
SUBSTITUTE HOUSE BILL 2754

State of Washington 60th Legislature 2008 Regular Session

By House Housing (originally sponsored by Representatives Pettigrew, Ericks, and Santos)

READ FIRST TIME 01/30/08.

1 AN ACT Relating to exempting certain housing developers from the
2 real estate excise tax requirement; amending RCW 82.45.010; and adding
3 new sections to chapter 82.45 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.45 RCW
6 to read as follows:

7 The legislature finds that there is a large, unmet need for
8 affordable housing in the state of Washington. The legislature also
9 finds that providing targeted incentives to nonprofit housing
10 developers will encourage the production and sale of homes affordable
11 to low-income households. The legislature intends to provide such
12 incentives through excise tax relief on sales of homes to low-income
13 first-time homebuyers.

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

16 (1) As used in this chapter, the term "sale" shall have its
17 ordinary meaning and shall include any conveyance, grant, assignment,
18 quitclaim, or transfer of the ownership of or title to real property,

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

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

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

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

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

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

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

35 (c) A cancellation or forfeiture of a vendee's interest in a
36 contract for the sale of real property, whether or not such contract
37 contains a forfeiture clause, or deed in lieu of foreclosure of a
38 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 by a nonprofit housing developer of a residential
30 housing unit that is new construction to a low-income first-time
31 homebuyer household. For the purpose of this subsection (3)(n):

32 (i) "Nonprofit housing developer" means any nonprofit organization
33 that has among its purposes, activities related to the provision of
34 decent housing that is affordable to low-income households;

35 (ii) "Low-income first-time homebuyer household" means a single
36 person, family, or unrelated persons living together whose adjusted
37 income is at or below eighty percent of the median family income
38 adjusted for family size, for the county where the project is located,

1 as reported by the United States department of housing and urban
2 development, when one of the legal homebuyers has not owned and
3 occupied a primary residence at any time in the three years preceding
4 the closing of the mortgage loan.

5 (o) A sale to a regional transit authority or public corporation
6 under RCW 81.112.320 under a sale/leaseback agreement under RCW
7 81.112.300.

8 ~~((+o))~~ (p) A transfer of real property, however effected, if it
9 consists of a mere change in identity or form of ownership of an entity
10 where there is no change in the beneficial ownership. These include
11 transfers to a corporation or partnership which is wholly owned by the
12 transferor and/or the transferor's spouse or children: PROVIDED, That
13 if thereafter such transferee corporation or partnership voluntarily
14 transfers such real property, or such transferor, spouse, or children
15 voluntarily transfer stock in the transferee corporation or interest in
16 the transferee partnership capital, as the case may be, to other than
17 ~~((+1))~~ (i) the transferor and/or the transferor's spouse or children,
18 ~~((+2))~~ (ii) a trust having the transferor and/or the transferor's
19 spouse or children as the only beneficiaries at the time of the
20 transfer to the trust, or ~~((+3))~~ (iii) a corporation or partnership
21 wholly owned by the original transferor and/or the transferor's spouse
22 or children, within three years of the original transfer to which this
23 exemption applies, and the tax on the subsequent transfer has not been
24 paid within sixty days of becoming due, excise taxes shall become due
25 and payable on the original transfer as otherwise provided by law.

26 ~~((+p))~~ (q)(i) A transfer that for federal income tax purposes does
27 not involve the recognition of gain or loss for entity formation,
28 liquidation or dissolution, and reorganization, including but not
29 limited to nonrecognition of gain or loss because of application of
30 section 332, 337, 351, 368(a)(1), 721, or 731 of the Internal Revenue
31 Code of 1986, as amended.

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

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

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.45 RCW
13 to read as follows:

14 (1) The amount of revenue exempted statewide from taxation under
15 RCW 82.45.010(3)(n) on sales by a nonprofit housing developer must not
16 exceed one million dollars per calendar year.

17 (2) The department must maintain a running total of all tax revenue
18 that would otherwise be imposed and collected under this chapter on
19 sales by nonprofit housing developers of residential housing units that
20 are new construction to low-income first-time homebuyer households, but
21 for the provisions in RCW 82.45.010(3)(n) that exempt such sales from
22 taxation under this chapter.

23 (3) The department must deny any claim, or portion thereof, for tax
24 exemption under RCW 82.45.010(3)(n), if the exemption would exceed the
25 statewide limitation in subsection (1) of this section. All nonprofit
26 housing developers that claim an exemption under RCW 82.45.010(3)(n),
27 which would result in the statewide limitation under subsection (1) of
28 this section being exceeded, must be notified by the department that
29 the statewide limitation for exemptions under RCW 82.45.010(3)(n) has
30 been met for the calendar year and that the portion of the submitted
31 claim in excess of the statewide limitation is denied.

32 (4) The definitions in this subsection apply throughout this
33 section unless the context clearly requires otherwise.

34 (a) "Nonprofit housing developer" has the same meaning as provided
35 in RCW 82.45.010.

1 (b) "Department" means the department of revenue.

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