
HOUSE BILL 3163

State of Washington

58th Legislature

2004 Regular Session

By Representatives McIntire, Chandler, Linville, Mastin and Cairnes;
by request of Governor Locke

Read first time 02/02/2004. Referred to Committee on Finance.

1 AN ACT Relating to the reporting and collection of the real estate
2 excise tax upon transfers of water rights; amending RCW 90.80.080,
3 82.45.010, and 82.45.090; adding new sections to chapter 90.03 RCW;
4 creating a new section; and providing an effective date.

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

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

1 rights that are transferred separately from the land be used to support
2 the department of ecology's water resources program.

3 **Sec. 2.** RCW 90.80.080 and 2001 c 237 s 12 are each amended to read
4 as follows:

5 (1) The board must provide a copy of its record of decision to the
6 applicant. The board shall submit its record of decision on the
7 transfer application to the department for review. The board shall
8 also submit its report of examination to the department summarizing
9 factual findings on which the board relied in reaching its record of
10 decision and a copy of the files and records upon which the board's
11 record of decision is based. The board shall also promptly transmit
12 notice by mail to any person who objected to the transfer or who
13 requested notice of the board's record of decision.

14 (2) Upon receipt of a board's record of decision, the department
15 shall promptly post the text of the record of decision transmittal form
16 on the department's internet site. The director shall review each
17 record of decision made by a board for compliance with applicable state
18 water law.

19 (3) Any party to a transfer, third party who alleges his or her
20 water right will be impaired by the proposed transfer, or other person
21 may file a letter of concern or support with the department and the
22 department may consider the concern or support expressed in the letter.
23 Such letters must be received by the department within thirty days of
24 the department's receipt of the board's record of decision.

25 (4) The director shall review the record of decision of the board
26 and shall affirm, reverse, or modify the action of the board within
27 forty-five days of receipt. The forty-five day time period may be
28 extended for an additional thirty days by the director or at the
29 request of the board or applicant. If the director fails to act within
30 the prescribed time period, the board's record of decision becomes the
31 decision of the department and is appealable as provided by RCW
32 90.80.090. If the director acts within the prescribed time period, the
33 director's decision to affirm, modify, or reverse is appealable as
34 provided by RCW 90.80.090, and the director's decision to remand is
35 appealable as provided by RCW 90.80.120(2)(b).

36 (5) The department shall promptly provide the department of revenue
37 copies of any action, including the director's failure to act, taken

1 upon the record of decision for a transfer application involving the
2 consolidation of water rights or a change in the place of use with the
3 text of any modifications it has made to the decision. The department
4 shall also promptly provide the department of revenue with the status
5 of the department's action at the end of the period to appeal this
6 action.

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

9 Upon granting approval of a transfer application involving the
10 consolidation of water rights or a change in the place of use made
11 under RCW 90.03.380 or 90.44.100, the department shall promptly provide
12 the text of its report of examination and findings to the department of
13 revenue. The department shall also promptly provide the department of
14 revenue with the status of any approval made on these decisions at the
15 end of the period to appeal.

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

18 (1) As used in this chapter, the term "sale" shall have its
19 ordinary meaning and shall include any conveyance, grant, assignment,
20 quitclaim, or transfer of the ownership of or title to real property,
21 including standing timber, or any estate or interest therein for a
22 valuable consideration, and any contract for such conveyance, grant,
23 assignment, quitclaim, or transfer, and any lease with an option to
24 purchase real property, including standing timber, or any estate or
25 interest therein or other contract under which possession of the
26 property is given to the purchaser, or any other person at the
27 purchaser's direction, and title to the property is retained by the
28 vendor as security for the payment of the purchase price. The term
29 also includes the grant, assignment, quitclaim, sale, or transfer of
30 improvements constructed upon leased land.

31 (2) The term "sale" also includes the transfer or acquisition
32 within any twelve-month period of a controlling interest in any entity
33 with an interest in real property located in this state for a valuable
34 consideration. For purposes of this subsection, all acquisitions of
35 persons acting in concert shall be aggregated for purposes of
36 determining whether a transfer or acquisition of a controlling interest

1 has taken place. The department of revenue shall adopt standards by
2 rule to determine when persons are acting in concert. In adopting a
3 rule for this purpose, the department shall consider the following:

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

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

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

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

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

19 (c) A cancellation or forfeiture of a vendee's interest in a
20 contract for the sale of real property, whether or not such contract
21 contains a forfeiture clause, or deed in lieu of foreclosure of a
22 mortgage.

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

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

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

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

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

36 (i) Any transfer or conveyance made pursuant to a deed of trust or
37 an order of sale by the court in any mortgage, deed of trust, or lien

1 foreclosure proceeding or upon execution of a judgment, or deed in lieu
2 of foreclosure to satisfy a mortgage or deed of trust.

3 (j) A conveyance to the federal housing administration or veterans
4 administration by an authorized mortgagee made pursuant to a contract
5 of insurance or guaranty with the federal housing administration or
6 veterans administration.

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

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

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

14 (n) A sale to a regional transit authority or public corporation
15 under RCW 81.112.320 under a sale/leaseback agreement under RCW
16 81.112.300.

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

35 (p)(i) A transfer that for federal income tax purposes does not
36 involve the recognition of gain or loss for entity formation,
37 liquidation or dissolution, and reorganization, including but not

1 limited to nonrecognition of gain or loss because of application of
2 section 332, 337, 351, 368(a)(1), 721, or 731 of the Internal Revenue
3 Code of 1986, as amended.

4 (ii) However, the transfer described in (p)(i) of this subsection
5 cannot be preceded or followed within a twelve-month period by another
6 transfer or series of transfers, that, when combined with the otherwise
7 exempt transfer or transfers described in (p)(i) of this subsection,
8 results in the transfer of a controlling interest in the entity for
9 valuable consideration, and in which one or more persons previously
10 holding a controlling interest in the entity receive cash or property
11 in exchange for any interest the person or persons acting in concert
12 hold in the entity. This subsection (3)(p)(ii) does not apply to that
13 part of the transfer involving property received that is the real
14 property interest that the person or persons originally contributed to
15 the entity or when one or more persons who did not contribute real
16 property or belong to the entity at a time when real property was
17 purchased receive cash or personal property in exchange for that person
18 or persons' interest in the entity. The real estate excise tax under
19 this subsection (3)(p)(ii) is imposed upon the person or persons who
20 previously held a controlling interest in the entity.

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

23 (r) The transfer of a water right to a municipally owned public
24 water system or to an irrigation district, for the purpose of
25 consolidation of the water right into the water supply services
26 provided by the system or district.

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

30 (t) An exchange of a water right for inclusion of the land
31 associated with that right in an area served by a water system as
32 defined by RCW 80.04.010 when the inclusion is the sole compensation
33 received.

34 **Sec. 5.** RCW 82.45.090 and 2003 c 53 s 404 are each amended to read
35 as follows:

36 (1) Except for a sale of a beneficial interest in real property
37 where no instrument evidencing the sale is recorded in the official

1 real property records of the county in which the property is located,
2 or the sale of a water right that is transferred separately from the
3 land, or both, the tax imposed by this chapter shall be paid to and
4 collected by the treasurer of the county within which is located the
5 real property which was sold. In collecting the tax the treasurer
6 shall act as agent for the state. The county treasurer shall cause a
7 stamp evidencing satisfaction of the lien to be affixed to the
8 instrument of sale or conveyance prior to its recording or to the real
9 estate excise tax affidavit in the case of used mobile home sales and
10 used floating home sales. A receipt issued by the county treasurer for
11 the payment of the tax imposed under this chapter shall be evidence of
12 the satisfaction of the lien imposed hereunder and may be recorded in
13 the manner prescribed for recording satisfactions of mortgages. Except
14 for an instrument of sale or conveyance for the sale of a water right
15 that is transferred separately from the land, no instrument of sale or
16 conveyance evidencing a sale subject to the tax shall be accepted by
17 the county auditor for filing or recording until the tax shall have
18 been paid and the stamp affixed thereto; in case the tax is not due on
19 the transfer, the instrument shall not be so accepted until suitable
20 notation of such fact has been made on the instrument by the treasurer.

21 (2)(a) For a sale of a beneficial interest in real property where
22 a tax is due under this chapter and where no instrument is recorded in
23 the official real property records of the county in which the property
24 is located, the sale shall be reported to the department of revenue
25 within five days from the date of the sale on such returns or forms and
26 according to such procedures as the department may prescribe.

27 (b) For the sale of a water right that is transferred separately
28 from the land and tax is due under this chapter, the sale shall be
29 reported to the department within five days from the date of the sale
30 on such returns and according to such procedures as the department may
31 prescribe.

32 (c) Such forms or returns shall be signed by both the transferor
33 and the transferee and shall be accompanied by payment of the tax due.

34 ((+3+)) (d) Any person who intentionally makes a false statement on
35 any return or form required to be filed with the department under this
36 chapter is guilty of perjury under chapter 9A.72 RCW.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.03 RCW
2 to read as follows:

3 The water right permit processing account is created in the state
4 treasury. All receipts accruing to the state of Washington from
5 payment of the real estate excise tax levied on the transfer of a water
6 right transferred separately from the land as provided in RCW
7 82.45.090, shall be deposited into the account. Money in the account
8 may be spent only after appropriation. Expenditures from the account
9 may be made only for expenses incurred by the department in support of
10 the water resources program, including the processing of new water
11 right applications and water right change applications.

12 NEW SECTION. **Sec. 7.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2004.

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