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**SUBSTITUTE SENATE BILL 6211**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Dammeier, Rolfes, Fraser, Conway, McCoy, O'Ban, Litzow, Fain, Rivers, Becker, Darneille, McAuliffe, Habib, Chase, and Benton)

AN ACT Relating to the exemption of property taxes for nonprofit homeownership development; amending RCW 84.36.805, 84.36.815, 84.36.820, 84.36.840, 84.36.845, and 84.36.855; adding a new section to chapter 84.36 RCW; and creating new sections.

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

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference contained in this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to provide tax relief for certain businesses or individuals, as indicated in RCW 82.32.808(2)(e).

(3) It is the legislature's specific public policy objective to encourage and expand the ability of nonprofit low-income housing developers to provide homeownership opportunities for low-income households. It is the legislature's intent to exempt from taxation real property owned by a nonprofit entity for the purpose of building residences to be sold to low-income households in order to enhance the ability of nonprofit low-income housing developers to purchase and hold land for future affordable housing development, thereby expanding the number of low-income households available.

(4)(a) To measure the effectiveness of the tax preference provided in section 2 of this act in achieving the specific public policy objectives described in subsection (3) of this section, the joint legislative audit and review committee must compare the number of housing units sold to low-income households by the nonprofit entities each year for the five years before the effective date of this section to the number of low-income housing units sold to low-income households two years prior to the expiration of the tax preference.

(b) If the review by the joint legislative audit and review committee finds that nonprofit low-income housing developers who receive the exemption increased the number of housing units sold to low-income households above the average of the five years prior to the effective date of this section, then the legislature intends to extend the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to:

(a) The Washington state housing needs assessment available from the Washington state department of commerce;

(b) Low-income family homeownership data provided in the annual report and the impact report of the Washington state housing finance commission; and

(c) Any other data necessary to evaluate subsection (4) of this section.

NEW SECTION. **Sec.**  A new section is added to chapter 84.36 RCW to read as follows:

(1) All real property owned by a nonprofit entity for the purpose of developing or redeveloping on the real property one or more residences to be sold to low-income households is exempt from state and local property taxes.

(2) The exemption provided in this section expires on or at the earlier of:

(a) The date on which the nonprofit entity transfers title to the real property;

(b) The end of the seventh consecutive property tax year for which the property is granted an exemption under this section or, if the nonprofit entity has claimed an extension under subsection (3) of this section, the end of the tenth consecutive property tax year for which the property is granted an exemption under this section; or

(c) The property is no longer held for the purpose for which the exemption was granted.

(3) If the nonprofit entity believes that title to the real property will not be transferred by the end of the sixth consecutive property tax year, the nonprofit entity may claim a three-year extension of the exemption period by:

(a) Filing a notice of extension with the department on or before March 31st of the sixth consecutive property tax year; and

(b) Providing a filing fee equal to the greater of two hundred dollars or one-tenth of one percent of the real market value of the property as of the most recent assessment date with the notice of extension. The filing fee must be deposited into the state general fund.

(4)(a) If the nonprofit entity has not transferred title to the real property to a low-income household within the applicable period described in subsection (2) of this section, or if the nonprofit entity has converted the property to a purpose other than the purpose for which the exemption was granted, the property is disqualified from the exemption.

(b) Upon disqualification, the county treasurer must collect an additional tax equal to all taxes that would have been paid on the property but for the existence of the exemption, plus interest at the same rate and computed in the same way as that upon delinquent property taxes.

(c) The additional tax must be distributed by the county treasurer in the same manner in which current property taxes applicable to the subject property are distributed. The additional taxes and interest are due in full thirty days following the date on which the treasurer's statement of additional tax due is issued.

(d) The additional tax and interest is a lien on the property. The lien for additional tax and interest has priority to and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the property may become charged or liable. If a nonprofit entity sells or transfers real property subject to a lien for additional taxes under this subsection, such unpaid additional taxes must be paid by the nonprofit entity at the time of sale or transfer. The county auditor may not accept an instrument of conveyance unless the additional tax has been paid. The nonprofit entity or the new owner may appeal the assessed values upon which the additional tax is based to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(5) Nonprofit entities receiving an exemption under this section must immediately notify the department when the exempt real property becomes occupied. The notice of occupancy made to the department must include a certification by the nonprofit entity that the occupants are a low-income household and a date when the title to the real property was or is anticipated to be transferred.

(6) Upon cessation of the exemption, the value of new construction and improvements to the property, not previously considered as new construction, must be considered as new construction for purposes of calculating levies under chapter 84.55 RCW.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the property is located.

(b) "Nonprofit entity" means a nonprofit as defined in RCW 84.36.800 that is exempt from federal income taxation under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended.

(c) "Residence" means a single-family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands.

**Sec.**  RCW 84.36.805 and 2014 c 99 s 13 are each amended to read as follows:

(1) In order to qualify for an exemption under this chapter, the nonprofit organizations, associations, or corporations must satisfy the conditions in this section.

(2) The property must be used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose. Notwithstanding anything to the contrary in this section:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4), 84.36.037, 84.36.050, and 84.36.060(1) (a) and (b), the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising events does not subject the property to tax if the fund-raising events are consistent with the purposes for which the exemption is granted or are conducted by a nonprofit organization. If the property is loaned or rented to conduct a fund-raising event, the requirements of (a) of this subsection (2) apply;

(c) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted does not subject the property to tax, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(3) The facilities and services must be available to all regardless of race, color, national origin or ancestry.

(4) The organization, association, or corporation must be duly licensed or certified where such licensing or certification is required by law or regulation.

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller does not qualify for exempt status. This subsection does not apply to property sold to a nonprofit entity, as defined in RCW 84.36.560(7), by:

(a) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under 26 U.S.C. Sec. 501(c) of the federal internal revenue code;

(b) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(c) A housing authority created under RCW 35.82.030;

(d) A housing authority meeting the definition in RCW 35.82.210(2)(a); or

(e) A housing authority established under RCW 35.82.300.

(6) The department must have access to its books in order to determine whether the nonprofit organization, association, or corporation is exempt from taxes under this chapter.

(7) This section does not apply to exemptions granted under RCW 84.36.020, 84.36.032, 84.36.250, section 2 of this act, and 84.36.480(2).

(8)(a) The use of property exempt under this chapter, other than as specifically authorized by this chapter, nullifies the exemption otherwise available for the property for the assessment year. However, the exemption is not nullified by the use of the property by any individual, group, or entity, where such use is not otherwise authorized by this chapter, for not more than fifty days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than fifteen of the fifty days in each calendar year. The fifty and fifteen-day limitations provided in this subsection (8)(a) do not include days during which setup and takedown activities take place immediately preceding or following a meeting or other event by an individual, group, or entity using the property as provided in this subsection (8)(a).

(b) If uses of the exempt property exceed the fifty and fifteen-day limitations provided in (a) of this subsection (8) during an assessment year, the exemption is removed for the affected portion of the property for that assessment year.

**Sec.**  RCW 84.36.815 and 2007 c 111 s 301 are each amended to read as follows:

(1) In order to qualify for exempt status for any real or personal property under this chapter except personal property under RCW 84.36.600, all foreign national governments; cemeteries; nongovernmental nonprofit corporations, organizations, and associations; hospitals owned and operated by a public hospital district for purposes of exemption under RCW 84.36.040(2); and soil and water conservation districts ((~~shall~~)) must file an initial application on or before March 31st with the state department of revenue. However, the initial application deadline for the exemption provided in section 2 of this act is July 1st for 2016 and March 31st for 2017 and thereafter. All applications ((~~shall~~)) must be filed on forms prescribed by the department and ((~~shall~~)) must be signed by an authorized agent of the applicant.

(2) In order to requalify for exempt status, all applicants except nonprofit cemeteries ((~~shall~~)) and nonprofits receiving the exemption under section 2 of this act must file an annual renewal declaration on or before March 31st each year. The renewal declaration ((~~shall~~)) must be on forms prescribed by the department of revenue and ((~~shall~~)) must contain a statement certifying the exempt status of the real or personal property owned by the exempt organization. This renewal declaration may be submitted electronically in a format provided or approved by the department. Information may also be required with the renewal declaration to assist the department in determining whether the property tax exemption should continue.

(3) When an organization acquires real property qualified for exemption or converts real property to exempt status, the organization ((~~shall~~)) must file an initial application for the property within sixty days following the acquisition or conversion in accordance with all applicable provisions of subsection (1) of this section. If the application is filed after the expiration of the sixty-day period, a late filing penalty ((~~shall be~~)) is imposed under RCW 84.36.825.

(4) When organizations acquire real property qualified for exemption or convert real property to an exempt use, the property, upon approval of the application for exemption, is entitled to a property tax exemption for property taxes due and payable the following year. If the owner has paid taxes for the year following the year the property qualified for exemption, the owner is entitled to a refund of the amount paid on the property so acquired or converted.

**Sec.**  RCW 84.36.820 and 2007 c 111 s 302 are each amended to read as follows:

On or before January 1st of each year, the department of revenue ((~~shall~~)) must notify the owners of record of property exempted from property taxation at their last known address about the obligation to file an annual renewal declaration for continued exemption. When a continued exemption is not approved, the department ((~~shall~~)) must notify the assessor of the county in which the property is located who, in turn, ((~~shall~~)) must remove the tax exemption from the property. The failure to file an annual renewal declaration for continued exemption and subsequent removal of the exemption ((~~shall~~)) is not ((~~be~~)) subject to review as provided in RCW 84.36.850. The department of revenue ((~~shall~~)) must review applications received after the ((~~March 31st~~)) due date required under RCW 84.36.815, but these applications ((~~shall be~~)) are subject to late filing penalties provided in RCW 84.36.825.

**Sec.**  RCW 84.36.840 and 2007 c 111 s 305 are each amended to read as follows:

(1) In order to determine whether organizations, associations, corporations, or institutions, except those exempted under RCW 84.36.020, section 2 of this act, and 84.36.030, are exempt from property taxes, and before the exemption ((~~shall be~~)) is allowed for any year, the superintendent or manager or other proper officer of the organization, association, corporation, or institution claiming exemption from taxation ((~~shall~~)) must file with the department of revenue a statement certifying that the income and the receipts thereof, including donations to it, have been applied to the actual expenses of operating and maintaining it, or for its capital expenditures, and to no other purpose. This report ((~~shall~~)) must also include a statement of the receipts and disbursements of the exempt organization, association, corporation, or institution.

(2) Educational institutions claiming exemption under RCW 84.36.050 ((~~shall~~)) must also file a list of all property claimed to be exempt, the purpose for which it is used, the revenue derived from it for the preceding year, the use to which the revenue was applied, the number of students who attended the school or college, the total revenues of the institution with the source from which they were derived, and the purposes to which the revenues were applied, listing the items of such revenues and expenditures in detail.

(3) The reports required under subsections (1) and (2) of this section may be submitted electronically, in a format provided or approved by the department, or mailed to the department. The reports ((~~shall~~)) must be submitted on or before March 31st of each year. The department ((~~shall~~)) must remove the tax exemption from the property of any organization, association, corporation, or institution that does not file the required report with the department on or before the due date. However, the department ((~~shall~~)) must allow a reasonable extension of time for filing upon receipt of a written request on or before the required filing date and for good cause shown therein.

**Sec.**  RCW 84.36.845 and 1973 2nd ex.s. c 40 s 15 are each amended to read as follows:

If subsequent to the time that the exemption of any property is initially approved or renewed, it ((~~shall be~~)) is determined that such exemption was approved or renewed as the result of inaccurate information provided by the authorized agent of the applicant, the exemption ((~~shall~~)) must be revoked and taxes ((~~shall~~)) must be levied against such property pursuant to the provisions of RCW 84.36.810 or section 2(4) of this act for exemptions granted under section 2 of this act.

**Sec.**  RCW 84.36.855 and 1973 2nd ex.s. c 40 s 17 are each amended to read as follows:

Except as otherwise provided by law, property ((~~which~~)) that changes from exempt to taxable status ((~~shall be~~)) is subject to the provisions of RCW 84.36.810 and 84.40.350 through 84.40.390, and the assessor ((~~shall~~)) must also place the property on the assessment roll for taxes due and payable in the following year.

NEW SECTION. **Sec.**  This act applies to taxes levied in 2016 for collection in 2017 and thereafter.

**--- END ---**