to pave Ms. Pemberton's driveway as part of the land development. The real estate excise tax is due on the true and fair value of the two acres conveyed to Mr. Robbins. In addition, sales or use tax may be due on the value of the paving.

(4) **Documentation.** In all cases, an affidavit is required to record the new property line.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-109, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-110 Relocation service—Two-deed process. (1) **Introduction.** The real estate excise tax applies to property transfers involving the two-deed process or delivery of a deed, blank as to the grantee, but otherwise complete.

(2) **Delivery to third party.** The subsequent delivery of the deed to a third person named as grantee for consideration is also a taxable sale.

(3) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples are provided as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) Bob lists his house with a realtor under an agreement that if the house does not sell within four months, the realtor will purchase the house from Bob at the agreed price. Bob intends to purchase a house listed with that realtor and needs the funds from the sale of his house to use as a payment for the new house. Bob's house does not sell within the four-month period so the realtor purchases Bob's house. Bob executes a blank deed and gives it to the realtor, authorizing the realtor to insert the grantee's name when the realtor eventually resells the house. Real estate excise tax is due on both transfers. Bob owes real estate excise tax on the selling price of the house at the time he transfers the house to the realtor. The realtor owes real estate excise tax on the selling price of the house upon sale to the final buyer.

(b) PSP Corporation contracts with a relocation company to handle the sale of homes for its employees that are relocating. The employee transfers the property to the relocation company. The relocation company delivers the deed to an escrow company who holds the deed until the relocation company finds a buyer. Real estate excise tax is due on both transfers. Tax is due when the employee transfers the deed to the relocation company. Real estate excise tax is due on the second transfer when the relocation company transfers the property to the buyer.

(4) **Transactions involving only a single deed.** In the event the transactions are accomplished by one deed, the county may require documentation confirming the date of sale of each transaction. The documentation may include a copy of the relocation contract, copy of the settlement statement(s), etc. Even though there is only one deed, two taxable transactions have occurred, and real estate excise tax is due on both.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-110, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-111 Easements, development rights, water rights, and air rights. (1) **Easements.** The real estate excise tax applies to the conveyance of an easement for the use of real property in return for valuable consideration. The real estate excise tax affidavit is required only if the transfer is taxable.

(2) **Development rights, water rights, and air rights.**

(a) The real estate excise tax applies to the sale of development rights, water rights, and air rights. The measure of the tax is the total consideration received in exchange for the transfer of the right. The real estate excise tax affidavit must be completed for the transfer of development rights, water rights, and air rights regardless of whether a taxable sale has occurred.

(b) **"Development rights"** means transferable rights to the unused development on a parcel of land measured by the difference between the existing development density on the parcel and the density allowed by applicable zoning laws.

(c) **"Water rights"** means transferable rights to the diversion, extraction or use of water arising by virtue of the ownership of land located contiguous to surface water, a water right claim, or the possession of a water right permit or certificate issued by the department of ecology.

(d) **"Air rights"** means the exclusive undisturbed use and control of a designated air space within the perimeter of a stated land area and within stated elevations.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-111, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-112 Mineral rights and mining claims. (1) **When tax is imposed.** A conditional sale of mining property in which the grantee has the right to terminate the contract at any time, and a lease and option to buy mining property in which the lessee/grantee has the right to terminate the lease and option at any time, is taxable at the time of execution on the amount of the consideration paid to the grantor/lessor for execution of the contract. The tax due on any additional consideration paid by the grantee and received by the grantor is paid to the county upon the first occurrence of the following events:

- (a) The time of termination;
- (b) The time that all of the consideration due to the grantor has been paid and the transaction is completed except for the delivery of the deed to the grantee; or
- (c) The time when the grantee unequivocally exercises an option to purchase the property.

(2) **Lease for royalty.** A mining lease that grants the lessee the right to conduct mining exploration upon or under the surface of real property and to remove minerals from the property in exchange for a royalty is not subject to the real estate excise tax when the lease does not transfer ownership of the minerals to the lessee prior to severance from the real property.

(3) **Patented claims.** Patented mining claims are real property and their sale is subject to the real estate excise tax.

(4) **Unpatented claims.** Unpatented mining claims are intangible personal property and therefore not subject to the real estate excise tax.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-112, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-113 Timber, standing. (1) The real estate excise tax applies to the sale of timber if the ownership of the timber is transferred while the timber is standing. The tax applies to the sale of standing timber whether the sale is accomplished by deed or by contract. See also chapters 84.33 RCW and 458-40 WAC for specific regulations and rules regarding the taxation of timber and forest land.

(2) The grantor's irrevocable agreement to sell timber and pass ownership to it as it is cut is a taxable transaction if the total amount of the sale is specified in the original contract.

(3) A contract to transfer the ownership of timber after it has been cut and removed from land by the grantee is not a taxable transaction.

(4) A contract between a timber owner and a harvester when the harvester provides the service of cutting the timber and transporting it to the mill is not subject to the real estate excise tax if the timber owner retains ownership of the timber until it is delivered to and purchased by the mill.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-113, filed 11/16/05, effective 12/17/05.]

EXEMPTIONS AND EXCLUSIONS

WAC 458-61A-200 Exemptions and exclusions. **Introduction.** There are limited exemptions or exclusions

from the real estate excise tax provided by law. WAC 458-61A-201 through 458-61A-217 discuss exemptions and the procedures that must be followed to qualify for an exemption.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-200, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-201 Gifts. (1) **Introduction.** Generally, a gift of real property is not a sale, and is not subject to the real estate excise tax. A gift of real property is a transfer for which there is no consideration given in return for granting an interest in the property. If consideration is given in return for the interest granted, then the transfer is not a gift, but a sale, and it is subject to the real estate excise tax to the extent of the consideration received.

(2) **Consideration.** See WAC 458-61A-102 for the definition of "consideration." Consideration may also include:

- (a) Monetary payments from the grantee to the grantor;
- or
- (b) Monetary payments from the grantee toward underlying debt (such as a mortgage) on the property that was transferred, whether the payments are made toward existing or refinanced debt.

(3) **Assumption of debt.** If the grantee agrees to assume payment of the grantor's debt on the property in return for the transfer, there is consideration, and the transfer is not exempt from tax. Real estate excise tax is due on the amount of debt assumed, in addition to any other form of payment made by the grantee to the grantor in return for the transfer. However, equity in the property can be gifted.

(4) **Rebuttable presumption regarding refinancing transactions.**

(a) There is a rebuttable presumption that the transfer is a sale and not a gift if the grantee is involved in a refinance of debt on the property within six months of the time of the transfer.

(b) There is a rebuttable presumption that the transfer is a gift and not a sale if the grantee is involved in a refinance of debt on the property more than six months from the time of the transfer.

(5) **Documentation.**

(a) A completed real estate excise tax affidavit is required for transfers by gift. A supplemental statement approved by the department must be completed and attached to the affidavit. The supplemental statement will attest to the existence or absence of underlying debt on the property, whether the grantee has or will in the future make any payments on the debt, and whether a refinance of debt has occurred or is planned to occur. The statement must be signed by both the grantor and the grantee.

(b) The grantor must retain financial records providing proof that grantor is entitled to this exemption in case of audit by the department. Failure to provide records upon request will result in subsequent denial of the exemption.

(6) **Examples.**

(a) **Overview.** The following examples, while not exhaustive, illustrate some of the circumstances in which a grant of an interest in real property may qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(b) Examples—No debt.

(i) John conveys his residence valued at \$200,000 to Sara. John comes off of the title. There is no underlying debt on the property, and Sara gives John no consideration for the transfer. The conveyance from John to Sara qualifies for the gift exemption from real estate excise tax.

(ii) Keith and Jean, as joint owners, convey their residence valued at \$200,000 to Jean as her sole property. There is no underlying debt on the property. In exchange for Keith's one-half interest in the property, Jean gives Keith \$10,000. Keith has made a gift of \$90,000 in equity, and received consideration of \$10,000. Real estate excise tax is due on the \$10,000.

(c) Examples—Existing debt.

(i) Josh conveys his residence valued at \$200,000 to Samantha. Josh has \$25,000 in equity and an underlying debt of \$175,000. Josh continues to make the mortgage payments out of his own funds, and Samantha does not contribute any payments toward the debt. Since Josh continues to make the payments, there is no consideration from Samantha to Josh, and the transfer qualifies for exemption as a gift.

(ii) Josh conveys the residence to Samantha, and after the transfer, Samantha begins to make payments on the debt. Josh does not contribute to the payments on the debt after the title is transferred. Josh has made a gift of his \$25,000 equity, but real estate excise tax is due on the \$175,000 debt that Samantha is now paying.

(iii) Dan conveys his residence valued at \$200,000 to himself and Jill as tenants in common. Dan has \$25,000 in equity and an underlying debt of \$175,000. Dan and Jill open a new joint bank account, to which they both contribute funds equally. Mortgage payments are made from their joint account. There is a rebuttable presumption that real estate excise tax is due on the conveyance because Jill appears to be contributing toward payments on the debt. In that case, real estate excise tax is due on the consideration given by Jill, (50% of the underlying debt) based upon her contributions to the joint account. The tax will be calculated on a one-half interest in the existing debt (\$87,500).

(iv) Dan conveys the residence to himself and Jill. Dan has \$25,000 in equity, and a mortgage of \$175,000. Dan and Jill open a new joint bank account, which is used to make the mortgage payments, but Dan contributes 100% of the funds to the account. The conveyance is exempt from real estate excise tax, because Jill has not given any consideration in exchange for the transfer.

(v) Bob conveys his residence valued at \$200,000 to himself and Jane as tenants in common. Bob has \$25,000 equity, and an underlying debt of \$175,000. Bob and Jane have contributed varying amounts to an existing joint bank account for many years prior to the conveyance. Mortgage payments have been made from the joint account both before and after the transfer. The conveyance is exempt from real estate excise tax, because Jane's contributions toward the joint account from which the payments are made is not deemed consideration in exchange for the transfer from Bob (because she made contributions for many years before the transfer as well as after the transfer, there is no evidence that her payments were consideration for the transfer).

(vi) Bill and Melanie, as joint owners, convey their residence valued at \$200,000 to Melanie, as her sole property.

There is an underlying debt of \$170,000. Prior to the transfer, both Bill and Melanie had contributed to the monthly payments on the debt. After the transfer, Melanie begins to make 100% of the payments, with Bill contributing nothing toward the debt. Bill's equity (\$15,000) is a gift, but Melanie's taking over the payments on the mortgage is consideration received by Bill. Real estate excise tax is due on \$85,000 (Bill's fractional interest in the property multiplied by the outstanding debt at the time of transfer: $50\% \times \$170,000$).

(vii) Casey and Erin, as joint owners, convey their residence to Erin. There is an underlying debt of \$170,000 in both their names. For the three years prior to the transfer, Erin made 100% of the payments on the debt. After the transfer, Erin continues to make 100% of the payments. The transfer is exempt from the real estate excise tax because Erin made all the payments on the property before the transfer as well as after the transfer; there is no evidence that her payments were consideration for the transfer.

(d) Examples—Refinanced debt.

(i) Bob conveys his residence to himself and Jane. Within one month of the transfer, Bob and Jane refinance the underlying debt of \$175,000 in both their names, but Bob continues to make the payments on the debt. Jane does not contribute any funds toward the payments. The conveyance qualifies for the gift exemption because Jane gave no consideration for the transfer.

(ii) Casey and Erin, as joint owners, convey their residence valued at \$200,000 to Erin as sole owner. There is an underlying mortgage on the property of \$170,000. Prior to the transfer, Casey and Erin had both contributed to the monthly mortgage payments. Within one month of the transfer, Erin refinances the mortgage in her name only and begins to make payments from her separate account. In this case, there is a rebuttable presumption that this is a disguised sale, since Erin, through her refinance, has assumed sole responsibility for the underlying debt. Real estate excise tax is due on \$85,000 (Casey's fractional interest in the property multiplied by the total debt on the property: $50\% \times \$170,000$).

(iii) Kyle conveys his residence valued at \$200,000 to himself and Amy as tenants in common. Kyle has \$25,000 in equity, and an underlying debt of \$175,000. Within one month of the transfer, Kyle and Amy refinance the mortgage in both their names, and open a joint bank account to which they contribute funds equally. Payments on the new mortgage are made from the joint account. There is a rebuttable presumption that Amy's contributions to the joint account are consideration for the transfer, since Amy appears to have agreed to pay half of the monthly debt payment, and real estate excise tax may be due. The measure of the tax is one-half of the underlying debt to which Amy is contributing (\$87,500).

(iv) Kyle conveys his residence to himself and Amy. Kyle continues to make the payments on the underlying debt of \$175,000. Nine months after the transfer, Kyle and Amy refinance the property in both of their names. After the refinance, Kyle and Amy contribute equally to a new joint bank account from which the mortgage payments are now made. Amy's contribution to the mortgage nine months after the transfer is not deemed consideration in exchange for the transfer from Kyle to the two of them as tenants in common. The conveyance will qualify for the gift exemption.

(e) **Example—Refinanced debt—"Cosigner."** Charlie and Sadie, a married couple, own a residence valued at \$200,000 with an underlying mortgage of \$170,000. Sadie receives the property when they divorce. After a few months, Sadie tries to refinance, but her credit is insufficient to obtain a loan in her name only. Aunt Grace offers to assist her by becoming a "co-borrower" on the loan. As a result, the bank requires that Aunt Grace be added to the title. Following the refinance, Sadie makes 100% of the payments on the new debt, and Aunt Grace gives no consideration for being added to the title. The conveyance adding Aunt Grace to the title is exempt from real estate excise tax. Although the quitclaim deed from Sadie to Aunt Grace may be phrased as a gift, the transfer is exempt as Aunt Grace's presence on the title acts as an exempt security interest to protect Aunt Grace in the event Sadie defaults on her mortgage. See WAC 458-61A-215 for this exemption.

(f) **Example—Rental or commercial property.** Sue owns a rental property valued at \$200,000, with an underlying mortgage of \$175,000. Sue conveys the property to herself and Zack as tenants in common. Prior to the transfer, the rental income went to a bank account in Sue's name only, and she made the mortgage payments from that account. After the transfer, Zack's name is added to the bank account. The rental income is now deposited in the joint account, and the mortgage payments are made from that account. There is a rebuttable presumption that this is a taxable transaction, because this appears to be a business arrangement. As a business venture, one-half of the rental income now belongs to Zack, and is being contributed toward payment of the mortgage. The real estate excise tax will be due on the one-half interest of the debt contributed by Zack (\$87,500).

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-201, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-202 Inheritance or devise. (1) Introduction. Transfers of real property by inheritance or devise are not subject to the real estate excise tax. For the purpose of this exemption, it does not matter whether the real property transferred was encumbered by underlying debt at the time it was inherited or devised.

(2) **Nonpro rata distributions.** A nonpro rata distribution is one in which the transfer of real property to the heirs or devisees may not be in proportion to their interests. For example, Aunt Mary wills her entire estate equally to her three nieces. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo. Such distribution by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if the transfer is authorized under the nonintervention powers of a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15), if no consideration is given to the personal representative or the trustee for the transfer. For the purpose of this section, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.

(3) **Subsequent transfers.** A transfer of property from an heir to a third party is subject to the real estate excise tax. Examples:

(a) Steve inherits real property from his mother's estate. He sells the property to his son for \$50,000. The transfer of the property from the estate to Steve is exempt from real estate excise tax. The subsequent sale of the property to his son is a taxable event, and tax is due based upon the full sales price of \$50,000.

(b) Susan inherits real property from her father's estate. She decides to sell it to a friend on a real estate contract for \$100,000. Tax is due on the \$100,000.

(c) Sheri and her two sisters inherit their father's home, valued at \$180,000, in equal portions. Sheri wants sole ownership of the home but there are not "in-kind" assets of sufficient value to be distributed by the personal representative to her two sisters in a nonpro rata distribution. In order to take title directly from the personal representative, Sheri pays each of her sisters \$60,000, and they quitclaim their right to the property under the will. Tax is due on the total of \$120,000 paid for the property.

(4) **Community property or right of survivorship.** The transfer of real property to a surviving spouse or surviving domestic partner in accordance with a community property agreement or a survivorship clause is not subject to real estate excise tax.

(5) **Joint tenants.** The transfer of real property upon the death of a joint tenant to the remaining joint tenants under right of survivorship is not subject to the real estate excise tax.

(6) **Life estates and remainder interests.** The conveyance of a life estate to the grantor with a remainder interest to another party is not a taxable transfer if no consideration passes. For example, Nate and Libby convey their property to their son, Rex, retaining a life estate for themselves. The transaction is not subject to real estate excise tax because Rex pays no consideration. Upon the deaths of Nate and Libby, the title will vest in Rex and no real estate excise tax is due. However, if Nate and Libby convey their property to Rex, retaining a life estate for themselves, and Rex pays any consideration for his future interest, the transaction is taxable. Tax is due on the total consideration paid.

(7) **Documentation.** In order to claim this exemption, the following documentation must be provided:

(a) **Community property agreement.** If the property is being transferred under the terms of a community property agreement, copies of the recorded agreement and certified copy of the death certificate;

(b) **Trusts.** If property is being transferred under the terms of a testamentary trust without probate, a certified copy of the death certificate, and a copy of the trust agreement showing the authority of the grantor;

(c) **Probate.** In the case of a probated will, a certified copy of the letters testamentary, or in the case of intestate administration, a certified copy of the letters of administration, showing that the grantor is the court appointed executor/executrix or administrator;

(d) **Joint tenants and remainder interests.** A certified copy of the death certificate is recorded to perfect title;

(e) **Court order.** If the property is being transferred pursuant to a court order, a certified copy of the court order

requiring the transfer of property, and confirming that the grantor is required to do so under the terms of the order.

(f) **Other.** If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in (a) through (e) of this subsection, a certified copy of the death certificate and a signed affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir of the property.

[Statutory Authority: 2009 c 521, 10-09-050, § 458-61A-202, filed 4/15/10, effective 5/16/10. Statutory Authority: RCW 82.45.150. 08-24-095, § 458-61A-202, filed 12/2/08, effective 1/2/09. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-202, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-203 Community property, dissolution of marriage or domestic partnership, legal separation, decree of invalidity. (1) Community property. Transfers from one spouse or domestic partner to the other that establish or separate community property are not subject to the real estate excise tax.

(2) **Court decree.** The real estate excise tax does not apply to any transfer, conveyance, or assignment of property or interest in property from one spouse or domestic partner to the other in fulfillment of a settlement agreement incident to a decree of dissolution, declaration of invalidity, or legal separation.

(3) **Transfers to third parties.** A sale of real property by either one or both spouses or domestic partners to a third party is subject to the real estate excise tax, regardless of whether the sale is pursuant to the terms of a decree of dissolution, declaration of invalidity, or legal separation.

(4) **Former spouses or domestic partners.** Transfers of real property between ex-spouses or former domestic partners that are independent of any settlement agreement incident to their decree of dissolution or decree of invalidity are subject to the real estate excise tax, unless otherwise exempt under this chapter.

[Statutory Authority: RCW 82.45.150. 08-24-095, § 458-61A-203, filed 12/2/08, effective 1/2/09. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-203, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-204 Tenants in common and joint tenants. (1) Introduction. The real estate excise tax does not apply to the transfer of real property that results in the creation of a tenancy in common or joint tenancy with or without right of survivorship if no consideration passes otherwise. See WAC 458-61A-201, Gifts.

(2) **Partition.** The partition of real property by tenants in common or joint tenants, by agreement or as the result of a court decree, is not subject to real estate excise tax. A partition results when tenants in common agree that certain tenants will be assigned certain particular tracts within the property that they own together. Transfers to partition real property are not subject to the real estate excise tax provided that the transfer is without additional consideration passing.

(3) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a grant of an interest in real property may qualify for this exemption. These examples should be used only as a general

guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Betsy, Haley, and Kalli own five riverfront parcels as tenants in common. One parcel is worth twice as much as any of the others, which are all equivalent in value. The property is partitioned. Betsy receives the especially valuable parcel; Haley and Kalli receive two parcels each. No real estate excise tax is due, since the partition of the property is by agreement and no additional consideration passed between the parties.

(b) David and Corwin are business partners; they own two parcels of real estate as tenants in common. One parcel is valued at \$200,000 and has an underlying debt of \$175,000. The other parcel is valued at \$25,000 and has no underlying debt. Pursuant to a proceeding to liquidate their partnership, the court orders partition of the real property. David receives the more valuable parcel and assumes full responsibility for the debt. Corwin receives the less valuable parcel. No real estate excise tax is due, because the partition of the property is pursuant to a court order.

(4) The transfer of property upon the death of a joint tenant to the remaining joint tenants under a right of survivorship is not subject to the real estate excise tax. Transfers of real property by inheritance are not subject to the real estate excise tax. WAC 458-61A-202, Inheritances or devise, is cited on the real estate excise tax affidavit to claim an exemption from the real estate excise tax for such transfers.

(5) The sale of an interest in real property from one or more joint tenants or tenants in common to remaining tenants or to a third party is a taxable transaction. The taxable amount of the sale is the total of the following:

(a) Any consideration given; and

(b) Any consideration promised to be given, including the amount of any debt remaining unpaid on the property at the time of sale multiplied by that fraction of interest in the real property being sold.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-204, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-205 Government transfers. (1) Introduction. Transfers of real property from a government entity are not subject to the real estate excise tax. Transfers of real property to a government entity are subject to real estate excise tax unless specifically exempted under this chapter. A completed real estate excise tax affidavit is required for transfers both to and from a government entity.

(2) **Government seller.** A governmental entity selling real property is exempt from the real estate excise tax.

(3) **Government purchaser.** Generally, a seller that is not a governmental entity must pay real estate excise tax on voluntary sales of real property to a governmental entity unless the transfer is otherwise exempt under this chapter. See WAC 458-61A-206 regarding transfers pursuant to condemnation proceedings or under threat of the exercise of eminent domain.

(4) **Transfers for a public purpose.** Transfers to a governmental entity for a public use in connection with the development of real property by a developer when the transfer is required for plat approval are not subject to the real estate excise tax. For example, a developer who deeds prop-

erty to the city for streets and utilities is not subject to real estate excise tax on the transfer.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-205, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-206 Condemnation proceedings. (1)

Introduction. Transfers of real property to a governmental entity under an imminent threat of the exercise of eminent domain, a court judgment or settlement with a government entity based upon a claim of inverse condemnation, or as a result of the actual exercise of eminent domain, are not subject to the real estate excise tax.

(2) **Transfer must be to a governmental entity.** To qualify for this exemption, the threat of condemnation or the exercise of eminent domain must be made by a governmental entity with the actual power to exercise eminent domain.

(3) **Threat to exercise eminent domain must be imminent.** To qualify for this exemption, the governmental entity must have either filed condemnation proceedings against the seller/grantee; or:

(a) The governmental entity must have notified the seller in writing of its intent to exercise its power of eminent domain prior to the sale; and

(b) The governmental entity must have the present ability and authority to use its power of eminent domain against the subject property at the time of sale; and

(c) The governmental entity must have specific statutory authority authorizing its power of eminent domain for property under the conditions presented.

(4) **Inverse condemnation.** Inverse condemnation occurs when the government constructively takes real property even though formal eminent domain proceedings are not actually taken against the subject property. The seller must have a judgment against the governmental entity, or a court approved settlement, based upon inverse condemnation to claim the exemption.

(5) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a sale to a governmental entity may or may not be exempt on the basis of condemnation or threat of eminent domain. The status of each situation must be determined after a review of all the facts and circumstances.

(a) The Jazz Port school district wants to purchase property for a new school. An election has been held to authorize the use of public funds for the purchase, and the general area for the site has been chosen. In order to proceed, the district will need to obtain a five-acre parcel owned by the Fairwood family. The district has been granted authority to obtain property by the use of eminent domain if required. The district has notified the Fairwoods in writing of its intention to exercise its powers of eminent domain if necessary to obtain the land. The Fairwoods, rather than allowing the matter to proceed to court, agree to sell the parcel to the Jazz Port district. The school district will use the parcel for construction of the new school. The conveyance from the Fairwoods to Jazz Port school district is exempt from real estate excise tax because the transfer was made under the imminent threat of the exercise of eminent domain.

(b) The Sonata City Parks Department has the authority to obtain land for possible future development of parks. The department would like to obtain waterfront property for pres-

ervation and future development. They approach Frankie and Chaz Friendly with an offer to purchase the Friendly's 20-acre waterfront parcel. The Parks Department does not have a current appropriation for actual construction of a park on the site, and the City Council has not specifically authorized an exercise of eminent domain to obtain the subject property. The conveyance from the Friendly's to the city is subject to the real estate excise tax, because the transfer was not made under the imminent threat of the exercise of eminent domain.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-206, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-207 Bankruptcy. (1) Introduction.

The real estate excise tax does not apply to the conveyance of real property by a trustee in bankruptcy or debtor in possession made after the plan is confirmed under a chapter 11 or chapter 12 plan. Federal law preempts real estate excise tax on these transfers.

(2) **Documentation requirements.** A copy of the Order of Confirmation or an extract from the Confirmed Bankruptcy Plan, showing the date the bankruptcy plan was confirmed, the court case cause number, and the bankruptcy chapter number must be attached to the real estate excise affidavit provided to the department.

[Statutory Authority: [RCW 82.32.300, 82.45.150, and 82.01.060(2)]. 06-15-021, § 458-61A-207, filed 7/7/06, effective 8/7/06; 05-23-093, § 458-61A-207, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-208 Foreclosure—Deeds in lieu of foreclosure—Sales pursuant to court order. (1) Introduction.

The real estate excise tax does not apply to any transfer or conveyance made pursuant to an order of sale by a court in any mortgage or lien foreclosure proceeding or upon execution of a judgment. Real estate excise tax affidavits which state claims for this tax exemption must cite the cause number of the foreclosure proceeding on the affidavit and the conveyance document. A copy of the court decision must be attached to the department's affidavit copy by the county treasurer.

(2) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Joan and Sam are friends. They decide to jointly purchase real property worth \$100,000 as tenants in common. One year later, they decide to end their co-ownership of the property. Joan and Sam cannot agree on how the property should be divided. They both obtain legal counsel and go to court to resolve the issue. The court orders that Sam will deed his interest in the real property to Joan and Sam will be paid \$65,000 for his interest in the property. No real estate excise tax is due on the transfer since the transfer is pursuant to a court ordered sale.

(b) Rather than going to trial, Joan and Sam agree to a settlement during the course of their negotiations. The attorneys draft an agreeable settlement under which Sam will get the property and Joan will be paid \$75,000. The settlement agreement is presented to the court and the judge signs off on

the agreement. Tax is due on the transfer because this is not a court ordered sale.

(3) **Foreclosure and contract forfeiture.** The real estate excise tax does not apply to the following transfers where no additional consideration passes:

(a) A transfer by deed in lieu of foreclosure to satisfy a mortgage or deed of trust;

(b) A transfer from a contract purchaser to the contract holder in lieu of forfeiture of a contract of sale upon default of the underlying obligation; or

(c) A transfer occurring through the cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, regardless of whether the contract contains a forfeiture clause, such as a declaration of forfeiture made under the provisions of RCW 61.30.070.

(d) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(i) Meg sells real property to Julie on a real estate contract. The contract price is \$65,000. Julie makes payments for one year and then loses her job and can't make payments on the contract. Julie feels that she has some equity in the property, but she and Meg disagree on how to resolve the issue. Eventually, they come to an agreement. Meg will pay Julie \$1,500; Julie will sign a deed in lieu of forfeiture and transfer the property to Meg. At the time of the deed in lieu of forfeiture, the outstanding balance of the contract was \$61,000. Even though the transfer was by a deed in lieu of forfeiture, there is additional consideration passing (the \$1,500). The transfer is subject to tax. The taxable selling price is \$62,500, which is the total of the outstanding contract balance that was canceled plus the \$1,500 paid to Julie.

(ii) Sally sells real property to Frank. Frank obtains a \$150,000 loan from Easy Bank. The bank secures the loan with a deed of trust on the real property. Frank is unable to make the payments on the loan. Frank transfers the property back to Easy Bank by deed in lieu of foreclosure to satisfy the deed of trust. No real estate excise tax is due on the transfer.

(iii) Mel sells real property to George. George obtains a \$100,000 loan from Zephyr Bank. The bank secures the loan with a deed of trust on the real property. George is unable to make the payments on the loan. George obtains a second loan of \$25,000 from Sam. Sam secures his loan with a second deed of trust on the real property. Sam's deed of trust is in junior position to Zephyr Bank's deed of trust. Later, George can't make payments to either the bank or Sam. At this time, George owes the Bank \$95,000 and Sam \$23,000. George transfers the real property to Sam by deed in lieu of foreclosure to satisfy Sam's junior deed of trust. The debt to Zephyr Bank (the senior position debt) remains unpaid on the property at the time of transfer. The transfer is partially exempt and partially taxable. The deed in lieu of the junior position debt is exempt. The senior position debt to the bank that remains outstanding on the property at the time of the transfer meets the definition of consideration and is subject to tax. Tax would be due on \$95,000.

(iv) Joe purchases a manufactured home and has it installed in a mobile home park. Joe signs a contract with the

mobile home park owner to pay \$300 in monthly rent. If the rent is not paid, the contract states that the park owner has a lien against the manufactured home. Joe is injured and moves in with relatives in another state. Joe does not pay rent for six months. The park owner, takes title to the mobile home under the authority of the rent contract, and puts it up for sale to recover his interest for back rent. The park owner sells the manufactured home to Mimi. No tax is due on the transfer to the park owner, since that transfer was to satisfy a lien on the property. Real estate excise tax is due on the sale to Mimi.

(4) **Deed of trust.** The real estate excise tax does not apply to the foreclosure sale of real property by the trustee under the terms of a deed of trust, whether to the beneficiary listed on that deed or to a third party.

(5) **Assignment of indebtedness.** A transfer from a servicing agent, who has acquired real property under this section, to the actual owner of the indebtedness that was foreclosed upon is not subject to real estate excise tax. A copy of the assignment of the indebtedness or a copy of the trustee's deed identifying the servicing agent as an agent for the actual owner must be attached to the real estate excise tax affidavit provided to the department for exemptions claimed under this subsection.

For example, Gil sells real property to Max. Max obtains a \$125,000 loan from Zone Finance. The finance company secures the loan with a deed of trust on real property. Zone Finance sells the loan to Federal National Mortgage Association (Fannie Mae). The finance company becomes the servicing agent for the loan. Max can't make payments on the loan. Due to nonpayment on the debt, the Trustee (under the authority of the Deed of Trust) conducts a Trustee's sale of the real property. The Trustee transfers the property to the Zone Finance via a Trustee's Deed. No real estate excise tax is due on that transfer. Zone Finance Company transfers real property to Fannie Mae, the actual owner of the debt. No real estate excise tax is due on that transfer.

(6) **Sheriff's sale.**

(a) **Introduction.** The real estate excise tax does not apply to a transfer of real property made by a county sheriff pursuant to a court decree. A real estate excise tax affidavit must be filed with the county.

(b) The real estate excise tax applies to a subsequent sale or assignment of the right of redemption and the certificate of purchase that result from the sheriff's sale. The taxable consideration includes any payment given or promised to be given. It also includes the amount of underlying encumbrance, the payment of which is necessary for the exercise of the right of redemption.

(c) **Examples.**

(i) Bill sells property to Sam on a contract. After one year, Sam stops making payments on the contract. Bill obtains a judgment against Sam for nonpayment. At the Sheriff's sale, Bill obtains a certificate of purchase. Sam obtains the right of redemption. Sam is unable to make payment to redeem the right of redemption during the redemption period. When the redemption period is over, Bill turns the certificate of purchase over to the Sheriff. The Sheriff issues a Sheriff's Deed to Bill. No real estate tax is due on the issuance of the Sheriff's deed to Bill.

(ii) Alternatively, at the Sheriff's sale, Bill obtains a certificate of purchase. Sam obtains the right of redemption. To

exercise the right of redemption, the holder must remit \$50,000 to the Sheriff. Sam sells the right of redemption to Jerry for \$10,000. Real estate excise tax is due on \$60,000 for the transfer of the right of redemption from Sam to Jerry. Jerry exercises the right of redemption by paying \$50,000 to the Sheriff. The Sheriff issues a Sheriff's Deed to Jerry. No real estate tax is due on the issuance of the Sheriff's deed to Jerry.

(7) **Documentation.** In addition to the documentation requirements set forth in subsections (1) and (5) of this section, a copy of the recorded original mortgage, deed of trust, contract of sale, or lien document must be presented with the real estate excise tax affidavit.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-208, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-209 Rescission of sale. (1) Introduction. The reconveyance of property due to a rescission of sale is not subject to the real estate excise tax.

(2) **Consideration must be repaid to buyer.** To qualify for exemption under this rule, all consideration paid toward the selling price must be returned by the seller to the buyer at the time of the reconveyance.

(a) A seller may retain interest paid by the buyer without disqualifying the exemption.

(b) The payment of a reasonable reimbursement for site improvements will not disqualify the exemption.

(3) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a reconveyance may or may not be exempt on the basis of a rescission of sale. The status of each situation must be determined after a review of all the facts and circumstances.

(a) Scott sold his property to Mary by real estate contract for \$200,000 on January 15, 2004. Real estate excise tax was paid to Lion County. Mary gave Scott a down payment of \$10,000 and started making monthly payments of \$1,000 per month to Scott beginning March 2004. In September 2004 Mary notified Scott that she lost her job and wanted to rescind the purchase contract. Scott agreed to take the property back and returned the down payment of \$10,000, and the monthly principal payments totaling \$600 to Mary. The transfer back to Scott from Mary is exempt from real estate excise tax.

(b) Tony purchased Charlie's property by real estate contract for \$100,000 in March 2003. Real estate excise tax of \$1,780 was paid to Puget County. Tony made a \$15,000 down payment and began making \$800 monthly contract payments in May 2003. On October 31, 2004, Tony found out that the property had some minor problems and he wanted to rescind the purchase. Charlie agreed to take the property back but would not give back the money Tony had paid to Charlie for the property. Since all consideration paid toward the purchase of the property was not returned by Charlie, the transfer from Tony to Charlie does not qualify for exemption from real estate excise tax under this rule.

(c) Julie contracted to sell property to Amanda for \$150,000 in April 2004. Julie paid real estate excise tax to Rainier County before Amanda obtained financing. Amanda made a \$20,000 down payment to Julie and applied for a conventional loan to pay the balance of \$130,000. Subsequently, Amanda found out she could not qualify for a loan due to her

past credit history. Amanda transferred the property back to Julie, and Julie returned the \$20,000 down payment to Amanda. The transfer back to Julie is exempt from real estate excise tax. In addition, the initial transfer from Julie to Amanda is exempt because Amanda was unable to qualify for a loan to finalize the purchase of the property.

(4) **Refunds.** See WAC 458-61A-301 for refund procedures with respect to real estate excise tax paid on original transfer when the sale is later rescinded.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-209, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-210 Irrevocable trusts. (1) Introduction. The distribution of real property to the beneficiaries of an irrevocable trust is not subject to the real estate excise tax if no valuable consideration is given for the transfer and the distribution is made according to the trust instrument.

(2) **Transfer into trust.** A conveyance of real property to an irrevocable trust is subject to the real estate excise tax if:

(a) The transfer results in a change in the beneficial interest and not a mere change in identity or ownership; and

(b) There is valuable consideration for the transfer.

(3) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a trust conveyance may or may not be exempt from real estate excise tax. The status of each situation must be determined after a review of all the facts and circumstances.

(a) Eric and Annie, husband and wife, transfer real property valued at \$500,000 to an irrevocable trust. The property has an underlying debt of \$300,000 that is secured by a deed of trust. Under the terms of the trust, the trustee is required to pay all the income annually to the grantors (Eric and Annie), or to the survivor if one of them dies. Upon the death of both Eric and Annie, the property will be divided equally among their children. The conveyance of the property into the trust is not subject to the real estate excise tax, even if the trust pays the indebtedness, because there has been no change in the present beneficial interest, and Eric and Annie did not receive consideration for the transfer.

(b) Jim and Jean, husband and wife, own real property valued at \$800,000. Upon Jean's death, her one-half interest in the property is transferred to Jean's testamentary trust under the terms of her will. Jim, as trustee, has sole discretion to accumulate income or to pay income to himself, or to their children, or to their grandchildren, or to each. The transfer to the trust is not subject to real estate excise tax. See WAC 458-61A-202.

(c) Upon Jean's death, Jim's remaining half-interest in the property is valued at \$400,000, with an underlying debt of \$30,000, for which he is personally liable. Jim transfers his half-interest to Jean's testamentary trust, and the trust pays or is obligated to pay the indebtedness. The conveyance of Jim's one-half interest is subject to real estate excise tax, because the transfer involves both a present change in the beneficial interest (after Jean's death, assets in Jean's trust are legally separate from assets belonging to Jim) and there is valuable consideration in the form of relief of liability for the debt. The real estate excise tax is due on the amount of the consideration (\$30,000).

(4) **Revocable trusts.** See WAC 458-61A-211 for the taxability of transfers into a revocable trust.

(5) **Documentation.** When real property is transferred to or from a testamentary trust, or real property is transferred to or from an irrevocable trust, the following must be provided:

- (a) A copy of the trust instrument; or
- (b) A statement signed by the trustee or the grantor, or the representative of the trustee or grantor containing the following information:
 - (i) The name, address, and telephone number of the trustee or grantor, and/or representative of the trustee or grantor who is authorized to represent the trustee or grantor before the department of revenue;
 - (ii) The character of the trust, e.g., testamentary, irrevocable living trust, etc.;
 - (iii) The nature of the transfer:
 - (A) If the transfer is to or from a testamentary trust, the nature of and reason for the transfer.
 - (B) If the transfer is to or from an irrevocable living trust:
 - (I) The nature and reason for the transfer;
 - (II) Whether or not the property is encumbered with debt; and
 - (III) Whether or not the trustee may, at the time of the transfer, distribute income and/or principal to a person(s) other than the grantor(s).

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-210, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-211 Mere change in identity or form—Family corporations and partnerships. (1) **Introduction.** A transfer of real property is exempt from the real estate excise tax if it consists of a mere change in identity or form of ownership of an entity. This exemption is not limited to transfers involving corporations and partnerships, and includes transfers of trusts, estates, associations, limited liability companies and other entities. If the transfer of real property results in the grantor(s) having a different proportional interest in the property after the transfer, real estate excise tax applies.

(2) **Qualified transactions.** A mere change in form or identity where no change in beneficial ownership has occurred includes, but is not limited to:

- (a) The transfer by an individual or tenants in common of an interest in real property to a corporation, partnership, or other entity if the entity receiving the ownership interest receives it in the same pro rata shares as the individual or tenants in common held prior to the transfer. (See also WAC 458-61A-212, Transfers where gain is not recognized under the Internal Revenue Code.)
- (b) The transfer by a corporation, partnership, or other entity of its interest in real property to its shareholders or partners, who will hold the real property either as individuals or as tenants in common in the same pro rata share as they owned the corporation, partnership, or other entity. To the extent that a distribution of real property is disproportionate to the interest the grantee partner has in the partnership, it will be subject to real estate excise tax.
- (c) The transfer by an entity of its interest in real property to its wholly owned subsidiary, the transfer of real property from a wholly owned subsidiary to its parent, or the transfer of real property from one wholly owned subsidiary to another.

(d) The transfer by a corporation, partnership or other entity of its interest in real property to another corporation, partnership, or other entity if the grantee owner(s) receives it in the same pro rata shares as the grantor owner(s) held prior to the transfer.

(e) Corporate mergers and consolidations that are accomplished by transfers of stock or membership, and mergers between corporations and limited partnerships as provided in chapters 25.10 and 24.03 RCW.

(f) A transfer of real property to a newly formed, beneficiary corporation from an incorporator to the newly formed corporation, provided:

- (i) The proper real estate excise tax was paid on the original transfer to the incorporator; and
- (ii) It was documented on or before the original transfer that the incorporator received title to the property on behalf of that corporation during its formation process.

This tax exemption does not apply to a transaction in which a property owner acquires title in his or her own name and later transfers title to the corporation upon its formation.

- (g) A transfer into any revocable trust.
- (h) A conveyance from a trustee of a revocable trust to the original grantor or to a beneficiary if no valuable consideration passes, or if the transaction is otherwise exempt under this chapter (for example, a gift or inheritance). A sale of real property by the trustee to a third party, or to a beneficiary for valuable consideration, is subject to the real estate excise tax.

(3) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a grant of an interest in real property may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Andy owns a 100% interest in real property. He transfers his property to his solely owned corporation. The transfer is exempt from real estate excise tax because there has been no change in the beneficial ownership interest in the property.

(b) Elizabeth owns a 100% interest in real property, and is the sole owner of Zippy Corporation. She transfers her property to Zippy. The corporation pays \$5,000 to Elizabeth and agrees to make payments on the underlying debt on the property. Despite the fact that there was consideration involved in the transfer, it is still exempt from tax because there was no change in beneficial ownership.

(c) Jim, Kathie, and Tim own real property as joint tenants. They transfer their property to their LLC in the same pro rata ownership. The transfer is exempt from real estate excise tax because there has been no change in beneficial ownership.

(d) Pat, Liz, and Erin own Stage Corporation. They also own Song & Dance Partnership, in the same pro rata ownership percentages as their interests in the corporation. Stage Corporation transfers real property to Song & Dance Partnership. The transfer is exempt from real estate excise tax, because there has been no change in beneficial interest.

(e) Morgan owns real property. Brea owns Sparkle Corporation. Morgan transfers real property to Sparkle in exchange for an interest in the corporation. The transfer is subject to real estate excise tax because there has been a change in the beneficial interest in the real property. The tax applies to the extent that the transfer of real property results

in the grantor having a different proportional interest in the property after it is transferred. (Note, however, that Morgan and Brea may be able to structure their transaction in a manner that would qualify for exemption under WAC 458-61A-212.)

(f) Dan owns property as sole owner. Jill owns property as sole owner. Dan and Jill each transfer their property to Rhyming LLC, which they form together. The transfers are taxable because there has been a change in the beneficial ownership interest in the real property. To the extent that the transfer of real property results in the grantor having a different proportional interest in the property after the transfer, it is taxable. (Note, however, that Dan and Jill may qualify for an exemption under WAC 458-61A-212.)

(g) Fred and Steve are equal partners in Jazzy Partnership. They decide to transfer real property from the partnership to themselves as individuals. Based on its true and fair value, the partnership transfers 60% of the real property to Fred and 40% to Steve. This distribution is not in proportion to their ownership interest in Jazzy Partnership, and the transfer is not exempt because there has been a change in the beneficial ownership interest. To the extent that the transfer of property results in the grantor having a different proportional interest in the property after the transfer, it is taxable. (Note, however, that Fred and Steve may qualify for an exemption under WAC 458-61A-212.)

(4) Disparate treatment of ownership interests.

(a) Where the ownership of real property is different for financial accounting purposes than for federal tax purposes, the beneficial ownership interest in the real property is deemed the entity which is the owner for financial accounting purposes. Any transfer from the entity that is the owner for federal tax purposes to the owner for financial accounting purposes, or vice versa, is subject to the real estate excise tax.

(b) For example, Giant Company wants to expand its business. It identifies some real property, but is unable to finance the purchase through a normal loan. It contracts with Mega Loans Inc. to enter into a "synthetic lease" for the purchase of the real property. Under the terms of the synthetic lease, Mega Loans will take title to the real property, and Giant Company will lease it from Mega Loans. Real estate excise tax is paid on the purchase of the real property by Mega Loans. The terms of the lease also provide that Giant Company will be the owner for federal tax purposes and Mega Loans will be the owner for financial accounting purposes. Per the lease agreement, after a specified time Mega Loans will transfer title to the real property to Giant Company. The transfer of title from Mega Loans to Giant Company is subject to real estate excise tax.

(5) Family corporations, partnerships, or other entities. This exemption applies to transfers to an entity that is wholly owned by the transferor and/or the transferor's spouse, state registered domestic partner, children, or state registered domestic partner's children regardless of whether the transfer results in a change in the beneficial ownership interest. However, real estate excise taxes will become due and payable on the original transfer as otherwise provided by law if:

(a) The partnership or corporation thereafter voluntarily transfers the property; or

(b) The transferor, spouse, state registered domestic partner, children, or state registered domestic partner's children voluntarily transfer stock in the corporation, or interest in the partnership capital to other than:

(i) The transferor and/or the transferor's spouse, state registered domestic partner, children, or state registered domestic partner's children;

(ii) A trust having the transferor and/or the transferor's spouse, state registered domestic partner, children, or state registered domestic partner's children as the only beneficiaries at the time of transfer to the trust; or

(iii) A corporation or partnership wholly owned by the original transferor and/or the transferor's spouse, state registered domestic partner, children, or state registered domestic partner's children within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer is not paid within sixty days of becoming due.

For example, parents own real property as individuals. They create an LLC that is owned by themselves and their three children. The parents transfer the real property to the LLC. Despite the fact that there was a change in beneficial ownership interest, it is still exempt from tax, because the LLC is owned by the grantor and/or the grantor's spouse, state registered domestic partner, children, or state registered domestic partner's children.

(6) Transfers when there is not a change in identity or form of ownership of an entity. This exemption applies to transfers of real property when the grantor and grantee are the same.

For example, John and Megan own real property as tenants in common. They decide that they prefer to hold the property as joint tenants with rights of survivorship. John and Megan, as tenants in common, convey the property to John and Megan as joint tenants with rights of survivorship. The transfer is exempt from real estate excise tax.

[Statutory Authority: 2009 c 521, 10-07-133, § 458-61A-211, filed 3/23/10, effective 4/23/10. Statutory Authority: RCW 82.32.300, 82.04.150, and 82.01.060(2), 06-20-036, § 458-61A-211, filed 9/25/06, effective 10/26/06. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150, 05-23-093, § 458-61A-211, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-212 Transfers where gain is not recognized under the Internal Revenue Code. (1) Introduction. A transfer that, for federal income tax purposes, does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, is not subject to the real estate excise tax.

(2) Internal Revenue Code sections. This exemption includes, but is not limited to, nonrecognition of loss or gain under the following sections of the Internal Revenue Code of 1986:

(a) Section 332 - Corporate liquidations - Complete liquidations of subsidiaries.

(b) Section 337 - Corporate liquidations - Nonrecognition for property distributed to parent in complete liquidation of subsidiary.

(c) Section 351 - Corporate organizations and reorganizations - Transfer to corporation controlled by transferor.

(d) Section 368 (a)(1) - Corporate organizations and reorganization - Definitions relating to corporate reorganizations - Reorganizations - In general.

(e) Section 721 - Partners and partnerships - Nonrecognition of gain or loss on contribution.

(f) Section 731 - Partners and partnerships - Extent of recognition of gain or loss on distribution.

(3) **Extent of exemption.** This exemption applies only to transfers that qualify as nonrecognition of gain or loss transactions under the Internal Revenue Code for entity formation, liquidation or dissolution, and reorganization.

(a) This exemption does not apply to transactions under Internal Revenue Code section 1031 - Exchange of property held for productive use or investment. That section of the Internal Revenue Code does not deal with entity formation, liquidation or dissolution, or reorganization. (See WAC 458-61A-213, IRS "tax deferred" exchanges.)

(b) This exemption does not apply to sales under Internal Revenue Code section 1034 - Rollover of gain on sale of principal residence. That section of the Internal Revenue Code does not deal with entity formation, liquidation or dissolution, or reorganization.

(4) **Treatment when gain is partially recognized in an otherwise exempt transaction.** In the event a transaction qualifies for the exemption under this section as a nonrecognition of gain or loss transaction for entity formation, liquidation or dissolution, or reorganization, but a gain is partially recognized under the Internal Revenue Code provisions, the real estate excise tax applies to the amount of the transaction for which gain is recognized.

(5) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a grant of an interest in real property may or may not qualify for exemption under this rule. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) In an otherwise nontaxable Internal Revenue Code section 351 transaction, Nate transfers to ZULU Corporation real property which has a true and fair value of \$100,000. Nate receives, in exchange, ZULU stock worth \$80,000, cash of \$5,000, and a promissory note from ZULU to pay Nate \$15,000 monthly, starting at closing, for 36 months at 6% interest. The \$5,000 cash received and the \$15,000 promissory note constitute "boot" under the provisions of section 351 and gain is recognized to the extent of the "boot." For real estate excise tax purposes, the taxable portion is 20% (\$20,000/\$100,000) and the real estate excise tax applies to 20% of the true and fair value of the real property transferred, or \$20,000.

(b) In an otherwise nontaxable Internal Revenue Code section 351 transaction, Sally transfers real property with a true and fair value of \$50,000, and machinery worth \$250,000, to ECHO Corporation. In exchange, Sally receives ECHO stock worth \$275,000 and cash of \$25,000. The cash received constitutes "boot" and gain is recognized. For real estate excise tax purposes, the nonexempt portion of the transaction is 8.3% (\$25,000/\$300,000). The nonexempt percentage (8.3%) is applied to the true and fair value of the real property (\$50,000) to arrive at the amount \$4,167. Real estate excise tax is due on \$4,167.

(c) Brenda and Julie are partners in LIMA Partnership. In a nontaxable Internal Revenue Code section 721 transaction, Mike transfers real property to LIMA Partnership in

exchange for a partnership interest in LIMA Partnership. No consideration, other than the partnership interest in LIMA Partnership, is given to Mike in exchange for Mike's transfer of real property. Because the transfer is exempt under Internal Revenue Code section 721, the real estate excise tax does not apply to Mike's conveyance of real property to LIMA partnership.

(d) Brenda and Julie are also partners in GOLF Partnership. In a nontaxable Internal Revenue Code section 721 transaction, Mike contributes cash to GOLF Partnership in exchange for a 60% partnership interest in GOLF Partnership. The cash is used by the partnership to develop real property owned by the GOLF Partnership. Because the transfer is exempt under Internal Revenue Code section 721, the real estate excise tax does not apply to Mike's acquisition of a partnership interest in GOLF Partnership.

(6) **Rules of construction.** In determining whether a transfer qualifies for exemption under this section, the department will consider the law, regulations, bulletins, technical memoranda, letter rulings, etc., of the Internal Revenue Code and the Internal Revenue Service, as interpreted by the courts. Determinations of taxability under this chapter will be given the same treatment as the final determination of taxability for federal tax purposes.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-212, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-213 IRS "tax deferred" exchange. (1) Introduction. This rule describes the application of the real estate excise tax in transfers involving an exchange facilitator. An "exchange facilitator" is a person who acts as an agent on behalf of another person in connection with an exchange of real property under section 1031 of the Internal Revenue Code section 1031 of 1986.

(2) Acquisition of property by an exchange facilitator in connection with a section 1031 tax deferred exchange is subject to the real estate excise tax.

(3) The later transfer of the property by the facilitator in completion of the exchange is subject to real estate excise tax, unless the following requirements are met:

(a) The proper tax was paid on the initial transaction;

(b) A supplemental statement signed by the exchange facilitator, as provided by WAC 458-61A-304, is attached to the real estate excise tax affidavit indicating that the facilitator originally took title to the property for the sole purpose of effecting a section 1031 federal tax deferred exchange; and

(c) The funds used by the exchange facilitator to acquire the property were provided by the grantee and/or received from the proceeds of the sale of real property owned by the grantee.

(4) If the deeds for both transactions to and from the facilitator are being recorded at the same time, the proper tax can be paid on either the first or the second transaction at the discretion of the facilitator.

(5) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a conveyance of real property may or may not qualify for exemption under this rule. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Bob owns commercial real property in Princeton County worth \$400,000. Bob wants to exchange his property in Princeton County for other commercial property in Eagle County owned by Sally. Sally agrees to sell her Eagle County property to Bob for \$600,000. Bob places his commercial property in Princeton County for sale. John contacts Bob and agrees to purchase the Princeton County property for \$450,000. Bob contacts Ted, an exchange facilitator, to arrange for a transfer of his property as a 1031 federal tax deferred exchange. Per Ted's instructions, Bob transfers the Princeton County property to Ted. Ted transfers the Princeton County property to John and receives \$450,000. Real estate excise tax is due on the transfer from Bob to Ted. No tax is due on the transfer from Ted to John. The Eagle County property is transferred from Sally to Ted for the \$600,000 sales price, \$450,000 which was received from the Princeton County sale and \$150,000 from a new loan obtained by Bob. Ted transfers the Eagle County property to Bob. Tax is due on the transfer from Sally to Ted. No tax is due on the transfer from Ted to Bob.

(b) Bob is unable to find a buyer for his Princeton County property. Bob contacts Ted, the exchange facilitator, to arrange for a transfer of his property as a 1031 federal tax deferred exchange. Per Ted's instructions, Bob transfers the Princeton County property to Ted. Ted holds the property until Bob can locate a buyer. Real estate excise tax is due on the transfer from Bob to Ted. The Eagle County property is transferred from Sally to Ted for the \$600,000 sales price, provided from a \$600,000 new loan obtained by Bob. Ted transfers the Eagle County property to Bob. Tax is due on the transfer from Sally to Ted. No tax is due on the transfer from Ted to Bob. One month later, Joan agrees to purchase the Princeton County property. Ted transfers the property to Joan for \$350,000. Tax is due on the transfer from Ted to Joan, because the funds used by Ted to acquire the Princeton County property from Bob were not provided by Joan.

(6) **Documentation.** A real estate excise tax affidavit is required for each transfer in a section 1031 exchange including the transfers to and from an exchange facilitator. The affidavit reflecting the claim for tax exemption must show the affidavit number and date of the tax payment, and have attached the supplemental statement as provided by WAC 458-61A-304 and subsection (3)(b) of this section.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-213, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-214 Nominee. (1) **Introduction.** This rule describes the application of the real estate excise tax in transfers involving a nominee. A "nominee" is a person who acts as an agent on behalf of another person in the purchase of real property.

(2) **Initial acquisition.** The initial acquisition of property by a nominee on behalf of a third party is subject to the real estate excise tax.

(3) **Subsequent transfer.** The later transfer of the property by the nominee to the third party purchaser is subject to real estate excise tax, unless each of the following requirements is met:

(a) The proper tax was paid on the initial purchase of the property by the nominee;

(b) The funds used by the nominee to acquire the property were provided by the third party;

(c) The third party legally existed at the time of the initial transaction; and

(d)(i) The subsequent transfer from the nominee to the third party is not for a greater consideration than that of the initial acquisition; or

(ii) In the case where the nominee is a licensed contractor and the subsequent transfer to the third party (customer) reflects the completed construction contract, the retail sales tax is collected on the construction contract and remitted to the department. See also WAC 458-61A-104.

For example, Sara finds a home to buy. However, she is in the military and has learned she is going to be called to duty out of the country. She gives her money for the home purchase to Tom, who finalizes the purchase and obtains the mortgage in his name. Sara pays the down payment, closing costs, and makes all the payments on the mortgage. When Sara returns from duty, Tom will transfer the home back to her, and she will refinance the mortgage into her own name. Tom's transfer to Sara is exempt from real estate excise tax, as Tom was acting as her nominee in the purchase of the home and all funds associated with the purchase of the home have come from Sara.

(4) If the nominee is a licensed contractor transferring to the third-party principal at the completion of a construction contract, proof of the payment to the department of retail sales tax on the construction contract must be attached to the affidavit.

For example, Bill contracted with Phil's Construction to build a home for him on a lot Phil will acquire. Phil buys a lot from Kevin. Real estate excise tax is paid on the sale from Kevin to Phil. Phil's Construction builds the home and collects retail sales tax on the total construction contract, which is then remitted to the department of revenue. Phil's Construction files a real estate excise tax affidavit with the county, together with proof that retail sales tax has been paid. The transfer of the lot and completed home from Phil's Construction to Bill is exempt from real estate excise tax.

(5) **Documentation.** The parties must provide documentation that they have met all the requirements necessary to claim this exemption. Acceptable documentation includes a notarized statement, dated on or before the date of the initial purchase, that the nominee acquired the property on behalf of the third party, or other documentation clearly demonstrating the requirements of subsection (3) of this section have been satisfied. Such documentation may include, but is not limited to, financial documentation evidencing the nominee/third-party relationship existed from the time of the original transfer, and confirming the source of the funds used to purchase the property.

Examples.

(a) Tom is on title to property. Tom wants to transfer the property to Angie and claim the nominee exemption, but they do not have a notarized statement. In lieu of that statement, Angie presents documentation that she provided the funds for the down payment and all closing costs for the initial purchase of the property. Angie also presents documentation that she provided the funds on the first year's payments on the debt after the initial purchase and provided funds for the last year's payments on the debt. This is acceptable documenta-

tion that the requirements of subsection (3) of this section have been satisfied.

(b) Dan wants to buy a house and executes an earnest money agreement, contingent on financing. When he applies for a mortgage he is turned down because of insufficient credit. Dan's Uncle Bob agrees to purchase the house in his name and loans Dan the down payment of \$10,000. Dan signs a promissory note agreeing to repay Uncle Bob. Dan makes all the mortgage payments on the property. After two years, Dan has sufficient credit to refinance the debt in his own name. Uncle Bob quitclaims title to Dan. This transfer meets the nominee exemption requirements because:

- (i) Real estate excise tax was paid on the initial transaction;
- (ii) The signed earnest money agreement shows Dan's initial intent to purchase the property in his name;
- (iii) Dan has made all the payments on the debt; and
- (iv) The signed promissory note is sufficient evidence Uncle Bob did not intend to have a financial interest in the property.

(6) The affidavit reflecting the claim for tax exemption must show the prior affidavit and number and date of the tax payment.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-214, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-215 Clearing or exiting title, and additions to title. (1) Introduction. The real estate excise tax does not apply to quitclaim deeds given for the sole purpose of clearing title if no consideration passes otherwise. This rule does not apply to deeds executed for the purpose of adding persons to title, except in cases of persons added to title for co-signing security purposes only.

(2) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a conveyance of real property may or may not qualify for exemption under this rule. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) An exiting minority partner gives the partnership a quitclaim deed for the purpose of removing any presumptive interest. This transfer is exempt from real estate excise tax under this rule.

(b) An heir to an estate gives the estate a quitclaim deed for the purpose of removing any presumptive interest they have in the estate. This transfer is exempt under this rule.

(c) A developer deeds greenbelts, streets or common areas in a development to the homeowners association upon completion of the development and under the terms and covenants of the development. This transfer is exempt under this rule.

(d) Joseph owns a residence and goes to a bank to refinance. His credit is not good enough to obtain the new loan in his name only, but he can qualify if he obtains a co-signor/co-borrower. Joseph's parents agree to co-sign the loan. The bank requests that the parents also go on title with Joseph, and he quitclaims a half interest to his parents. Although the deed may be phrased as a gift to his parents, the deed acts as a security interest for his parents in the event Joseph defaults. The addition of Joseph's parents to the title is exempt under

this rule, provided Joseph makes all the mortgage payments, and Joseph receives no consideration from his parents for the transfer.

(e) The parents described in (d) of this subsection who have been on title with their child are now issuing a quitclaim deed to Joseph to exit title. Joseph has now paid off or refinanced the mortgage in his name only. The parents' intention was to go on title as "co-signors" only, not as co-purchasers of the property, and they have not made any payments toward the repayment of the loan. This transfer is exempt under this rule.

(3) **Documentation.** A narrative that explains the nature of the clearance of, or addition to title must be signed by both grantor and grantee, or agents of either, and attached to the real estate excise tax affidavit. The original narrative will be retained with the original affidavit at the county office and a copy of the narrative will be attached to the department's affidavit copy.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-215, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-216 Mortgage insurers. (1) Introduction. The transfer of real property from a mortgage lender to the Veterans Administration or Federal Housing Authority is an exempt transaction.

(2) The transfer of real property from a mortgage lender to another private insurer or guarantor in settlement of an insurance claim is a taxable transaction.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-216, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-217 Rerecord. (1) Introduction. The rerecording of documents to correct a legal description, change contract terms, or correct the spelling of the name of a party to the transaction, is not subject to the real estate excise tax.

(2) **Documentation required.** An affidavit is required for the rerecording. The affidavit must refer to the prior affidavit number and the recorded document number for the prior transaction, and must include a complete explanation of why the rerecording is necessary.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-217, filed 11/16/05, effective 12/17/05.]

COLLECTION AND ADMINISTRATION

WAC 458-61A-300 Collection and administration. Introduction. Real estate excise tax is levied by the state under chapter 82.45 RCW and by counties under chapter 82.46 RCW. The general provisions for the administration of the state's excise taxes contained in chapter 82.32 RCW apply to the real estate excise tax, except as provided in RCW 82.45.150. This section describes the applicable procedures for payment, collection, disposition of proceeds, requests for refunds, penalties, record keeping requirements, requests for rulings, and other administrative processes.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-300, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-301 Payment of tax, collection responsibility, audit responsibility, and tax rulings. (1) Tax imposed.

(a) The taxes imposed are due at the time the sale occurs and are collected by the county when the documents of sale are presented for recording or, in the case of a transfer of a controlling interest (see WAC 458-61A-101), by the department.

(b) The tax is imposed upon the seller. Effective May 1, 2010, the parent corporation of a wholly owned subsidiary is the seller, if the subsidiary sells to a third party and the subsidiary is dissolved before paying the tax.

(2) **Payment of tax. Scope of section.** This section applies to sales of real property that are evidenced by conveyance, deed, grant, assignment, quitclaim, or transfer of title to real property. See WAC 458-61A-101 for procedures pertaining to transfers or acquisitions of a controlling interest in an entity owning real property in Washington.

(3) **County as agent for state.** Real estate excise tax is paid to and collected by the agent of the county where the property is located (unless the transaction involves the transfer of a controlling interest, in which case the tax is paid to the department).

(4) **Computation of tax.** The tax is computed by multiplying the combined state and local tax rates in effect at the time of sale by the selling price. A current list of the current state and local real estate excise tax rates is available on the department's web site at dor.wa.gov. This information is also available by contacting the county where the property is located.

(5) **Evidence of payment.** The county agent stamps the instrument of sale or conveyance prior to its recording as evidence that the tax has been paid or that an exemption from the tax was claimed. In the case of a used mobile home, the real estate excise tax affidavit is stamped as evidence of payment or a claimed exemption. The stamp references the affidavit number, date, and payment of or exemption from tax, and identifies the person stamping the instrument or affidavit.

(6) **Compliance with property tax statutes.** The county agent will not stamp the instrument of conveyance or affidavit if:

(a) A continuance of use has been applied for but not approved by the county assessor under chapter 84.33 or 84.34 RCW; or

(b) Compensating or additional tax is due but has not been paid as required by RCW 84.33.086, 84.33.140 (5)(c), 84.34.108 (1)(c), 84.36.812, or 84.26.080.

(7) **Prerequisites to recording.** The county auditor will not file or record the instrument of conveyance until all taxes due under this section have been paid or the transfer is determined to be exempt from tax as indicated by a stamped document.

(8) **Evidence of lien satisfaction.** A receipt issued by the county agent for payment of the tax may be used as evidence of satisfaction of a lien imposed under RCW 82.45.070.

(9) **Audit authority.** All transactions are subject to audit by the department. The department will audit transactions to confirm the proper amount of tax was paid and that any claim for exemption is valid. Failure to provide documentation to

the department as requested may result in denial of any exemptions claimed and the assessment of additional tax.

(10) Tax assessments.

(a) If the department discovers an underpayment of tax due, it will notify the taxpayer and assess the additional tax due, together with all applicable interest and penalties. The assessment notice will identify the additional tax due and explain the reason for the assessment.

(b) Persons receiving an assessment must respond within thirty days from the date the assessment was mailed. Failure to respond may result in the assessment of additional penalties and interest and enforcement for collection of the deficient tax under the administrative provisions of chapters 82.32 and 82.45 RCW.

(11) **Tax rulings.** Any person may request a written opinion from the department regarding their real estate excise tax liability pertaining to a proposed transfer of real property or a proposed transfer or acquisition of the controlling interest in an entity with an interest in real property. The request should include sufficient facts about the transaction to enable the department to ascertain the proper tax liability. The department will advise the taxpayer in writing of its opinion. The opinion is binding upon both the taxpayer and the department under the facts presented in accordance with WAC 458-20-100(9), appeals, small claims and settlements. To obtain a written opinion, send your request to:

Department of Revenue
Taxpayer Information & Education
P.O. Box 47478
Olympia, WA 98504-7478

You may also use the "contact" information available online at dor.wa.gov.

(12) Refunds.

(a) **Introduction.** Under certain circumstances, taxpayers (or their authorized representatives) may request a refund of real estate excise tax paid. The request must be filed within four years of the date of sale, and must be accompanied by supporting documents.

(b) **Claims for refunds.** Any person having paid the real estate excise tax in error may apply for a refund of the amount overpaid by submitting a completed refund request form.

(c) **Forms and documentation.** Refund request forms are available from the department or the county. The completed form along with supporting documentation is submitted to the county office where the tax was originally paid. If the tax was originally paid directly to the department, the claim form and supporting documentation are submitted to:

Department of Revenue
Miscellaneous Tax Section
P.O. Box 47477
Olympia, WA 98504-7477

(d) **Circumstances under which refunds are authorized.** The authority to issue a refund under this chapter is limited to the following circumstances:

(i) Real estate excise tax was paid on the conveyance back to the seller in a transaction that is completely rescinded (as defined in WAC 458-61A-209);

(ii) Real estate excise tax was paid on the conveyance back to the seller on a sale rescinded by court order. The

county treasurer must attach a copy of the court decision to the department's affidavit copy (see also WAC 458-61A-208, Deeds in lieu of foreclosure);

(iii) Real estate excise tax was paid on the initial conveyance recorded in error by an escrow agent before the closing date, provided that the property is conveyed back to the seller;

(iv) Real estate excise tax was paid on the conveyance back to the seller in accordance with (d)(iii) of this subsection;

(v) Real estate excise tax was paid on the initial conveyance recorded before a purchaser assumes an outstanding loan that represents the only consideration paid for the property, provided:

(A) The purchaser is unable to assume the loan; and

(B) The property is conveyed back to the seller. The refund is allowed because there is a failure of the consideration;

(vi) The conveyance back to the seller in (d)(v) of this subsection;

(vii) Double payment of the tax;

(viii) Overpayment of the tax through error of computation; or

(ix) Real estate excise tax paid when the taxpayer was entitled to claim a valid exemption from the tax but failed to do so at the time of transfer.

(e) **Responsibilities of county.**

(i) **Request for refund made prior to disposition of proceeds.** If the taxpayer submits a valid refund request to the county before the county treasurer has remitted the tax to the state treasurer, the county may void the receipted affidavit copies and issue the refund directly. The county will then submit a copy of the initial affidavit, together with a copy of the refund request, to the department. If, after reviewing the request for refund and supporting documentation, the county is unable to determine the validity of the request, the county will send the request, a copy of the affidavit, and all supporting documentation to the department for determination. If the county denies the request for refund, in whole or in part, the taxpayer may appeal in writing to the department's miscellaneous tax section within thirty days of the county's denial.

(ii) **Request for refund made after disposition of proceeds.** If the taxpayer submits the refund request after the county treasurer has remitted the tax to the state treasurer, the county will verify the information in the request and forward it to the department with a copy of the affidavit and any other supporting documents provided by the taxpayer. The county or the department may request additional documentation to determine whether the taxpayer qualifies for a refund.

[Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060. 11-16-106, § 458-61A-301, filed 8/3/11, effective 9/3/11. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-301, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-302 Disposition of proceeds and affidavit batch transmittal. (1) Introduction. This rule explains how the counties, the department of revenue, and the state treasurer process the taxes and administrative fees received under this chapter.

(2) **County treasurer.** The county treasurer distributes the proceeds of the real estate excise tax along with the cash

receipt journal summary in accordance with the provisions of chapters 82.45 and 82.46 RCW. When no real estate excise tax is due on a transaction, the county will collect an administrative fee for processing the real estate excise tax affidavit. RCW 82.45.180.

(3) **Adjustments.** Requests from county treasurers for adjustments to the funds that have been distributed to the state treasurer must be sent to the department for approval or denial. If the department denies a request for adjustment, the department will return the request to the county treasurer with an explanation for the denial.

(4) **Tax paid directly to the department.** Real estate excise tax for transfers of a controlling interest in an entity owning real property in Washington, and any other tax payment under this chapter made directly to the department, are remitted to the state treasurer for deposit in accordance with the provisions of chapter 82.45 RCW. The state treasurer deposits and distributes the proceeds of any local taxes in accordance with the provisions of chapters 82.45 and 82.46 RCW.

(5) **Affidavit batch transmittal.**

(a) **Due date.** The county will submit copies of all the real estate excise tax affidavits for the entire month, together with a completed affidavit batch transmittal form, to the department by the fifth business day following the close of the month in which the tax was received. The affidavit batch must include all affidavits processed during the month, plus copies of any documents related to refunds made by the county.

(b) **Alternate transmittal method.** An alternate method for submitting affidavits may be used in lieu of the paper method described in this rule with the prior approval of the department. Use of an alternate method (e.g., electronic transmittal) requires a signed memorandum of understanding (MOU) between the county and the department.

(c) **Distribution.** The county will complete the affidavit transmittal form, supplied by the department, and send one copy with the affidavit batch to the department.

(d) **Reporting of refunds.** The county must report any refunds made during the month on the adjustment section provided on the batch transmittal form and attach all refund documentation.

(e) **Retention of records.** The county treasurer will retain the approved real estate excise tax affidavits, including any supplemental statements, for a period of not less than four years following the year in which the affidavit is received. See RCW 82.45.150 and 82.32.340.

[Statutory Authority: RCW 34.05.353 (1)(a), 82.32.300, and 82.01.060(2). 10-01-042, § 458-61A-302, filed 12/8/09, effective 1/8/10. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-302, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-303 Affidavit. (1) Introduction. This section explains when a real estate excise tax affidavit is required for the conveyance of an interest in property. See WAC 458-61A-101 for procedures pertaining to transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) **Affidavit required.** In general, an affidavit must be filed when ownership or title to real property transfers as evi-

denced by conveyance, deed, grant, assignment, quitclaim, including, but not limited to, the following:

(a) Conveyance establishing or separating community property, or in fulfillment of a settlement agreement incident to a dissolution of marriage, legal separation, or declaration of invalidity;

(b) Conveyance resulting from a court order;

(c) Conveyance to secure a debt;

(d) Conveyance of a taxable easement;

(e) A deed in lieu of foreclosure of a mortgage;

(f) A deed in lieu or declaration of forfeiture of a real estate contract;

(g) Conveyance to an heir in the settlement of an estate;

(h) Conveyance to or from the United States, the state of Washington, or any political subdivision or municipal corporation of this state;

(i) Conveyance of development rights, water rights, or air rights;

(j) Conveyance of leasehold improvements;

(k) Boundary line adjustments; or

(l) The affidavit must be filed when rerecording a document to correct a minor error, such as the legal description or spelling of a name.

(3) **Affidavit not required.** The real estate excise tax affidavit is not required nor accepted for the following transactions:

(a) Conveyance of cemetery lots or graves;

(b) Conveyance for assignment or release of security, stated on the face of the instrument:

(i) To secure or assign a debt; or

(ii) To provide or release collateral;

(c) A lease of real property that does not transfer lessee-owned improvements;

(d) A mortgage or deed of trust, satisfaction of mortgage, or reconveyance of a deed of trust;

(e) A seller's assignment of deed and contract;

(f) A fulfillment deed pursuant to a real estate contract;

(g) A community property agreement under RCW 26.16.120;

(h) Purchase of an option; or

(i) An earnest money agreement.

(4) **Examples.**

(a) Lionel Construction has developed a group of new homes. It deeds a street to the homeowners' association upon completion of the development. This is done to clear title, which is an exempt transaction. The affidavit should cite the appropriate exemption rule, describe the exemption as "clearing title for street for homeowners' association," and have attached all department-required documentation.

(b) Webb Corporation transfers its interest in a parcel of real property to its wholly owned subsidiary, Watson Company. This is an exempt transaction because there is no change in beneficial ownership of the property. The affidavit must cite the appropriate exemption rule, describe the exemption as "transfer to wholly owned subsidiary; no change in beneficial ownership," and have attached all documentation required by the department.

(5) **Multiple buyers.** When the transfer of property is to two or more buyers, the affidavit must clearly state the relationship between them as joint tenants, tenants in common,

partners, etc., and identify the form and proportion of interest each is acquiring.

(6) **Affidavit must be complete.**

(a) Taxpayers must provide complete and accurate information on the affidavit, as well as all documentation required by the department for claimed tax exemptions. Incomplete affidavits will not be accepted.

(b) An affidavit is incomplete if any required information is omitted or obviously incorrect, such as the use of a nominal selling price. A nominal selling price is an amount stated on the affidavit that is so low in comparison with the fair market value assessment stated on the property tax rolls that it would cause disbelief by a reasonable person. In the case of a nominal selling price, the county assessed value will be used as the selling price, unless there is an independent appraisal showing a greater value.

(7) **Documentation required when claiming an exemption.** Claims of exemption from the real estate excise tax must be specific and include the following:

(a) Current assessed values of parcels involved as of the date of sale; and

(b) Complete reasons for the exemption, including reference to the specific tax exemption in this chapter, citing the specific WAC section and subsection providing the exemption, as well as a brief description of the exemption.

(8) **Completion of affidavit.** The department will provide a real estate excise tax affidavit to be completed by the taxpayer and filed with the agent of the county where the property is located. Affidavits will be furnished by the department to the county agents and accessible to the public in one or more formats to be determined by the department. Alternative forms may be used, as long as they are in a format accepted by the department.

In most instances, the affidavit must be signed by the seller or the seller's agent and the buyer or the buyer's agent, under oath, certifying that all information on the affidavit is complete and correct. However, an affidavit given in connection with the grant of an easement or right of way to a utility company, public utility district or cooperative, or a governmental entity needs to be signed only on behalf of the entity purchasing the utility right of way or easement.

(9) **Duplicate affidavits.** To accommodate the requirement that the affidavit be signed by both the seller and buyer, or agents of each, identical affidavits may be submitted for a single transaction, one bearing the seller's or seller's agent's signature and one bearing the buyer's or buyer's agent's signature. Both affidavits must be complete and have identical information. The county agent will receipt one of the affidavits and attach the other affidavit to the receipted affidavit.

(10) **Retention of records.** The taxpayer must retain all records pertaining to the transaction for a period of at least four years from the date of the conveyance.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-303, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-304 Supplemental statements. (1) The department will provide the county with a uniform multiuse supplemental statement form for use in meeting the requirements of the following sections of this chapter:

(a) WAC 458-61A-306, Interest and penalties—Date of sale;

(b) WAC 458-61A-201, Gifts; and

(c) WAC 458-61A-213, IRS "tax deferred" exchange.

(2) The supplemental statements must be completed and distributed as required by the instructions contained on the form.

(3) Supplemental statements may be unsworn certified statements that meet the requirements set forth in RCW 9A.72.085.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-304, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-305 Trade-in credit. (1) Introduction.

When a single-family residential property is transferred as either partial or entire consideration for the purchase of another single-family residential property, a credit for the amount of the real estate excise tax paid at the time of the first transfer is allowed toward the amount of the real estate excise tax due upon the later transfer of the same property.

(2) **Refund not available.** The later transfer must be made within nine months of the original transfer for the credit to be allowed. If the tax that would be due on the later transfer is greater than the tax paid for the first transfer, the difference must be paid. However, if the tax paid on the first transfer is greater than that due on the second transfer, no refund of tax paid will be allowed.

(3) The trade-in credit is allowed toward the later sale of the residence "brought in" on trade, not toward the tax liability of the sale of the residence for which it was traded. The affidavit upon which the trade-in credit is claimed must show all of the following:

(a) The transaction date and prior affidavit number where the tax was paid on the original (trade-in) transaction;

(b) The county auditor's recorded document number for the original transaction, if such was recorded; and

(c) The disclosure that both properties involved in the original trade-in transaction are single-family dwellings.

For example, Bob is selling real property in Sun City. Alex wants to buy Bob's property, but he needs to sell his property in Smokey Hollow. Both the Sun City property and the Smokey Hollow property are single-family residential properties. Bob agrees to buy Alex's Smokey Hollow property for \$175,500 and Alex agrees to buy Bob's Sun City property for \$210,000. Real estate excise tax is paid on the full sales price of both properties. Three months later, Bob sells the Smokey Hollow property to Sally for \$180,000. Bob receives a credit on the sale to Sally for the tax paid on the previous sale of the Smokey Hollow property.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-305, filed 11/16/05, effective 12/17/05.]

WAC 458-61A-306 Date of sale, interest, and penalties. (1) Introduction.

This rule explains how to determine the date of sale and explains the application of interest and penalties when the tax is not paid within one month of the date of sale. See WAC 458-61A-101 for procedures pertaining to transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) **Date of sale.** Real estate excise tax is due and payable to the county on the date of sale, regardless of the date on which the contract of sale or instrument of conveyance is recorded.

(a) Conditions to be fulfilled prior to completing sale.

When a contract of sale or instrument of conveyance is signed and delivered by the seller to an escrow agent licensed under chapter 18.44 RCW (Escrow Agent Registration Act), a title company, a title insurance company, or an attorney acting as an escrow agent, with instructions to deliver the instrument to the buyer upon the fulfillment of one or more conditions that had prevented the sale from being completed, the date of sale will be presumed to be the date that the instrument is presented for recording, subject to the following:

(i) A statement, signed by the seller's agent, is attached to the affidavit indicating the specific conditions that had to be met in order for the sale to be completed;

(ii) The date shown on the instrument cannot be more than ninety days prior to the date the affidavit is presented to the county treasurer for filing; and

(iii) All documentation required by the department must be provided to the county agent when submitting the affidavit claiming an exemption from interest and penalty pursuant to this rule.

(b) **Sale of mining property.** A conditional sale of mining property in which the buyer has the right to terminate the contract at any time, and a lease and option to buy mining property in which the lessee-buyer has the right to terminate the lease and option at any time, is taxable at the time of execution only on the consideration received by the seller or lessor for execution of such contract. The tax due on any additional consideration received by the seller is paid to the county at:

(i) The time of termination;

(ii) The time that all of the consideration due to the seller has been paid and the transaction is completed except for delivery of the deed to the buyer; or

(iii) The time when the buyer exercises an option to purchase the property.

For further information regarding mineral rights and mining claims, see WAC 458-61A-112.

(c) In all other cases, the date of sale will be presumed to be the date shown on the instrument. A taxpayer alleging a date of sale other than the instrument date has the burden of proving that delivery of title or ownership of the property in exchange for consideration occurred on the date alleged.

(3) **Interest.** Payment of the real estate excise tax is due on the date of sale. If the tax is not paid within one month of the date of sale, interest will be imposed on the total amount of the unpaid tax (both the state and local components) from the date of sale to the date of full payment. RCW 82.45.100(1) and 82.46.010(5). Interest is calculated on a monthly basis with a full month's interest accruing at the beginning of each month. A list of annual interest rates is available on the department's web site at dor.wa.gov.

(a) Interest is computed in accordance with the provisions of RCW 82.32.050(2). The interest rate is adjusted annually on January 1. The rate applied to any given month or portion of a month is the annual variable interest rate in effect at the beginning of that month, divided by twelve. Any interest imposed for a month or portion of a month that starts in December will be imposed at the interest rate effective in December, even though the interest rate may change on January 1. For example:

(i) Tyler sold real property located in Mayberry to Dustin on April 20, 2004. Tyler does not file a Real Estate Excise Tax Affidavit until August 15, 2004, at which time he pays \$1,530 in tax. The interest rate for 2004 is 4%, and interest is due on the transfer from April 20, 2004, through August 15, 2004, the date the tax was paid. Interest would be due as follows:

April 20 to May 20, 2004	\$1,530 tax at 0.33% per month	\$5.05
May 21 to June 20, 2004	\$1,530 tax at 0.33% per month	\$5.05
June 21 to July 20, 2004	\$1,530 tax at 0.33% per month	\$5.05
July 21 to August 15, 2004	\$1,530 tax at 0.33% per month	\$5.05
Total interest due with August 15, 2004 payment		\$20.20

In this example, note that a full month's interest applies from July 21 to August 15, 2004, even though it is less than a full month.

(ii) Tara sells her house in Sun City to Chris on March 5, 2004. Real estate excise tax of \$1,780 is due on April 5, 2004, but is not paid until June 16, 2004. Interest applies from March 5, 2004, through June 16, 2004, the date of full payment. Again, a full month's interest applies from June 5 to June 16, 2004, even though it is less than a full month.

March 5 to April 4, 2004	\$1,780 tax at 0.33% per month	\$5.87
April 5 to May 4, 2004	\$1,780 tax at 0.33% per month	\$5.87
May 5 to June 4, 2004	\$1,780 tax at 0.33% per month	\$5.87
June 5 to June 16, 2004	\$1,780 tax at 0.33% per month	\$5.87
Total additional interest due with June 16, 2004 payment		\$23.48

(b) When interest must be calculated in a shorter month that does not have a day corresponding to the original date of sale, interest is computed on the first day of the following calendar month.

For example, Kevin sells land located in unincorporated Sparkle County to Jim and Anita on January 30, 2004. Tax of \$3,560 is due on February 28, 2004. Since February has only twenty-eight days (assuming it is not a leap year) and February 28 most closely corresponds to the January 30 date of sale. The tax is not paid until May 10, 2004. The interest is computed as follows:

January 30 to February 28, 2004	\$3,560 tax at 0.33% per month	\$11.75
March 1 to March 30, 2004	\$3,560 tax at 0.33% per month	\$11.75
March 31 to April 30, 2004	\$3,560 tax at 0.33% per month	\$11.75
May 1 to May 10, 2004	\$3,560 tax at 0.33% per month	\$11.75
Total interest due with May 10, 2004 payment		\$47.00

(4) **Delinquent penalty.** If payment of real estate excise tax is not received by the county within one month of the date of sale, a delinquent penalty is imposed on the total amount of the unpaid tax. RCW 82.45.100(2) and 82.46.010(5).

(a) If tax is not paid:

(i) Within one month of the date of sale, a penalty of five percent of the amount of the tax will be added to the tax due;

(ii) Within two months of the date of sale, a penalty of ten percent shall be added to the tax due; and

(iii) Within three months of the date of sale, a penalty of twenty percent will be added to the tax due.

(b) Penalties are assessed against the seller only and will not be included in a lien arising under RCW 82.45.070.

(5) **State assessment penalty.** Any tax determined to be due and assessed by the department will include an assessment penalty of five percent of the tax assessed by the department. RCW 82.32.090(2).

(a) If payment of the tax assessment is not received by the department by the due date specified in the notice, or any extension thereof, a penalty of fifteen percent of the amount of the tax under this subsection will be assessed; and

(b) If payment of the tax assessment is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, a penalty of twenty-five percent of the amount of the tax under this subsection will be assessed; and

(c) This penalty will be no less than five dollars.

(6) **Evasion penalty.**

(a) The department may add a penalty equal to fifty percent of the underpaid excise tax due on transfers where an intent to evade the payment of the excise tax is demonstrated.

(b) An "intent to evade" includes, but is not limited to, knowingly stating a false sales price or knowingly claiming a tax exemption for which the transfer does not qualify.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-306, filed 11/16/05, effective 12/17/05.]