
Finance Committee

HB 2539

Brief Description: Concerning the inheritance exemption for the real estate excise tax.

Sponsors: Representatives Nealey, Manweller, Hansen, Tharinger, Harris, Walsh, Magendanz, Wilson, Haler, Springer, Johnson, Muri, Hayes and Dent.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Clarifies the application of the real estate excise tax to property inherited by operation of law.
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Hearing Date: 1/22/16

Staff: Jeffrey Mitchell (786-7139).

Background:

The real estate excise tax (REET) is imposed on each sale of real property, which includes both the transfer of ownership and the transfer of controlling interests. Real property includes any interest in land or anything affixed to land. The state tax rate is 1.28 percent. Additional local rates are allowed. The combined state and local rate in most areas is 1.78 percent or less.

There are several exemptions allowable from the REET. One exemption is for individuals who inherit real property. This exemption from the REET is allowed for inherited property when one of the following documents is provided (or already filed with the county) along with a certified copy of the death certificate:

- (1) a community property agreement;
- (2) a trust agreement;
- (3) a certified copy of the letters testamentary or letter of administration;
- (4) deed;
- (5) a copy of a court order requiring the transfer; or
- (6) a lack of probate affidavit for a community property interest.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In some instances, an individual will inherit property by operation of law, but there is no accompanying documentation. In these cases, the heir will often file a lack of probate affidavit with the county affirming that the person is the rightful heir to the property. There has been some confusion as to whether these individuals qualify for the REET inheritance exemption for this type of transfer because of the absence of documentation.

The county treasurer is usually responsible for collecting and administering the REET. For the REET inheritance exemption, the county treasurer is typically the recipient of the documentation substantiating the transfer by inheritance.

In 2013 the Legislature passed Engrossed Substitute Senate Bill 5882 (ESSB 5882), which requires all new tax preference legislation to include a tax preference performance statement. New tax preference means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013. Tax preferences include deductions, exemptions, preferential tax rates and tax credits. The performance statement must clearly specify the public policy objective of the tax preference, and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee (JLARC) to evaluate the efficacy of the tax preference.

ESSB 5882 also establishes an automatic 10-year expiration date for new tax preference if an alternative expiration date is not provided in the new tax preference legislation.

Summary of Bill:

The conditions to qualify for the inheritance exemption are modified to include circumstances where a person inherits property by operation of law but absent a will, trust, community property agreement, or other document or court order. To qualify for the exemption, the heir (or heirs) must submit a certified copy of the death certificate along with a lack of probate affidavit affirming that he or she is the rightful heir to the property.

The documentation provided to the county treasurer must also be recorded with the county auditor.

The bill is exempted from a JLARC review and the automatic ten year expiration.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.