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SENATE BILL 5763

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State of Washington

54th Legislature

1995 Regular Session

By Senators Loveland, Strannigan, Rinehart, Winsley, Fraser and Haugen

Read first time 02/06/95. Referred to Committee on Ways & Means.

1 AN ACT Relating to application of the real estate excise tax to  
2 sales to public entities; and amending RCW 82.45.010.

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

4 **Sec. 1.** RCW 82.45.010 and 1993 sp.s. c 25 s 502 are each amended  
5 to read as follows:

6 (1) As used in this chapter, the term "sale" shall have its  
7 ordinary meaning and shall include any conveyance, grant, assignment,  
8 quitclaim, or transfer of the ownership of or title to real property,  
9 including standing timber, or any estate or interest therein for a  
10 valuable consideration, and any contract for such conveyance, grant,  
11 assignment, quitclaim, or transfer, and any lease with an option to  
12 purchase real property, including standing timber, or any estate or  
13 interest therein or other contract under which possession of the  
14 property is given to the purchaser, or any other person at the  
15 purchaser's direction, and title to the property is retained by the  
16 vendor as security for the payment of the purchase price. The term  
17 also includes the grant, assignment, quitclaim, sale, or transfer of  
18 improvements constructed upon leased land.

1 (2) The term "sale" also includes the transfer or acquisition  
2 within any twelve-month period of a controlling interest in any entity  
3 with an interest in real property located in this state for a valuable  
4 consideration. For purposes of this subsection, all acquisitions of  
5 persons acting in concert shall be aggregated for purposes of  
6 determining whether a transfer or acquisition of a controlling interest  
7 has taken place. The department of revenue shall adopt standards by  
8 rule to determine when persons are acting in concert. In adopting a  
9 rule for this purpose, the department shall consider the following:

10 (a) Persons shall be treated as acting in concert when they have a  
11 relationship with each other such that one person influences or  
12 controls the actions of another through common ownership; and

13 (b) When persons are not commonly owned or controlled, they shall  
14 be treated as acting in concert only when the unity with which the  
15 purchasers have negotiated and will consummate the transfer of  
16 ownership interests supports a finding that they are acting as a single  
17 entity. If the acquisitions are completely independent, with each  
18 purchaser buying without regard to the identity of the other  
19 purchasers, then the acquisitions shall be considered separate  
20 acquisitions.

21 (3) The term "sale" shall not include:

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

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

25 (c) A cancellation or forfeiture of a vendee's interest in a  
26 contract for the sale of real property, whether or not such contract  
27 contains a forfeiture clause, or deed in lieu of foreclosure of a  
28 mortgage.

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

31 (e) The assignment of property or interest in property from one  
32 spouse to the other in accordance with the terms of a decree of divorce  
33 or in fulfillment of a property settlement agreement.

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

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

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

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

7 (j) A conveyance to the federal housing administration or veterans  
8 administration by an authorized mortgagee made pursuant to a contract  
9 of insurance or guaranty with the federal housing administration or  
10 veterans administration.

11 (k) A transfer in compliance with the terms of any lease or  
12 contract upon which the tax as imposed by this chapter has been paid or  
13 where the lease or contract was entered into prior to the date this tax  
14 was first imposed.

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

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

18 (n) A transfer of real property, however effected, if it consists  
19 of a mere change in identity or form of ownership of an entity where  
20 there is no change in the beneficial ownership. These include  
21 transfers to a corporation or partnership which is wholly owned by the  
22 transferor and/or the transferor's spouse or children: PROVIDED, That  
23 if thereafter such transferee corporation or partnership voluntarily  
24 transfers such real property, or such transferor, spouse, or children  
25 voluntarily transfer stock in the transferee corporation or interest in  
26 the transferee partnership capital, as the case may be, to other than  
27 (1) the transferor and/or the transferor's spouse or children, (2) a  
28 trust having the transferor and/or the transferor's spouse or children  
29 as the only beneficiaries at the time of the transfer to the trust, or  
30 (3) a corporation or partnership wholly owned by the original  
31 transferor and/or the transferor's spouse or children, within three  
32 years of the original transfer to which this exemption applies, and the  
33 tax on the subsequent transfer has not been paid within sixty days of  
34 becoming due, excise taxes shall become due and payable on the original  
35 transfer as otherwise provided by law.

36 (o) A transfer that for federal income tax purposes does not  
37 involve the recognition of gain or loss for entity formation,  
38 liquidation or dissolution, and reorganization, including but not  
39 limited to nonrecognition of gain or loss because of application of

1 section 332, 337, 351, 368(a)(1), 721, or 731 of the Internal Revenue  
2 Code of 1986, as amended.

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