
SENATE BILL 5286

State of Washington

58th Legislature

2003 Regular Session

By Senators Fraser and Jacobsen

Read first time 01/21/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to the collection of the real estate excise tax
2 upon transfers of water rights; amending RCW 90.03.280, 82.45.010, and
3 82.45.090; adding a new section to chapter 90.03 RCW; adding a new
4 section to chapter 90.44 RCW; creating a new section; prescribing
5 penalties; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature intends to improve the real
8 estate excise tax reporting and collection process for the transfer of
9 water rights that are transferred separately from the land. The
10 legislature intends to improve reporting by requiring the department of
11 ecology and water conservancy boards to provide the department of
12 revenue with information about these transfers and to allow the
13 reporting and payment of any real estate excise tax for these transfers
14 to be made directly to the department of revenue, thereby relieving the
15 counties of responsibility for collection of such tax payments and
16 reports. The legislature intends for these improvements in processing
17 to result in a simpler and more coordinated system for collection of
18 the real estate excise tax for these types of water rights transfers.

1 **Sec. 2.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to read
2 as follows:

3 Upon receipt of a proper application, the department shall instruct
4 the applicant to publish notice thereof in a form and within a time
5 prescribed by the department in a newspaper of general circulation
6 published in the county or counties in which the storage, diversion,
7 and use is to be made, and in such other newspapers as the department
8 may direct, once a week for two consecutive weeks. Upon receipt by the
9 department of an application it shall send notice thereof containing
10 pertinent information to the director of fish and wildlife. Within
11 thirty days of receipt, the department shall provide to the department
12 of revenue a copy of any application to change the place of use of a
13 water right to be transferred from the land to which it is appurtenant
14 and to become appurtenant.

15 **NEW SECTION.** **Sec. 3.** A new section is added to chapter 90.03 RCW
16 to read as follows:

17 In addition to filing with the county auditor under RCW
18 90.03.380(1), the department shall also provide to the department of
19 revenue a copy of the certificate and report of examination where the
20 department has approved a change in the place of use of a water right
21 to be transferred from the land to which it is appurtenant and to
22 become appurtenant.

23 **NEW SECTION.** **Sec. 4.** A new section is added to chapter 90.44 RCW
24 to read as follows:

25 Within thirty days of receipt, the department shall provide to the
26 department of revenue a copy of any application filed pursuant to RCW
27 90.44.100 to change the place of use of a ground water right to be
28 transferred from the land to which it is appurtenant and to become
29 appurtenant.

30 **Sec. 5.** RCW 82.45.010 and 2000 2nd sp.s. c 4 s 26 are each amended
31 to read as follows:

32 (1) As used in this chapter, the term "sale" shall have its
33 ordinary meaning and shall include any conveyance, grant, assignment,
34 quitclaim, or transfer of the ownership of or title to real property,
35 including standing timber, or any estate or interest therein for a

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

10 (2) The term "sale" also includes the transfer or acquisition
11 within any twelve-month period of a controlling interest in any entity
12 with an interest in real property located in this state for a valuable
13 consideration. For purposes of this subsection, all acquisitions of
14 persons acting in concert shall be aggregated for purposes of
15 determining whether a transfer or acquisition of a controlling interest
16 has taken place. The department of revenue shall adopt standards by
17 rule to determine when persons are acting in concert. In adopting a
18 rule for this purpose, the department shall consider the following:

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

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

30 (3) The term "sale" shall not include:

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

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

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

1 (d) The partition of property by tenants in common by agreement or
2 as the result of a court decree.

3 (e) The assignment of property or interest in property from one
4 spouse to the other in accordance with the terms of a decree of divorce
5 or in fulfillment of a property settlement agreement.

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

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

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

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

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

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

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

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

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

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

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

12 (p)(i) A transfer that for federal income tax purposes does not
13 involve the recognition of gain or loss for entity formation,
14 liquidation or dissolution, and reorganization, including but not
15 limited to nonrecognition of gain or loss because of application of
16 section 332, 337, 351, 368(a)(1), 721, or 731 of the Internal Revenue
17 Code of 1986, as amended.

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

35 (q) The transfer of a water right to the state of Washington for
36 administration as a trust water right under chapter 90.38 or 90.42 RCW.

37 (r) The transfer of a water right to a municipally owned public

1 water system or to an irrigation district for the purpose of
2 consolidation of the water right into the water supply services
3 provided by the system or district.

4 (s) The transfer of a water right to the United States for purposes
5 of instream flows, municipal water supply, irrigation, or other
6 beneficial uses.

7 (t) An exchange of a water right for inclusion of the land
8 associated with that right in an area served by a water system as
9 defined by RCW 80.04.010 when such inclusion is the sole compensation
10 received.

11 **Sec. 6.** RCW 82.45.090 and 1993 sp.s. c 25 s 506 are each amended
12 to read as follows:

13 (1) Except for: (a) A sale of a beneficial interest in real
14 property where no instrument evidencing the sale is recorded in the
15 official real property records of the county in which the property is
16 located, or (b) the sale of a water right that is transferred
17 separately from the land, or (c) both (a) and (b) of this subsection,
18 the tax imposed by this chapter shall be paid to and collected by the
19 treasurer of the county within which is located the real property which
20 was sold. In collecting the tax the treasurer shall act as agent for
21 the state. The county treasurer shall cause a stamp evidencing
22 satisfaction of the lien to be affixed to the instrument of sale or
23 conveyance prior to its recording or to the real estate excise tax
24 affidavit in the case of used mobile home sales and used floating home
25 sales. A receipt issued by the county treasurer for the payment of the
26 tax imposed under this chapter shall be evidence of the satisfaction of
27 the lien imposed hereunder and may be recorded in the manner prescribed
28 for recording satisfactions of mortgages. Except for an instrument of
29 sale or conveyance for the sale of water right that is transferred
30 separately from the land, no instrument of sale or conveyance
31 evidencing a sale subject to the tax shall be accepted by the county
32 auditor for filing or recording until the tax shall have been paid and
33 the stamp affixed thereto; in case the tax is not due on the transfer,
34 the instrument shall not be so accepted until suitable notation of such
35 fact has been made on the instrument by the treasurer.

36 (2) For a sale of a beneficial interest in real property where a
37 tax is due under this chapter and where no instrument is recorded in

1 the official real property records of the county in which the property
2 is located, the sale shall be reported to the department of revenue
3 within five days from the date of the sale on such returns or forms and
4 according to such procedures as the department may prescribe. Such
5 forms or returns shall be signed by both the transferor and the
6 transferee and shall be accompanied by payment of the tax due. Any
7 person who intentionally makes a false statement on any return or form
8 required to be filed with the department under this chapter shall be
9 guilty of perjury.

10 (3) For the sale of a water right that is transferred separately
11 from the land and tax is due under this chapter, the sale shall be
12 reported to the department within five days from the date of the sale
13 on such returns and according to such procedures as the department may
14 prescribe. The transferor and the transferee must sign such returns.
15 Payment of the tax due must accompany the return. Any person who
16 intentionally makes a false statement on any return required to be
17 filed with the department under this chapter is guilty of perjury.

18 NEW SECTION. Sec. 7. If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. Sec. 8. This act takes effect August 1, 2003.

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