



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Revenue

- Permanent Rule
- Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: Chapter 458-61 WAC provides tax reporting information to persons who sell real estate in Washington, or who transfer a controlling interest in an entity that owns real estate in this state. The rules explain who is liable for the tax, how and when the tax imposed by chapter 82.45 RCW is paid, which transactions are taxable, what exemptions are available from imposition of the tax, and the record keeping requirements. The Department is revising the rules to update existing information, more clearly and completely explain Department practices in administering the tax, and incorporate legislative amendments to Chapter 82.45 RCW. The Department has consolidated the information from several of the existing rules, and organized the chapter in a more "user friendly" format. The rules adopted are being codified in a new Chapter 458-61A, and the rules in Chapter 458-61 are being repealed. (See attachment.)

Citation of existing rules affected by this order:

Repealed: (See attachment.)

Statutory authority for adoption: RCW 82.32.300, 82.01.060(2), and 82.45.150

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR **05-17-025 & 05-17-041** on **August 5 & August 9, 2005, respectively.**

Describe any changes other than editing from proposed to adopted version: **(See attachment)**

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: **An analysis was not prepared.**

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted:

CODE REVISER USE ONLY

NAME (TYPE OR PRINT)

Janis P. Bianchi

Filed: November 16, 2005

SIGNATURE

Time: 4:33 p.m.

TITLE

Manager
Interpretations and Technical Advice Unit

WSR: 05-23-093

This information was input by DOR

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>7</u>	Amended	_____	Repealed	<u>7</u>

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>39</u>	Amended	_____	Repealed	<u>53</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>39</u>	Amended	_____	Repealed	<u>53</u>

**Attachment for CR 103 Filing
Chapter 458-61A WAC, Real Estate Excise Tax**

Purpose:

The following rules are included in the new chapter 458-61A being adopted:

WAC 458-61A-100	Real estate excise tax--Overview.
WAC 458-61A-101	Taxability of the transfer or acquisition of the controlling interest of an entity with an interest in real property located in this state.
WAC 458-61A-102	Definitions.
WAC 458-61A-103	Transfers involving an underlying debt.
WAC 458-61A-104	Assignments.
WAC 458-61A-105	Mobile and floating home sales.
WAC 458-61A-106	Sales of improvements to land, leases, and leases with option.
WAC 458-61A-107	Option to purchase.
WAC 458-61A-108	Contractor.
WAC 458-61A-109	Trading/exchanging property and boundary line adjustments.
WAC 458-61A-110	Relocation service-- Two-deed process.
WAC 458-61A-111	Easements, development rights, water rights, and air rights.
WAC 458-61A-112	Mineral rights and mining claims.
WAC 458-61A-113	Timber, standing.
WAC 458-61A-200	Exemptions and exclusions--Introduction.
WAC 458-61A-201	Gifts.
WAC 458-61A-202	Inheritance or devise.
WAC 458-61A-203	Community property, dissolution of marriage, legal separation, decree of invalidity.
WAC 458-61A-204	Tenants in common and joint tenants.
WAC 458-61A-205	Government transfers.
WAC 458-61A-206	Condemnation proceedings.
WAC 458-61A-207	Bankruptcy.
WAC 458-61A-208	Foreclosure--Deeds in lieu of foreclosure—Sales pursuant to court order.
WAC 458-61A-209	Rescission of sale.
WAC 458-61A-210	Irrevocable trusts.
WAC 458-61A-211	Mere change in identity or form—Family corporations and partnerships.
WAC 458-61A-212	Transfers where gain is not recognized under the Internal Revenue Code.
WAC 458-61A-213	IRS "tax deferred" exchange.
WAC 458-61A-214	Nominee.
WAC 458-61A-215	Clearing or exiting title, and additions to title.
WAC 458-61A-216	Mortgage insurers.
WAC 458-61A-217	Rerecord.
WAC 458-61A-300	Collection and administration--Introduction.
WAC 458-61A-301	Payment of tax, collection responsibility, audit responsibility, and tax rulings.
WAC 458-61A-302	Disposition of proceeds and affidavit batch transmittal.
WAC 458-61A-303	Affidavit.
WAC 458-61A-304	Supplemental statements.
WAC 458-61A-305	Trade-in credit.
WAC 458-61A-306	Date of sale, interest, and penalties.

Citation of existing rules affected by this order:

The following chapter of the Washington Administrative Code (chapter 458-61 WAC) is repealed:

WAC 458-61-015	General information.
WAC 458-61-025	Taxability of the transfer or acquisition of the controlling interest of an entity with an interest in real property located in this state.
WAC 458-61-030	Definitions.
WAC 458-61-050	Payment of tax--County treasurer as agent for the state.

WAC 458-61-060	Disposition of proceeds.
WAC 458-61-070	Affidavit batch transmittal.
WAC 458-61-080	Affidavit requirements.
WAC 458-61-090	Date of sale--Interest and penalty.
WAC 458-61-100	Refunds of tax paid.
WAC 458-61-120	Evasion penalty.
WAC 458-61-130	Department audit responsibility.
WAC 458-61-150	Supplemental statements.
WAC 458-61-200	Apartments.
WAC 458-61-210	Assignments--Purchasers.
WAC 458-61-220	Assignments--Sellers.
WAC 458-61-225	Assumption of debt.
WAC 458-61-230	Bankruptcy.
WAC 458-61-235	Boundary line adjustments.
WAC 458-61-250	Cemetery lots or graves.
WAC 458-61-255	Clearing title.
WAC 458-61-290	Contract.
WAC 458-61-300	Contractor.
WAC 458-61-330	Foreclosure--Deeds in lieu of foreclosure.
WAC 458-61-335	Easements, development rights, water rights and air rights.
WAC 458-61-340	Community property--Dissolution of marriage/divorce.
WAC 458-61-370	Exchanges--Trades.
WAC 458-61-374	Exemption--Transfers made "subject to."
WAC 458-61-375	Exemption--Mere change in identity or form--Family corporations and partnerships.
WAC 458-61-376	Exemption--Transfers where gain is not recognized under the Internal Revenue Code.
WAC 458-61-400	Creation, assignment and release of security interests.
WAC 458-61-410	Gifts.
WAC 458-61-411	Exemption--Irrevocable trusts.
WAC 458-61-412	Exemption--Inheritances.
WAC 458-61-420	Government transfers.
WAC 458-61-425	Growing crops.
WAC 458-61-430	Sale of improvements to land.
WAC 458-61-450	Indian (American), transfers to or from.
WAC 458-61-470	Irrigation equipment.
WAC 458-61-480	IRS "tax deferred" exchange.
WAC 458-61-510	Leases.
WAC 458-61-520	Mineral rights and mining claims.
WAC 458-61-540	Mobile and floating home sales.
WAC 458-61-545	Mortgage insurers.
WAC 458-61-550	Nominee.
WAC 458-61-553	Nonprofit organizations.
WAC 458-61-555	Option to purchase.
WAC 458-61-590	Rescission of sale.
WAC 458-61-600	Relocation service.
WAC 458-61-610	Rerecord.
WAC 458-61-640	Sheriff's sale.
WAC 458-61-650	Tenants in common and joint tenants.
WAC 458-61-660	Timber, standing.
WAC 458-61-670	Trade-in credit.

Describe any changes other than editing from proposed to adopted version:

Rule 458-61A-113 (Timber, standing) was changed. The rule being adopted includes language substantially the same as the language that was in WAC 458-61-660 (Timber, standing). This change was in response to a number of comments expressing concern about the possible effect of proposed WAC 458-61A-113 (Timber, standing). Many of those providing comments requested that the Department engage in further stakeholder discussions before proceeding with adoption of this rule.

Rule 458-61A-201 (Gifts) was changed to provide an additional example to address the issue of gift transfers of rental/commercial property. This example was added in response to the volume of questions the department receives on this subject from county officials and the public.