
SUBSTITUTE SENATE BILL 5776

State of Washington 63rd Legislature 2013 Regular Session

By Senate Ways & Means (originally sponsored by Senator Parlette)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to interest rate and penalty provisions in the
2 current use program; amending RCW 84.34.070; reenacting and amending
3 RCW 84.34.108; and creating a new section.

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

5 **Sec. 1.** RCW 84.34.108 and 2009 c 513 s 2, 2009 c 354 s 3, 2009 c
6 255 s 2, and 2009 c 246 s 3 are each reenacted and amended to read as
7 follows:

8 (1) When land has once been classified under this chapter, a
9 notation of the classification (~~shall~~) must be made each year upon
10 the assessment and tax rolls and the land (~~shall~~) must be valued
11 pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a
12 portion of the classification by the assessor upon occurrence of any of
13 the following:

14 (a) Receipt of notice from the owner to remove all or a portion of
15 the classification;

16 (b) Sale or transfer to an ownership, except a transfer that
17 resulted from a default in loan payments made to or secured by a
18 governmental agency that intends to or is required by law or regulation

1 to resell the property for the same use as before, making all or a
2 portion of the land exempt from ad valorem taxation;

3 (c) Sale or transfer of all or a portion of the land to a new
4 owner, unless the new owner has signed a notice of classification
5 continuance, except transfer to an owner who is an heir or devisee of
6 a deceased owner (~~shall~~) does not, by itself, result in removal of
7 classification. The notice of continuance (~~shall~~) must be on a form
8 prepared by the department. If the notice of continuance is not signed
9 by the new owner and attached to the real estate excise tax affidavit,
10 all additional taxes calculated pursuant to subsection (4) of this
11 section (~~shall become~~) are due and payable by the seller or
12 transferor at time of sale. The auditor (~~shall~~) may not accept an
13 instrument of conveyance regarding classified land for filing or
14 recording unless the new owner has signed the notice of continuance or
15 the additional tax has been paid, as evidenced by the real estate
16 excise tax stamp affixed thereto by the treasurer. The seller,
17 transferor, or new owner may appeal the new assessed valuation
18 calculated under subsection (4) of this section to the county board of
19 equalization in accordance with the provisions of RCW 84.40.038.
20 Jurisdiction is hereby conferred on the county board of equalization to
21 hear these appeals;

22 (d) Determination by the assessor, after giving the owner written
23 notice and an opportunity to be heard, that all or a portion of the
24 land no longer meets the criteria for classification under this
25 chapter. The criteria for classification pursuant to this chapter
26 continue to apply after classification has been granted.

27 The granting authority, upon request of an assessor, (~~shall~~) must
28 provide reasonable assistance to the assessor in making a determination
29 whether the land continues to meet the qualifications of RCW 84.34.020
30 (1) or (3). The assistance (~~shall~~) must be provided within thirty
31 days of receipt of the request.

32 (2) Land may not be removed from classification because of:

33 (a) The creation, sale, or transfer of forestry riparian easements
34 under RCW 76.13.120; or

35 (b) The creation, sale, or transfer of a fee interest or a
36 conservation easement for the riparian open space program under RCW
37 76.09.040.

1 (3) Within thirty days after the removal of all or a portion of the
2 land from current use classification under subsection (1) of this
3 section, the assessor (~~shall~~) must notify the owner in writing,
4 setting forth the reasons for the removal. The seller, transferor, or
5 owner may appeal the removal to the county board of equalization in
6 accordance with the provisions of RCW 84.40.038. The removal notice
7 must explain the steps needed to appeal the removal decision, including
8 when a notice of appeal must be filed, where the forms may be obtained,
9 and how to contact the county board of equalization.

10 (4) Unless the removal is reversed on appeal, the assessor
11 (~~shall~~) must revalue the affected land with reference to its true and
12 fair value on January 1st of the year of removal from classification.
13 Both the assessed valuation before and after the removal of
14 classification (~~shall~~) must be listed and taxes (~~shall~~) must be
15 allocated according to that part of the year to which each assessed
16 valuation applies. Except as provided in subsection (6) of this
17 section, an additional tax, applicable interest, and penalty (~~shall~~
18 ~~be~~) is imposed which (~~shall be~~) is due and payable to the treasurer
19 thirty days after the owner is notified of the amount of the additional
20 tax. As soon as possible, the assessor (~~shall~~) must compute the
21 amount of additional tax, applicable interest, and penalty and the
22 treasurer (~~shall~~) must mail notice to the owner of the amount thereof
23 and the date on which payment is due. The amount of the additional
24 tax, applicable interest, and penalty (~~shall~~) must be determined as
25 follows:

26 (a) The amount of additional tax (~~shall be~~) is equal to the
27 difference between the property tax paid as "open space land," "farm
28 and agricultural land," or "timber land" and the amount of property tax
29 otherwise due and payable for the seven years last past had the land
30 not been so classified;

31 (b) (~~The amount of applicable interest shall be equal to the~~
32 ~~interest upon the amounts of the additional tax paid at the same~~
33 ~~statutory rate charged on delinquent property taxes from the dates on~~
34 ~~which the additional tax could have been paid without penalty if the~~
35 ~~land had been assessed at a value without regard to this chapter;~~) The
36 interest rate provided in RCW 82.32.050(2) must be charged on the
37 amount of additional tax imposed under (a) of this subsection. The

1 annual rate of interest in effect at the time of removal must be
2 applied to the total amount of additional tax due;

3 (c) The amount of the penalty (~~shall be~~) is as provided in RCW
4 84.34.080. The penalty (~~shall~~) may not be imposed if the removal
5 satisfies the conditions of RCW 84.34.070.

6 (5) Additional tax, applicable interest, and penalty, (~~shall~~)
7 must become a lien on the land which (~~shall~~) attaches at the time the
8 land is removed from classification under this chapter and (~~shall~~
9 ~~have~~) has priority to and (~~shall~~) must be fully paid and satisfied
10 before any recognizance, mortgage, judgment, debt, obligation or
11 responsibility to or with which the land may become charged or liable.
12 This lien may be foreclosed upon expiration of the same period after
13 delinquency and in the same manner provided by law for foreclosure of
14 liens for delinquent real property taxes as provided in RCW 84.64.050.
15 Any additional tax unpaid on its due date (~~shall~~) becomes thereupon
16 (~~become~~) delinquent. From the date of delinquency until paid,
17 interest (~~shall~~) must be charged at the same rate applied by law to
18 delinquent ad valorem property taxes.

19 (6) The additional tax, applicable interest, and penalty specified
20 in subsection (4) of this section (~~shall~~) may not be imposed if the
21 removal of classification pursuant to subsection (1) of this section
22 resulted solely from:

23 (a) Transfer to a government entity in exchange for other land
24 located within the state of Washington;

25 (b)(i) A taking through the exercise of the power of eminent
26 domain, or (ii) sale or transfer to an entity having the power of
27 eminent domain in anticipation of the exercise of such power, said
28 entity having manifested its intent in writing or by other official
29 action;

30 (c) A natural disaster such as a flood, windstorm, earthquake, or
31 other such calamity rather than by virtue of the act of the landowner
32 changing the use of the property;

33 (d) Official action by an agency of the state of Washington or by
34 the county or city within which the land is located which disallows the
35 present use of the land;

36 (e) Transfer of land to a church when the land would qualify for
37 exemption pursuant to RCW 84.36.020;

1 (f) Acquisition of property interests by state agencies or agencies
2 or organizations qualified under RCW 84.34.210 and 64.04.130 for the
3 purposes enumerated in those sections. At such time as these property
4 interests are not used for the purposes enumerated in RCW 84.34.210 and
5 64.04.130 the additional tax specified in subsection (4) of this
6 section (~~shall be~~) is imposed;

7 (g) Removal of land classified as farm and agricultural land under
8 RCW 84.34.020(2)(f);

9 (h) Removal of land from classification after enactment of a
10 statutory exemption that qualifies the land for exemption and receipt
11 of notice from the owner to remove the land from classification;

12 (i) The creation, sale, or transfer of forestry riparian easements
13 under RCW 76.13.120;

14 (j) The creation, sale, or transfer of a conservation easement of
15 private forest lands within unconfined channel migration zones or
16 containing critical habitat for threatened or endangered species under
17 RCW 76.09.040;

18 (k) The sale or transfer of land within two years after the death
19 of the owner of at least a fifty percent interest in the land if the
20 land has been assessed and valued as classified forest land, designated
21 as forest land under chapter 84.33 RCW, or classified under this
22 chapter continuously since 1993. The date of death shown on a death
23 certificate is the date used for the purposes of this subsection
24 (6)(k); or

25 (l)(i) The discovery that the land was classified under this
26 chapter in error through no fault of the owner. For purposes of this
27 subsection (6)(l), "fault" means a knowingly false or misleading
28 statement, or other act or omission not in good faith, that contributed
29 to the approval of classification under this chapter or the failure of
30 the assessor to remove the land from classification under this chapter.

31 (ii) For purposes of this subsection (6), the discovery that land
32 was classified under this chapter in error through no fault of the
33 owner is not the sole reason for removal of classification pursuant to
34 subsection (1) of this section if an independent basis for removal
35 exists. Examples of an independent basis for removal include the owner
36 changing the use of the land or failing to meet any applicable income
37 criteria required for classification under this chapter.

1 **Sec. 2.** RCW 84.34.070 and 1992 c 69 s 10 are each amended to read
2 as follows:

3 (1) When land has once been classified under this chapter, it
4 ~~((shall))~~ remains under such classification and ~~((shall))~~ may not be
5 applied to other use except as provided by subsection (2) of this
6 section for at least ten years from the date of classification and
7 ~~((shall))~~ must continue under such classification until and unless
8 withdrawn from classification after notice of request for withdrawal
9 ~~((shall be))~~ is made by the owner. ~~((During any year))~~ After ~~((eight~~
10 ~~years of))~~ the initial ten-year classification period ~~((have))~~ has
11 elapsed, notice of request for withdrawal of all or a portion of the
12 land may be given by the owner to the assessor or assessors of the
13 county or counties in which such land is situated. In the event that
14 a portion of a parcel is removed from classification, the remaining
15 portion must meet the same requirements as did the entire parcel when
16 such land was originally granted classification pursuant to this
17 chapter unless the remaining parcel has different income criteria.
18 Within seven days the assessor ~~((shall))~~ must transmit one copy of such
19 notice to the legislative body which originally approved the
20 application. The assessor or assessors, as the case may be, ~~((shall,~~
21 ~~when two assessment years have elapsed following the date of receipt of~~
22 ~~such notice,))~~ must withdraw such land from such classification and the
23 land ~~((shall be))~~ is subject to the additional tax and applicable
24 interest due under RCW 84.34.108. Agreement to tax according to use
25 ~~((shall))~~ is not ~~((be))~~ considered to be a contract and can be
26 abrogated at any time by the legislature in which event no additional
27 tax or penalty ~~((shall))~~ may be imposed.

28 (2) The following reclassifications are not considered withdrawals
29 or removals and are not subject to additional tax under RCW 84.34.108:

30 (a) Reclassification between lands under RCW 84.34.020 (2) and (3);

31 (b) Reclassification of land classified under RCW 84.34.020 (2) or
32 (3) or chapter 84.33 RCW to open space land under RCW 84.34.020(1);

33 (c) Reclassification of land classified under RCW 84.34.020 (2) or
34 (3) to forest land classified under chapter 84.33 RCW; and

35 (d) Reclassification of land classified as open space land under
36 RCW 84.34.020(1)(c) and reclassified to farm and agricultural land
37 under RCW 84.34.020(2) if the land had been previously classified as
38 farm and agricultural land under RCW 84.34.020(2).

1 (3) Applications for reclassification ((~~shall be~~)) are subject to
2 applicable provisions of RCW 84.34.037, 84.34.035, 84.34.041, and
3 chapter 84.33 RCW.

4 (4) The income criteria for land classified under RCW 84.34.020(2)
5 (b) and (c) may be deferred for land being reclassified from land
6 classified under RCW 84.34.020 (1)(c) or (3), or chapter 84.33 RCW into
7 RCW 84.34.020(2) (b) or (c) for a period of up to five years from the
8 date of reclassification.

9 NEW SECTION. **Sec. 3.** This act applies to taxes levied for
10 collection in 2014 and thereafter.

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