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HOUSE BILL 1664

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State of Washington

56th Legislature

1999 Regular Session

By Representatives Dickerson, Thomas and Dunshee; by request of  
Department of Revenue

Read first time 02/02/1999. Referred to Committee on Finance.

1 AN ACT Relating to preventing the use of step transactions to avoid  
2 real estate excise tax; amending RCW 82.45.010; and creating a new  
3 section.

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

5 NEW SECTION. **Sec. 1.** In chapter 25, Laws of 1993 sp. sess., the  
6 legislature found that transfer of ownership of entities can be  
7 equivalent to the sale of real property held by the entity. The  
8 legislature further found that all transfers of possession or use of  
9 real property should be subject to the same excise tax burdens.

10 The legislature intended to apply the real estate excise tax of  
11 chapter 82.45 RCW to transfers of entity ownership when the transfer of  
12 entity ownership is comparable to the sale of real property. The  
13 legislature intends to equate the excise tax burdens on all sales of  
14 real property and transfers of entity ownership essentially equivalent  
15 to a sale of real property under chapter 82.45 RCW.

16 **Sec. 2.** RCW 82.45.010 and 1993 sp.s. c 25 s 502 are each amended  
17 to read as follows:

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

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

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

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

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

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

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

38 (c) A cancellation or forfeiture of a vendee's interest in a  
39 contract for the sale of real property, whether or not such contract

1 contains a forfeiture clause, or deed in lieu of foreclosure of a  
2 mortgage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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