

HOUSE BILL REPORT

HB 2539

As Reported by House Committee On: Finance

Title: An act relating to the inheritance exemption for the real estate excise tax.

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.

Brief History:

Committee Activity:

Finance: 1/22/16, 1/26/16 [DPS].

Brief Summary of Substitute Bill

- Clarifies the application of the real estate excise tax to property inherited by operation of law.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Lytton, Chair; Robinson, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Frame, Manweller, Pollet, Reykdal, Ryu, Springer, Stokesbary, Vick, Wilcox and Wylie.

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.

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.

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:

- a community property agreement;
- a trust agreement;
- a certified copy of the letters testamentary or letter of administration;
- a deed;
- a copy of a court order requiring the transfer; or
- a lack of probate affidavit for a community property interest.

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, 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.

Engrossed Substitute Senate Bill 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 Substitute 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 10-year expiration.

Substitute Bill Compared to Original Bill:

The substitute bill modifies the intent language, addresses skip transfers, and restores the current law requirement that when property is transferred pursuant to a court order, a certified copy of the court order must be provided. It also adds additional data points for the lack of probate affidavit, makes other technical, non-substantive changes and clarifications, and eliminates the language making the bill applicable to decedent's dying on or after July 1, 2016.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Some counties are misinterpreting the inheritance exemption for the REET in certain cases where there is not documentation to prove who is the new owner of the property. The REET applies to the sale of real property. When a person inherits property, there is no exchange of money or other consideration and therefore should not apply under any circumstances. The intent of the bill is to clarify that REET does not apply when property is inherited. The bill does not expand any REET exemption. It clarifies a law from a couple of years ago relating to how transfers by operation of law need to be documented. There is an interpretation by several counties that because a person cannot document an inheritance transfer by law, it is subject to REET. Please pass this bill. The REET is a sales tax on real property. There has never been an intent to tax the transfer of property by inheritance. The Department of Revenue had a rule change in 2014 that required every one of these transfers by law to have a real estate excise tax affidavit. The county treasurers read the statute as requiring documentation for these transfers. Please remove the language applying the bill to decedents dying on or after July 1, 2016. This is a clarification that should be fixed immediately. This bill is about administrative clarity.

(Opposed) None.

Persons Testifying: (In support) Representative Nealey, prime sponsor; Bill Clarke, Washington Realtors; Shawn Myers, Washington State Association of County Treasurers; Monty Cobb, Washington Association of County Officials; Dwight Bickel, Washington Land Title Association and Fidelity National Title Group.

Persons Signed In To Testify But Not Testifying: None.