

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. WSR 05-23-093, § 458-61A-204, filed 11/16/05, effective 12/17/05.]