



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: March 22, 2019

TIME: 1:44 PM

WSR 19-08-015

Agency: Department of Revenue

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)

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

- Yes No If Yes, explain:

Purpose: WAC 458-61A-103(1), which is derived from RCW 82.45.030(3), discusses debt remaining at the time of sale as part of the consideration subject to the Real Estate Excise Tax. Additional wording derived from RCW 82.45.030(3), is added for clarification. Current WAC 458-61A-103(2) is not supported by RCW Chapter 82.45, Excise Tax on Real estate Sales, and is deleted. WAC 458-61A-103(3) is also deleted as unnecessary when section (2) is deleted. The rule is renumbered to reflect additional examples.

Citation of rules affected by this order:

New: None
Repealed: None
Amended: WAC 458-61A-103 Transfers involving an underlying debt.
Suspended: None

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

Other authority: RCW 82.45.030

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 19-03-131 on January 18, 2019 (date).
Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:

Other: This rule is not a significant legislative rule as defined by RCW 34.05.328.

**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 | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
| Federal rules or standards: | New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
| Recently enacted state statutes: | New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |

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

| | | | | | |
|-----|----------|---------|----------|----------|----------|
| New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
|-----|----------|---------|----------|----------|----------|

The number of sections adopted on the agency's own initiative:

| | | | | | |
|-----|----------|---------|----------|----------|----------|
| New | <u>0</u> | Amended | <u>1</u> | Repealed | <u>0</u> |
|-----|----------|---------|----------|----------|----------|

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

| | | | | | |
|-----|----------|---------|----------|----------|----------|
| New | <u>0</u> | Amended | <u>1</u> | Repealed | <u>0</u> |
|-----|----------|---------|----------|----------|----------|

The number of sections adopted using:

| | | | | | | |
|--------------------------------|-----|----------|---------|----------|----------|----------|
| Negotiated rule making: | New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
| Pilot rule making: | New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
| Other alternative rule making: | New | <u>0</u> | Amended | <u>1</u> | Repealed | <u>0</u> |

Date Adopted: March 22, 2019

Name: Erin T. Lopez

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-103 Transfers involving an underlying debt. (1) **Introduction.** The real estate excise tax applies to transfers of real property when the grantee relieves the grantor from an underlying debt on the property or makes payments on the grantor's debt. The measure of the tax is the combined amount of the underlying debt on the property and any other consideration.

~~((For example,))~~ (2) **Consideration.** Consideration includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance remaining unpaid on the property at the time of sale. It does not include the amount of any outstanding lien or encumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements. RCW 82.45.030(3).

(3) **Examples.** This rule includes a number of examples that identify a set of facts, and then state a conclusion. These examples are only a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(a) **Example 1.** Yen transfers property to Lee that is subject to an underlying debt (i.e., mortgage). ~~((Yen is personally liable for the debt, meaning that if Yen does not make the payments the lender may foreclose on the property and obtain a judgment against Yen if the value of the property is insufficient to pay the debt.))~~ Lee agrees to make all future mortgage payments on Yen's debt, but gives no other consideration for the property. Yen owes real estate excise tax on the amount of the underlying debt. Lee's payments on the underlying debt relieve Yen of her debt obligation. Therefore, Yen receives consideration.

~~((2) **Transfers where grantor has no personal liability for the underlying debt.** Real estate excise tax does not apply to transfers of real property subject to an underlying debt when the grantor has no personal liability for the debt and receives no other consideration for the transfer.~~

~~For example, Yen purchases property with funds obtained from PSP Corporation and secured only by the property. Yen has no personal liability for this debt. If Yen fails to make payments on the debt, PSP may foreclose on the property but it may not obtain a judgment against Yen. Yen transfers the property to Lee subject to the underlying debt. Lee takes the property subject to the underlying debt, and does not give any other consideration for the property. If Lee fails to make payments, PSP may foreclose on the property but it may not obtain a judgment against Lee (who, like Yen before, has no personal liability for the debt). Because Yen is not personally liable for the debt, Lee's payments on the underlying debt to PSP do not relieve Yen of any liability for the debt. The real estate excise tax does not apply to this transfer because there is no consideration.~~

~~(3) **Documentation.** In order to avoid the incidence of the tax, the grantor must present and maintain proper documentation to verify the type of debt and to confirm that fact that the grantor is not personally liable for the debt.))~~ (b) **Example 2.** Same facts as above, except Lee also paid Yen \$10,000 in addition to making the mortgage payments. In this circumstance, the measure of the real estate excise tax is the amount of the mortgage outstanding at the time of sale, plus the additional consideration paid of \$10,000.