
SENATE BILL 6062

State of Washington

61st Legislature

2009 Regular Session

By Senators Tom, Prentice, McDermott, Fairley, McAuliffe, Kauffman, Jarrett, Marr, Hobbs, Kline, Fraser, Oemig, Keiser, Shin, and Kilmer

Read first time 02/19/09. Referred to Committee on Ways & Means.

1 AN ACT Relating to exempting certain foreclosure sales from the
2 real estate excise tax; and reenacting and amending RCW 82.45.010.

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

4 **Sec. 1.** RCW 82.45.010 and 2008 c 116 s 3 and 2008 c 6 s 701 are
5 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (i) ~~((Any))~~ A transfer or conveyance made pursuant to: (i) The
7 nonjudicial foreclosure of a deed of trust ((or)) when the transfer or
8 conveyance is to the beneficiary of the deed of trust; (ii) an order of
9 sale by the court in any mortgage, deed of trust, or lien foreclosure
10 proceeding or upon execution of a judgment, when the transfer or
11 conveyance is to the judgment creditor who obtained the writ of
12 execution or who initiated the mortgage, deed of trust, or lien
13 foreclosure proceeding; or (iii) a deed in lieu of foreclosure to
14 satisfy a mortgage or deed of trust.

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

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

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

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

26 (n) A sale to a regional transit authority or public corporation
27 under RCW 81.112.320 under a sale/leaseback agreement under RCW
28 81.112.300.

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

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

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

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

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

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