
HOUSE BILL 2970

State of Washington **61st Legislature** **2010 Regular Session**

By Representatives Hunter and Conway; by request of Department of Revenue

Read first time 01/19/10. Referred to Committee on Finance.

1 AN ACT Relating to addressing tax avoidance; amending RCW
2 82.32.090, 82.32.050, 82.12.020, 82.45.033, 82.45.070, 82.45.080,
3 82.45.100, 82.45.220, and 43.07.390; reenacting and amending RCW
4 82.45.010; adding new sections to chapter 82.32 RCW; creating new
5 sections; and providing an effective date.

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

7 **PART I**

8 **INTENT**

9 NEW SECTION. **Sec. 101.** The legislature recognizes that
10 Washington's tax system is based on all businesses and individuals
11 paying their fair share of taxes. The legislature finds that some
12 taxpayers have been exploiting certain loopholes and using techniques
13 to avoid taxes that have no business purpose or substantial economic
14 effect other than their tax effects. The legislature further finds
15 that in these difficult economic conditions when the state is facing
16 budget cuts that will severely impact its most vulnerable citizens, the
17 state must aggressively act to curtail these practices. Therefore, by
18 this act, the legislature intends to close loopholes and provide the

1 department of revenue with enhanced tools to invalidate abusive tax
2 avoidance transactions, thereby preserving revenues for vital state
3 services.

4 **PART II**

5 **GENERAL ANTIABUSE PROVISIONS**

6 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.32
7 RCW to read as follows:

8 (1) The department must disregard, for tax purposes, abusive tax
9 avoidance transactions. In disregarding an abusive tax avoidance
10 transaction, the department may:

11 (a) Recharacterize the nature of income, such as recharacterizing
12 dividends received from a related entity as income received for
13 providing services to that entity;

14 (b) Disregard the form of a corporate or other entity, even when
15 legal formalities have been observed, when the form of entity is used
16 as part of an abusive tax avoidance transaction;

17 (c) Treat the tax effects of the transaction, plan, or arrangement
18 according to its underlying substance rather than its form;

19 (d) Treat a series of formally separate steps as a single
20 transaction;

21 (e) Impute income to a taxpayer that provides services to a related
22 person and the consideration received for providing such services does
23 not reflect fair market value; and

24 (f) Take any other reasonable steps necessary to deny the tax
25 benefit that would otherwise arise as a result of the abusive tax
26 avoidance transaction.

27 (2) For purposes of this section, "abusive tax avoidance
28 transaction" means the avoidance of any tax collected by the department
29 under the provisions of this chapter by means of a transaction, plan,
30 or arrangement that lacks economic substance.

31 (3)(a) A transaction, plan, or arrangement will be considered as
32 having economic substance only if:

33 (i) The transaction, plan, or arrangement changes in a meaningful
34 way, apart from its tax effects, the taxpayer's economic position;

35 (ii) The taxpayer has a substantial nontax purpose for entering
36 into the transaction, plan, or arrangement; and

1 (iii) The transaction, plan, or arrangement is an objectively
2 reasonable means of accomplishing the substantial nontax purpose.

3 (b) A transaction, plan, or arrangement that carries some risk of
4 loss and profit potential may nevertheless be found to lack economic
5 substance if the economic risks and profit potential are so
6 insignificant when compared to the tax benefits that a reasonable
7 person would conclude that the taxpayer would not have engaged in the
8 transaction, plan, or arrangement absent its tax effects.

9 (c) An objective of achieving favorable financial accounting
10 benefits arising from tax savings is not deemed to be a substantial
11 nontax purpose for entering into a transaction, plan, or arrangement.

12 (d) The burden is on the taxpayer to establish that a transaction,
13 plan, or arrangement has economic substance.

14 (4) The provisions of this section are cumulative and nonexclusive
15 and do not affect any other remedies provided to the department under
16 statutory or common law.

17 **Sec. 202.** RCW 82.32.090 and 2006 c 256 s 6 are each amended to
18 read as follows:

19 (1) If payment of any tax due on a return to be filed by a taxpayer
20 is not received by the department of revenue by the due date, there
21 (~~shall be~~) is assessed a penalty of five percent of the amount of the
22 tax; and if the tax is not received on or before the last day of the
23 month following the due date, there (~~shall be~~) is assessed a total
24 penalty of fifteen percent of the amount of the tax under this
25 subsection; and if the tax is not received on or before the last day of
26 the second month following the due date, there (~~shall be~~) is assessed
27 a total penalty of twenty-five percent of the amount of the tax under
28 this subsection. No penalty so added shall be less than five dollars.

29 (2) If the department of revenue determines that any tax has been
30 substantially underpaid, there (~~shall be~~) is assessed a penalty of
31 five percent of the amount of the tax determined by the department to
32 be due. If payment of any tax determined by the department to be due
33 is not received by the department by the due date specified in the
34 notice, or any extension thereof, there (~~shall be~~) is assessed a
35 total penalty of fifteen percent of the amount of the tax under this
36 subsection; and if payment of any tax determined by the department to
37 be due is not received on or before the thirtieth day following the due

1 date specified in the notice of tax due, or any extension thereof,
2 there (~~shall be~~) is assessed a total penalty of twenty-five percent
3 of the amount of the tax under this subsection. No penalty so added
4 (~~shall~~) may be less than five dollars. As used in this section,
5 "substantially underpaid" means that the taxpayer has paid less than
6 eighty percent of the amount of tax determined by the department to be
7 due for all of the types of taxes included in, and for the entire
8 period of time covered by, the department's examination, and the amount
9 of underpayment is at least one thousand dollars.

10 (3) If a warrant (~~be~~) is issued by the department (~~of revenue~~)
11 for the collection of taxes, increases, and penalties, there (~~shall~~
12 ~~be~~) is added thereto a penalty of ten percent of the amount of the
13 tax, but not less than ten dollars.

14 (4) If the department finds that a person has engaged in any
15 business or performed any act upon which a tax is imposed under this
16 title and that person has not obtained from the department a
17 registration certificate as required by RCW 82.32.030, the department
18 (~~shall~~) must impose a penalty of five percent of the amount of tax
19 due from that person for the period that the person was not registered
20 as required by RCW 82.32.030. The department (~~shall~~) may not impose
21 the penalty under this subsection (4) if a person who has engaged in
22 business taxable under this title without first having registered as
23 required by RCW 82.32.030, prior to any notification by the department
24 of the need to register, obtains a registration certificate from the
25 department.

26 (5) If the department finds that all or any part of a deficiency
27 resulted from the disregard of specific written instructions as to
28 reporting or tax liabilities, the department (~~shall~~) must add a
29 penalty of ten percent of the amount of the additional tax found due
30 because of the failure to follow the instructions. A taxpayer
31 disregards specific written instructions when the department (~~of~~
32 ~~revenue~~) has informed the taxpayer in writing of the taxpayer's tax
33 obligations and the taxpayer fails to act in accordance with those
34 instructions unless the department has not issued final instructions
35 because the matter is under appeal pursuant to this chapter or
36 departmental regulations. The department (~~shall~~) may not assess the
37 penalty under this section upon any taxpayer who has made a good faith
38 effort to comply with the specific written instructions provided by the

1 department to that taxpayer. Specific written instructions may be
2 given as a part of a tax assessment, audit, determination, or closing
3 agreement, provided that such specific written instructions (~~((shall))~~)
4 apply only to the taxpayer addressed or referenced on such documents.
5 Any specific written instructions by the department (~~((of revenue~~
6 ~~shall))~~) must be clearly identified as such and (~~((shall))~~) must inform
7 the taxpayer that failure to follow the instructions may subject the
8 taxpayer to the penalties imposed by this subsection.

9 (6) If the department finds that all or any part of a deficiency
10 resulted from engaging in an abusive tax avoidance transaction, as
11 defined in section 201 of this act, the department must assess a
12 penalty of thirty-five percent of the additional tax found to be due.
13 The penalty provided in this subsection may be assessed together with
14 any other applicable penalties provided in this section on the same tax
15 found to be due, except for the evasion penalty provided in subsection
16 (7) of this section. The department may not assess the penalty under
17 this subsection if, before the department discovers the taxpayer's use
18 of an abusive tax avoidance transaction, the taxpayer discloses its
19 participation in the abusive tax avoidance transaction to the
20 department.

21 (7) If the department finds that all or any part of the deficiency
22 resulted from an intent to evade the tax payable (~~((hereunder))~~), a
23 further penalty of fifty percent of the additional tax found to be due
24 (~~((shall))~~) must be added.

25 ~~((+7))~~ (8) The penalties imposed under subsections (1) through (4)
26 of this section can each be imposed on the same tax found to be due.
27 This subsection does not prohibit or restrict the application of other
28 penalties authorized by law.

29 ~~((+8))~~ (9) The department (~~((of revenue))~~) may not impose both the
30 evasion penalty and the penalty for disregarding specific written
31 instructions or the penalty provided in subsection (6) of this section
32 on the same tax found to be due.

33 ~~((+9))~~ (10) For the purposes of this section, "return" means any
34 document a person is required by the state of Washington to file to
35 satisfy or establish a tax or fee obligation that is administered or
36 collected by the department of revenue, and that has a statutorily
37 defined due date.

1 NEW SECTION. **Sec. 203.** A new section is added to chapter 82.32
2 RCW to read as follows:

3 (1) In all civil actions for damages against tax practitioners that
4 advised the taxpayer in connection with an abusive tax avoidance
5 transaction, where negligence is an element of the cause of action, it
6 is evidence of negligence on the part of such tax practitioner to show
7 that the tax practitioner failed to request a ruling from the
8 department, disclosing the identity of the taxpayer to which the ruling
9 request applied, on whether the department would consider the
10 transaction, plan, or arrangement an abusive tax avoidance transaction
11 and to communicate the ruling to the taxpayer before the taxpayer
12 participated in the abusive tax avoidance transaction.

13 (2) For purposes of this section, the following definitions apply:

14 (a) "Abusive tax avoidance transaction" has the same meaning as in
15 section 201 of this act.

16 (b) "Tax practitioner" means an individual who receives
17 compensation for providing tax advice, including attorneys,
18 accountants, and consultants.

19 **Sec. 204.** RCW 82.32.050 and 2008 c 181 s 501 are each amended to
20 read as follows:

21 (1) If upon examination of any returns or from other information
22 obtained by the department it appears that a tax or penalty has been
23 paid less than that properly due, the department (~~shall~~) must assess
24 against the taxpayer such additional amount found to be due and
25 (~~shall~~) must add thereto interest on the tax only. The department
26 (~~shall~~) must notify the taxpayer by mail, or electronically as
27 provided in RCW 82.32.135, of the additional amount, and the additional
28 amount (~~shall become~~) is due and (~~shall~~) must be paid within thirty
29 days from the date of the notice, or within such further time as the
30 department may provide.

31 (a) For tax liabilities arising before January 1, 1992, interest
32 (~~shall be~~) is computed at the rate of nine percent per annum from the
33 last day of the year in which the deficiency is incurred until the
34 earlier of December 31, 1998, or the date of payment. After December
35 31, 1998, the rate of interest (~~shall be~~) is variable and computed as
36 provided in subsection (2) of this section. The rate so computed

1 ((shall)) must be adjusted on the first day of January of each year for
2 use in computing interest for that calendar year.

3 (b) For tax liabilities arising after December 31, 1991, the rate
4 of interest ((shall-be)) is variable and computed as provided in
5 subsection (2) of this section from the last day of the year in which
6 the deficiency is incurred until the date of payment. The rate so
7 computed ((shall)) must be adjusted on the first day of January of each
8 year for use in computing interest for that calendar year.

9 (c) Interest imposed after December 31, 1998, ((shall-be)) is
10 computed from the last day of the month following each calendar year
11 included in a notice, and the last day of the month following the final
12 month included in a notice if not the end of a calendar year, until the
13 due date of the notice. If payment in full is not made by the due date
14 of the notice, additional interest ((shall)) must be computed until the
15 date of payment. The rate of interest ((shall-be)) is variable and
16 computed as provided in subsection (2) of this section. The rate so
17 computed ((shall)) must be adjusted on the first day of January of each
18 year for use in computing interest for that calendar year.

19 (2) For the purposes of this section, the rate of interest to be
20 charged to the taxpayer ((shall-be)) is an average of the federal
21 short-term rate as defined in 26 U.S.C. Sec. 1274(d) of the federal
22 internal revenue code of 1986, as amended plus two percentage points.
23 The rate set for each new year ((shall-be)) is computed by taking an
24 arithmetical average to the nearest percentage point of the federal
25 short-term rate, compounded annually. That average ((shall-be)) is
26 calculated using the rates from four months: January, April, and July
27 of the calendar year immediately preceding the new year, and October of
28 the previous preceding year.

29 (3) During a state of emergency declared under RCW 43.06.010(12),
30 the department, on its own motion or at the request of any taxpayer
31 affected by the emergency, may extend the due date of any assessment or
32 correction of an assessment for additional taxes, penalties, or
33 interest as the department deems proper.

34 (4) No assessment or correction of an assessment for additional
35 taxes, penalties, or interest due may be made by the department more
36 than four years after the close of the tax year, except (a) against a
37 taxpayer who has not registered as required by this chapter, (b) upon
38 a showing of fraud or of misrepresentation of a material fact by the

1 taxpayer, ~~((or))~~ (c) where a taxpayer has executed a written waiver of
2 such limitation, or (d) where the assessment is the result of
3 disregarding an abusive tax avoidance transaction as defined in section
4 201 of this act. The execution of a written waiver ~~((shall))~~ also
5 extends the period for making a refund or credit as provided in RCW
6 82.32.060(2).

7 (5) For the purposes of this section, "return" means any document
8 a person is required by the state of Washington to file to satisfy or
9 establish a tax or fee obligation that is administered or collected by
10 the department of revenue and that has a statutorily defined due date.

11 PART III

12 CLOSING USE TAX LOOPHOLES AND CLARIFYING AMBIGUITY

13 **Sec. 301.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
14 read as follows:

15 (1) There is ~~((hereby))~~ levied and ~~((there shall be))~~ collected
16 from every person in this state a tax or excise for the privilege of
17 using within this state as a consumer any:

18 (a) Article of tangible personal property ~~((purchased at retail,~~
19 ~~or))~~ acquired by ~~((lease, gift, repossession, or bailment, or extracted~~
20 ~~or produced or manufactured by the person so using the same, or~~
21 ~~otherwise furnished to a person engaged in any business taxable under~~
22 ~~RCW 82.04.280 (2) or (7))~~ the user in any manner, including tangible
23 personal property acquired at a casual or isolated sale, and including
24 by-products used by the manufacturer thereof, except as otherwise
25 provided in this chapter, irrespective of whether the article or
26 similar articles are manufactured or are available for purchase within
27 this state;

28 (b) Prewritten computer software, regardless of the method of
29 delivery, but excluding prewritten computer software that is either
30 provided free of charge or is provided for temporary use in viewing
31 information, or both;

32 (c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or
33 (g), (3)(a), or (6)(b), excluding services defined as a retail sale in
34 RCW 82.04.050(6)(b) that are provided free of charge;

35 (d) Extended warranty; or

1 (e)(i) Digital good, digital code, or digital automated service,
2 including the use of any services provided by a seller exclusively in
3 connection with digital goods, digital codes, or digital automated
4 services, whether or not a separate charge is made for such services.

5 (ii) With respect to the use of digital goods, digital automated
6 services, and digital codes acquired by purchase, the tax imposed in
7 this subsection (1)(e) applies in respect to:

8 (A) Sales in which the seller has granted the purchaser the right
9 of permanent use;

10 (B) Sales in which the seller has granted the purchaser a right of
11 use that is less than permanent;

12 (C) Sales in which the purchaser is not obligated to make continued
13 payment as a condition of the sale; and

14 (D) Sales in which the purchaser is obligated to make continued
15 payment as a condition of the sale.

16 (iii) With respect to digital goods, digital automated services,
17 and digital codes acquired other than by purchase, the tax imposed in
18 this subsection (1)(e) applies regardless of whether or not the
19 consumer has a right of permanent use or is obligated to make continued
20 payment as a condition of use.

21 (2) The provisions of this chapter do not apply in respect to the
22 use of any article of tangible personal property, extended warranty,
23 digital good, digital code, digital automated service, or service
24 taxable under RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), if the
25 sale to, or the use by, the present user or the present user's bailor
26 or donor has already been subjected to the tax under chapter 82.08 RCW
27 or this chapter and the tax has been paid by the present user or by the
28 present user's bailor or donor.

29 (3)(a) Except as provided in this section, payment of the tax
30 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
31 of tangible personal property, extended warranty, digital good, digital
32 code, digital automated service, or other service does not have the
33 effect of exempting any other purchaser or user of the same property,
34 extended warranty, digital good, digital code, digital automated
35 service, or other service from the taxes imposed by such chapters.

36 (b) The tax imposed by this chapter does not apply:

37 (i) If the sale to, or the use by, the present user or his or her

1 bailor or donor has already been subjected to the tax under chapter
2 82.08 RCW or this chapter and the tax has been paid by the present user
3 or by his or her bailor or donor;

4 (ii) In respect to the use of any article of tangible personal
5 property acquired by bailment and the tax has once been paid based on
6 reasonable rental as determined by RCW 82.12.060 measured by the value
7 of the article at time of first use multiplied by the tax rate imposed
8 by chapter 82.08 RCW or this chapter as of the time of first use;

9 (iii) In respect to the use of any article of tangible personal
10 property acquired by bailment, if the property was acquired by a
11 previous bailee from the same bailor for use in the same general
12 activity and the original bailment was prior to June 9, 1961; or

13 (iv) To the use of digital goods or digital automated services,
14 which were obtained through the use of a digital code, if the sale of
15 the digital code to, or the use of the digital code by, the present
16 user or the present user's bailor or donor has already been subjected
17 to the tax under chapter 82.08 RCW or this chapter and the tax has been
18 paid by the present user or by the present user's bailor or donor.

19 (4)(a) Except as provided in (b) of this subsection (4), the tax is
20 levied and must be collected in an amount equal to the value of the
21 article used, value of the digital good or digital code used, value of
22 the extended warranty used, or value of the service used by the
23 taxpayer, multiplied by the applicable rates in effect for the retail
24 sales tax under RCW 82.08.020.

25 (b) In the case of a seller required to collect use tax from the
26 purchaser, the tax must be collected in an amount equal to the purchase
27 price multiplied by the applicable rate in effect for the retail sales
28 tax under RCW 82.08.020.

29 (5) For purposes of the tax imposed in this section, "person"
30 includes anyone within the definition of "buyer," "purchaser," and
31 "consumer" in RCW 82.08.010.

32 **PART IV**
33 **CLOSING REAL ESTATE EXCISE TAX LOOPHOLES**
34 **AND ADDRESSING AMBIGUITIES**

35 **Sec. 401.** RCW 82.45.010 and 2008 c 116 s 3 and 2008 c 6 s 701 are
36 each reenacted and amended to read as follows:

1 (1) As used in this chapter, the term "sale" (~~(shall have)~~) has its
2 ordinary meaning and (~~(shall)~~) includes any conveyance, grant,
3 assignment, quitclaim, or transfer of the ownership of or title to real
4 property, including standing timber, or any estate or interest therein
5 for a valuable consideration, and any contract for such conveyance,
6 grant, assignment, quitclaim, or transfer, and any lease with an option
7 to 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)(a) 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.

18 (b) For the sole purpose of determining whether, pursuant to the
19 exercise of an option, a controlling interest was transferred or
20 acquired within a twelve-month period, the date that the option
21 agreement was executed is the date on which the transfer or acquisition
22 of the controlling interest is deemed to occur. For all other purposes
23 under this chapter, the date upon which the option is exercised is the
24 date of the transfer or acquisition of the controlling interest.

25 (c) For purposes of this subsection, all acquisitions of persons
26 acting in concert (~~(shall)~~) must be aggregated for purposes of
27 determining whether a transfer or acquisition of a controlling interest
28 has taken place. The department (~~(of revenue shall)~~) must adopt
29 standards by rule to determine when persons are acting in concert. In
30 adopting a rule for this purpose, the department (~~(shall)~~) must
31 consider the following:

32 (~~(+a)~~) (i) Persons (~~(shall)~~) must be treated as acting in concert
33 when they have a relationship with each other such that one person
34 influences or controls the actions of another through common ownership;
35 and

36 (~~(+b)~~) (ii) When persons are not commonly owned or controlled,
37 they (~~(shall)~~) must be treated as acting in concert only when the unity
38 with which the purchasers have negotiated and will consummate the

1 transfer of ownership interests supports a finding that they are acting
2 as a single entity. If the acquisitions are completely independent,
3 with each purchaser buying without regard to the identity of the other
4 purchasers, then the acquisitions (~~(shall be)~~) are considered separate
5 acquisitions.

6 (3) The term "sale" (~~(shall)~~) does not include:

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

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

10 (c) A cancellation or forfeiture of a vendee's interest in a
11 contract for the sale of real property, whether or not such contract
12 contains a forfeiture clause, or deed in lieu of foreclosure of a
13 mortgage.

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

16 (e) The assignment of property or interest in property from one
17 spouse or one domestic partner to the other spouse or other domestic
18 partner in accordance with the terms of a decree of dissolution of
19 marriage or state registered domestic partnership or in fulfillment of
20 a property settlement agreement.

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

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

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

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

33 (j) A conveyance to the federal housing administration or veterans
34 administration by an authorized mortgagee made pursuant to a contract
35 of insurance or guaranty with the federal housing administration or
36 veterans administration.

37 (k) A transfer in compliance with the terms of any lease or

1 contract upon which the tax as imposed by this chapter has been paid or
2 where the lease or contract was entered into prior to the date this tax
3 was first imposed.

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

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

7 (n) A sale to a regional transit authority or public corporation
8 under RCW 81.112.320 under a sale/leaseback agreement under RCW
9 81.112.300.

10 (o) A transfer of real property, however effected, if it consists
11 of a mere change in identity or form of ownership of an entity where
12 there is no change in the beneficial ownership. These include
13 transfers to a corporation or partnership which is wholly owned by the
14 transferor and/or the transferor's spouse or domestic partner or
15 children of the transferor or the transferor's spouse or domestic
16 partner(~~(-PROVIDED, That)~~). However, if thereafter such transferee
17 corporation or partnership voluntarily transfers such real property, or
18 such transferor, spouse or domestic partner, or children of the
19 transferor or the transferor's spouse or domestic partner voluntarily
20 transfer stock in the transferee corporation or interest in the
21 transferee partnership capital, as the case may be, to other than (1)
22 the transferor and/or the transferor's spouse or domestic partner or
23 children of the transferor or the transferor's spouse or domestic
24 partner, (2) a trust having the transferor and/or the transferor's
25 spouse or domestic partner or children of the transferor or the
26 transferor's spouse or domestic partner as the only beneficiaries at
27 the time of the transfer to the trust, or (3) a corporation or
28 partnership wholly owned by the original transferor and/or the
29 transferor's spouse or domestic partner or children of the transferor
30 or the transferor's spouse or domestic partner, within three years of
31 the original transfer to which this exemption applies, and the tax on
32 the subsequent transfer has not been paid within sixty days of becoming
33 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) A qualified sale of a manufactured/mobile home community, as
22 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
23 but before December 31, 2018.

24 **Sec. 402.** RCW 82.45.033 and 1993 sp.s. c 25 s 505 are each amended
25 to read as follows:

26 (1) As used in this chapter, the term "controlling interest" has
27 the following meaning:

28 ~~((+1))~~ (a) In the case of a corporation, either fifty percent or
29 more of the total combined voting power of all classes of stock of the
30 corporation entitled to vote, or fifty percent of the capital, profits,
31 or beneficial interest in the voting stock of the corporation; and

32 ~~((+2))~~ (b) In the case of a partnership, association, trust, or
33 other entity, fifty percent or more of the capital, profits, or
34 beneficial interest in such partnership, association, trust, or other
35 entity.

36 (2) The department may, at the department's option, enforce the

1 obligation of the seller under this chapter as provided in this
2 subsection (2):

3 (a) In the transfer or acquisition of a controlling interest as
4 defined in subsection (1)(a) of this section, either against the
5 corporation in which a controlling interest is transferred or acquired,
6 against the person or persons who acquired the controlling interest in
7 the corporation or, when the corporation is not a publicly traded
8 company, against the person or persons who transferred the controlling
9 interest in the corporation; and

10 (b) In the transfer or acquisition of a controlling interest as
11 defined in subsection (1)(b) of this section, either against the entity
12 in which a controlling interest is transferred or acquired or against
13 the person or persons who transferred or acquired the controlling
14 interest in the entity.

15 **Sec. 403.** RCW 82.45.070 and 1969 ex.s. c 223 s 28A.45.070 are each
16 amended to read as follows:

17 The tax (~~herein~~) provided for in this chapter and any interest or
18 penalties thereon (~~shall be~~) is a specific lien upon each (~~piece~~)
19 parcel of real property that is sold or that is owned by an entity in
20 which a controlling interest has been transferred or acquired. The
21 lien attaches from the time of sale until the tax (~~shall have been~~)
22 is paid, which lien may be enforced in the manner prescribed for the
23 foreclosure of mortgages.

24 **Sec. 404.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to
25 read as follows:

26 (1) The tax levied under this chapter (~~shall be~~) is the
27 obligation of the seller and the department (~~of revenue~~) may, at the
28 department's option, enforce the obligation through an action of debt
29 against the seller or the department may proceed in the manner
30 prescribed for the foreclosure of mortgages (~~and resort to~~). The
31 department's use of one course of enforcement (~~shall~~) is not (~~be~~)
32 an election not to pursue the other.

33 (2) For purposes of this section and notwithstanding any other
34 provisions of law, the seller is the parent corporation of a wholly
35 owned subsidiary, when such subsidiary is the transferor to a third-

1 party transferee and the subsidiary is dissolved before paying the tax
2 imposed under this chapter.

3 **Sec. 405.** RCW 82.45.100 and 2007 c 111 s 112 are each amended to
4 read as follows:

5 (1) Payment of the tax imposed under this chapter is due and
6 payable immediately at the time of sale, and if not paid within one
7 month thereafter (~~shall~~) will bear interest from the time of sale
8 until the date of payment.

9 (a) Interest imposed before January 1, 1999, (~~shall be~~) is
10 computed at the rate of one percent per month.

11 (b) Interest imposed after December 31, 1998, (~~shall be~~) is
12 computed on a monthly basis at the rate as computed under RCW
13 82.32.050(2). The rate so computed (~~shall~~) must be adjusted on the
14 first day of January of each year for use in computing interest for
15 that calendar year. The department (~~of revenue shall~~) must provide
16 written notification to the county treasurers of the variable rate on
17 or before December 1st of the year preceding the calendar year in which
18 the rate applies.

19 (2) In addition to the interest described in subsection (1) of this
20 section, if the payment of any tax is not received by the county
21 treasurer or the department of revenue, as the case may be, within one
22 month of the date due, there (~~shall be~~) is assessed a penalty of five
23 percent of the amount of the tax; if the tax is not received within two
24 months of the date due, there (~~shall~~) will be assessed a total
25 penalty of ten percent of the amount of the tax; and if the tax is not
26 received within three months of the date due, there (~~shall~~) will be
27 assessed a total penalty of twenty percent of the amount of the tax.
28 The payment of the penalty described in this subsection (~~shall be~~) is
29 collectible from the seller only, and RCW 82.45.070 does not apply to
30 the penalties described in this subsection.

31 (3) If the tax imposed under this chapter is not received by the
32 due date, the transferee (~~shall be~~) is personally liable for the tax,
33 along with any interest as provided in subsection (1) of this section,
34 unless(~~+~~

35 ~~a~~) an instrument evidencing the sale is recorded in the official
36 real property records of the county in which the property conveyed is
37 located(~~+~~

1 ~~(b) Either the transferor or transferee notifies the department of~~
2 ~~revenue in writing of the occurrence of the sale within thirty days~~
3 ~~following the date of the sale)).~~

4 (4) If upon examination of any affidavits or from other information
5 obtained by the department or its agents it appears that all or a
6 portion of the tax is unpaid, the department (~~shall~~) must assess
7 against the taxpayer the additional amount found to be due plus
8 interest and penalties as provided in subsections (1) and (2) of this
9 section. The department (~~shall~~) must notify the taxpayer by mail, or
10 electronically as provided in RCW 82.32.135, of the additional amount
11 and the same (~~shall~~) becomes due and (~~shall~~) must be paid within
12 thirty days from the date of the notice, or within such further time as
13 the department may provide.

14 (5) No assessment or refund may be made by the department more than
15 four years after the date of sale except upon a showing of:

16 (a) Fraud or misrepresentation of a material fact by the taxpayer;

17 (b) A failure by the taxpayer to record documentation of a sale or
18 otherwise report the sale to the county treasurer; or

19 (c) A failure of the transferor or transferee to report the sale
20 under RCW 82.45.090(2).

21 (6) Penalties collected on taxes due under this chapter under
22 subsection (2) of this section and RCW 82.32.090 (2) through (7)
23 (~~shall~~) must be deposited in the housing trust fund as described in
24 chapter 43.185 RCW.

25 **Sec. 406.** RCW 82.45.220 and 2005 c 326 s 3 are each amended to
26 read as follows:

27 An organization that fails to report a transfer of (~~the~~
28 ~~controlling~~) an interest, or an option to purchase an interest, in the
29 organization under RCW 43.07.390 to the secretary of state and is later
30 determined to be subject to real estate excise taxes due to the
31 transfer, (~~shall be~~) is subject to the provisions of RCW 82.45.100 as
32 well as the evasion penalty in RCW 82.32.090(~~(+6)~~) (7).

33 **Sec. 407.** RCW 43.07.390 and 2005 c 326 s 2 are each amended to
34 read as follows:

35 (1) The secretary of state (~~shall~~) must adopt rules requiring any
36 entity that is required to file an annual report with the secretary of

1 state, including entities under Titles 23, 23B, 24, and 25 RCW, to
2 disclose any transfer (~~in~~) of the controlling interest (~~of~~) in the
3 entity, or any transfer of an interest or an option to purchase an
4 interest in the entity, and any interest in real property.

5 (2) This information (~~shall~~) must be made available to the
6 department of revenue upon request for the purposes of tracking the
7 transfer of the controlling interest in entities owning real property
8 and to determine when the real estate excise tax is applicable in such
9 cases.

10 (3) For the purposes of this section, "controlling interest" has
11 the same meaning as provided in RCW 82.45.033.

12 **PART V**
13 **MISCELLANEOUS**

14 NEW SECTION. **Sec. 501.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 502.** This act must be construed liberally to
19 effectuate the legislature's intent to ensure that all businesses and
20 individuals pay their fair share of taxes.

21 NEW SECTION. **Sec. 503.** Section 201 of this act applies to tax
22 periods beginning January 1, 2006.

23 NEW SECTION. **Sec. 504.** This act takes effect July 1, 2010.

--- END ---