EXPEDITED RULE MAKING

CR-105 (July 2026)
(Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: October 07, 2026
TIME: 7:45 AM

WSR 26-20-101

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) **WAC 458-61A-1001** Graduated real estate excise tax rates – Exceptions to graduated rates – Tax avoidance arrangements; and **WAC 458-61A-102** Definitions.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is updating WAC 458-61A-1001 and WAC 458-61A-102 to incorporate changes due to legislation, House Bill 1983 (2026). The legislative amendments include updates to the definition of "timberland" under RCW 82.45.060 for purposes of determining real estate excise tax (REET) for a governmental entity.

Reasons supporting proposal: The update is to conform the rules to HB 1983 (2026).

Statutory authority for adoption: The statutory authority for adoption of **WAC 458-61A-1001:** RCW 82.01.060, 82.45.060, and 82.45.235. The statutory authority for adoption of **WAC 458-61A-102:** RCW 82.45.150, 82.32.300, and 82.01.060.

Statute being implemented: RCW 82.45.060

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

Name of proponent: (person or organization) Department of Revenue

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Tiffany Do	7345 Linderson Way SW, Tumwater, WA	360-534-1558
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

☐ Relates only to internal governmental operations that are not subject to violation by a person;

☒ Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

☐ Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

☐ Content is explicitly and specifically dictated by statute;

☐ Substitutes "alien" with "noncitizen" and related grammatical changes not changing the effect of the rule;

☐ Has been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or

☐ Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

☐ The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;

☐ The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;

☐ The rule is no longer necessary because of changed circumstances; or

☐ Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The expedited rule-making process is appropriate because the department is incorporating changes resulting from 2026 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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BEGINNING (date/time) 10/07/2026/ 8:00 AM **AND RECEIVED BY** (date/time) 12/07/2026

Date: 10/07/2026	**Signature:**
Name: Perry Samans	
Title: Rules Coordinator	

This rule draft is being proposed under an expedited rule-making process that does not require the agency to hold public hearings.
Under no circumstances is this proposed rule to be used as a basis for determining tax liability or eligibility for a tax deduction, exemption, or credit.

AMENDATORY SECTION (Amending WSR 21-14-034, filed 6/29/21, effective 7/30/21)

WAC 458-61A-1001 Graduated real estate excise tax rates—Exceptions to graduated rates—Tax avoidance arrangements. (1) **Introduction.** This rule explains how the graduated real estate excise tax rates apply to transactions subject to real estate excise tax (REET). See chapter 82.45 RCW. The rule also explains when and how the tax rates change over time. In addition to the REET discussed in this rule, a sale of real property may also be subject to an excise tax imposed by a county or city. See RCW 82.46.010.

(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including:

(a) WAC 458-30-200 Definitions.

(b) WAC 458-61A-100 Real estate excise tax—Overview.

(c) 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.

(d) WAC 458-61A-102 Definitions.

(e) WAC 458-61A-301 Payment of tax, collection responsibility, audit responsibility, and tax rulings.

(f) WAC 458-61A-303 Affidavit.

(g) WAC 458-61A-306 Date of sale, interest, and penalties.

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

(4) **Definitions.** In addition to the definitions found in chapter 82.45 RCW, the following definitions apply throughout this section.

(a) **"Agricultural land"** means "farm and agricultural land" and "farm and agricultural conservation land," as those terms are defined in RCW 84.34.020, including any structures affixed to the land. Affixed structures may include fences, irrigation systems, machinery, or other types of property, dependent upon the determinative factors under Washington law:

(i) Actual annexation of the realty, or something appurtenant thereto;

(ii) Application to the use or purpose to which that part of the realty with which it is connected is appropriated; and

(iii) The intention of the party making the annexation to make a permanent accession to the freehold. See *Dep't of Revenue v. Boeing*, 85 Wn.2d 663, 538 P.2d 505 (1975).

(b) **"Classified land"** refers to land falling under this rule's definitions for "agricultural land" or "timberland."

(c) **"Consumer price index for shelter"** means the most current seasonally adjusted index for the shelter expenditure category of the consumer price index for all urban consumers (CPI-U) as published by July 31st of each year by the United States Department of Labor, Bureau of Labor Statistics.

(d) **"Growth of the consumer price index for shelter"** means the percentage increase in the consumer price index for shelter for the most recent three-year period for the selling prices threshold adjustment in 2022, and the most recent four-year period for the subsequent selling price threshold adjustments.

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(e) **"Meaningful purpose"** means, apart from its tax benefits, a bona fide and significant reason for structuring a transaction in a certain way, such as a substantial increase in profit or reduction in cost.

(f) **"Nonclassified land"** refers to land that is not "classified land."

(g) **"Substantial nontax reason"** means a bona fide nontax reason that is a substantial motivating factor to the taxpayer's decision to enter into the arrangement or transaction in this state. A bona fide nontax reason may include the purpose of obtaining tax benefits from another government, provided the benefits are not the same type, kind, or nature of any substantial Washington state tax benefit obtained under the arrangement or transaction.

(h) **"Timberland"** means land ((~~classified under chapter 84.34 RCW or designated under chapter 84.33 RCW~~)), including any structures and standing timber on ((~~timberland, as well as~~)) such land, and standing timber sold apart from the ((~~timberland~~)) land upon which it sits, that is either:

(i) Classified under chapter 84.34 RCW;

(ii) Designated under chapter 84.33 RCW; or

(iii) Transferred or sold to a governmental entity if the governmental entity manages the land in the same manner as designated forestland under chapter 84.33 RCW or property classified as timberland under chapter 84.34 RCW. The governmental entity must comply with the requirements under RCW 84.33.140 (13)(j) or 84.34.108 (6)(m).

The term "timberland" generally means any parcel of land that is five or more acres, or multiple parcels of land that are contiguous and total five or more acres, and devoted primarily to the growth and harvest of timber for commercial purposes. ((~~The term~~)) Timberland includes land used for incidental uses that are compatible with growing and harvesting timber, but no more than ((~~ten~~)) 10 percent of the land may be used for such incidental uses. Timberland includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products. ((~~The term~~)) Timberland, however, does not include a residential homesite.

(5) **Graduated tax rates and thresholds.**

(a) For the period of January 1, 2020, through June 30, 2022, the selling price of a sale of real property, except as provided in subsection (7) of this rule, is subject to the real estate excise tax at the following tax rates (state portion only):

(i) 1.1 percent of the portion of selling price less than or equal to $500,000;

(ii) 1.28 percent of the portion of the selling price greater than $500,000 and less than or equal to $1,500,000;

(iii) 2.75 percent of the portion of the selling price greater than $1,500,000 and less than or equal to $3,000,000; and

(iv) 3 percent of the portion of the selling price greater than $3,000,000.

(b) Effective July 1, 2022, and every fourth year thereafter, the tax rate thresholds increase by the same percentage as the growth of the "consumer price index for shelter," but not more than 5 percent.

(6) **Determining the proper tax rate(s).**

(a) **Deeded transfers.** Graduated tax rates are determined according to the total selling price of a sale of real property. "Selling price" means the true and fair value of the property conveyed, which is presumed to be the total consideration paid to the transferor in an

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arm's length transaction between unrelated persons for a valuable consideration. See WAC 458-61A-102. Real property conveyed in an arm's length transaction between unrelated persons for a valuable consideration may include more than one parcel of real property. See RCW 82.45.030(1).

In cases where a sale includes parcels of real property located in more than one county, a separate real estate excise tax affidavit must be filed with each county, however, the selling price for purposes of the graduated tax rates is unaffected. For more information on completing affidavits see WAC 458-61A-303.

Example 1. Single arm's length transaction.

Facts: Sam Moore has owned three separate but adjacent retail parcels located in Thurston County for several years. Mr. Moore decides to sell all three of the parcels, which share a parking lot, and lists/markets the properties as a single sale. Mr. Moore agrees to sell the properties to Michelle Smith. The sale occurs on June 1, 2020, with a total selling price of $1,000,000 for the three parcels of real property. Individually each property is valued by the Thurston County assessor at $250,000, $275,000, and $375,000 respectively.

Result: The total selling price for determining the applicable tax rate is $1,000,000.

Example 2. Separate arm's length transactions.

Facts: Assume the facts from example 1, except that Mr. Moore separately markets and lists each parcel of real property for sale. During the month of June 2020, Mr. Moore receives three separate offers for each parcel of real property, which he accepts. The purchaser of each property is a separate unrelated party. Mr. Moore is unrelated to each of the buyers and each of the sales are completed at arm's length. The selling price of each parcel of real property is $300,000, $300,000, and $400,000.

Result: Mr. Moore made three separate sales of real property. The REET rate applicable to each sale is determined by the selling price of each parcel of real property.

Example 3. Single arm's length transaction (property located in multiple counties).

Facts: Anna Carter owns and leases two buildings to the same lessee, which the lessee uses to operate his nail salon businesses located in Yelm, Washington and Roy, Washington. Rather than list the properties for sale with an agent, Ms. Carter decides to sell both properties to the lessee, James Wright. The sale occurs on August 1, 2020, and the selling price is $900,000.

Result: For purposes of determining the applicable tax rate, Ms. Carter must use the total selling price of $900,000 when applying the tax rate thresholds. Because the sale involves real property parcels located in multiple counties, a separate affidavit must be filed with each county.

(b) **Controlling interest transfers.** For purposes of determining the applicable real estate excise tax rate(s), the selling price means the true and fair value of the real property owned by the entity at the time the controlling interest is transferred. See WAC 458-61A-101(4) for more information on the measure of tax for controlling interest transfers.

(7) **Sales of real property classified as agricultural land or timberland.** The sale of real property classified as either "agricultural land" or "timberland," is subject to a nongraduated REET rate of 1.28 percent. In instances where a sale includes both "agricultural land" or "timberland" and nonclassified land, the predominant use of

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the entire real property conveyed determines the applicable tax rate. RCW 82.45.060.

(a) **Predominant use factors.** Predominant use is determined by two equal factors:

(i) Square footage factor; and

(ii) County-assessed value factor (value factor).

(b) **Predominant use calculation.** Real property is predominantly used as classified land if the classified portion of the property accounts for at least 50 percent of the average of the square footage and county-assessed value. The determination is computed as follows:

(i) Divide the square footage of classified land by the square footage of all real property included in the sale.

(ii) Divide the county-assessed value of classified land by the county-assessed value of all real property included in the sale.

(iii) Add the calculated value in (b)(i) of this subsection to the calculated value in (b)(ii) of this subsection, then divide the sum by two.

(iv) If the result is equal to or greater than 0.5, all of the real property included in the sale is treated as classified land subject to the flat rate of 1.28 percent. If the result is less than 0.5, all of the real property included in the sale is treated as nonclassified land subject to the graduated tax rates.

(c) **Land classification based on continued land use.** For purposes of Title 84 RCW, Property taxes, sales of real property that include classified land require determinations of whether the buyer intends to continue using the property in a manner required for the property to continue to qualify as classified land. Buyers reflect their land use intentions for this purpose on a notice of continuance. County assessors determine whether the land will continue to be primarily used as classified land.

Thus, in cases where a county assessor indicates the buyer's intended use of classified land reflects continued use of the land as agricultural land or timberland, the seller will treat the real property as agricultural land or timberland for purposes of determining the predominant use of real property included in the sale.

In cases where the county assessor indicates the buyer's intended use would remove the property from the agricultural land or timberland classification, the real property is nonclassified land for purposes of determining its predominant use for REET purposes.

Real property is only treated as classified land if:

(i) The buyer indicates it will continue to use the land in a qualifying manner; and

(ii) The county assessor approves the land for such continued use.

(iii) If the conditions in (c)(i) and (ii) of this subsection are not met, the seller must report the real property as nonclassified land for purposes of determining the applicable tax rate.

(d) **Land classification based on intent to manage the land as timberland by a governmental entity.** For REET purposes, a sale or transfer of timberland includes land sold or transferred to a governmental entity that will manage the land in the same manner as designated forestland under chapter 84.33 RCW, or as property classified as timberland under chapter 84.34 RCW, and the governmental entity complies with the requirements under RCW 84.33.140 (13)(j) or 84.34.108 (6)(m).

Example 4. Real property sale involving classified and nonclassified land - Predominantly classified land.

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Facts: A real property sale of 2 parcels of real property, Parcel A and Parcel B. The selling price is $1,500,000. Parcel A is classified land (agricultural land) and Parcel B is nonclassified land. Parcel A is 3,600,000 square feet. Parcel B is 400,000 square feet. The county assessed value of Parcel A is $150,000. The county assessed value of Parcel B is $1,100,000. The real property's predominant use is determined as follows:

1. Square footage factor: 0.90 (3,600,000 sq. ft. (classified land)/4,000,000 sq. ft. (total square footage of Parcel A and Parcel B)).

2. Value factor: 0.12 ($150,000 (county-assessed value of Parcel A)/$1,250,000 (county-assessed value of Parcels A and B)).

3. **Predominant use determination:** 0.51 ((0.90 + 0.12)/2).

Result: The predominant use of the property sold is for a classified purpose. If the buyer intends to continue using the land in a qualifying manner and the county assessor approves the real property for continued designation as classified land, the sale is subject to a flat tax rate of 1.28 percent. The tax liability is $25,600.

(8) **Disregarding the form of certain arrangements designed to avoid tax.** RCW 82.45.235 authorizes the department to disregard the form of a transaction or series of transactions to determine the proper REET treatment based on the substance of the transaction or transactions. Among other actions, the department may treat a single sale as multiple sales or treat multiple sales as a single sale.

(a) Factors for disregarding the form of a transaction(s). When necessary to deny the tax benefit that would otherwise accrue from engaging in one or more related transactions designed to avoid tax under this chapter, the department is authorized to disregard the form of the transaction or series of transactions and determine the proper tax treatment based on the substance of the transaction or transactions. In exercising this authority, the department may consider the factors described in RCW 82.32.655 (2)(a), (b), (c), and (f):

(i) Whether an arrangement or transaction changes in a meaningful way, apart from its tax effects, the economic positions of the participants when the transaction is considered as a whole;

(ii) Whether substantial nontax reasons exist for entering into a transaction;

(iii) Whether a transaction is a reasonable means of accomplishing a substantial nontax purpose; and

(iv) Other relevant factors.

(b) **Result of a disregarded transaction(s).** For transactions occurring on or after January 1, 2020, in cases where the department disregards the form of a transaction(s), the department will determine the amount of tax properly due based on the actual substance of the transaction(s).

Example 5. Tax avoidance - Series of sales of a partial interest in a single parcel of real property.

Facts: In February 2020, Prime Office Inc. (Prime) agrees to buy a large office building in Seattle for $3,500,000 from King Commercial Inc. (King). In order to pay the lowest rate of tax, the parties agree to structure the sale as seven separate sales of a one-seventh interest in the parcel of real property, each with a selling price of $500,000 (1/7 x $3,500,000). The sales are completed and recorded during the month of February 2020. As a result of the arrangement, the total real estate excise tax paid on the transactions is $38,500 (1.1% tax rate x $3,500,000).

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Result: The department will disregard the reported form of the separate transactions and treat the arrangement as a single sale, with a selling price of $3,500,000. As a result, the proper amount of tax due for the transaction is $74,550. The department will assess $36,050 in additional real estate excise tax.

Example 6. Tax avoidance - Multiple owners of a single real property parcel - Individual interests sold separately.

Facts: Juan and Li are business partners who each own a 50 percent interest in an LLC that owns one residential property in Washington. Juan and Li agree to sell the residential property to an unrelated third party, Mike, for $1,000,000. In order to reduce the amount of real estate excise tax due on the transaction, prior to completing the sale, Juan and Li each redeem their 50 percent interest in the LLC for a 50 percent interest in the real property held by the LLC. Afterwards, each party separately conveys their fifty percent interest in the property as separate sales to Mike. Juan and Li complete separate REET affidavits for these transactions. As a result of the arrangement, the total real estate excise tax paid on the transactions is $11,000 ((1.1% tax rate x $500,000 selling price) + (1.1% tax rate x $500,000 selling price)).

Result: The department will disregard the reported form of the separate transactions and treat the arrangement as a single sale, with a selling price of $1,000,000. As a result, the proper amount of tax due for the transaction is $11,900. The department will assess $900 in additional real estate excise tax.

Example 7. Tax avoidance – Sale of adjacent real property parcels separately.

Facts: Wei owns two adjacent parcels of real property in Kennewick, a retail shopping plaza and an adjacent parking lot used by patrons of the shopping plaza. Wei advertises the sale of both parcels for a single price of $1,920,000. Wei sells both parcels to Hui on June 15, 2020. Instead of completing a single real estate excise tax affidavit to include both parcels in the reported sale, Wei completes separate affidavits for each parcel, disclosing a selling price of $1,450,000 for the retail shopping plaza and $470,000 for the adjacent parking lot. As a result of the arrangement, the total real estate excise tax paid on the transactions is $22,830 ($17,660 for the retail shopping plaza and $5,170 for the parking lot).

Result: The department will disregard the form of the separate transactions and treat the arrangement as a single sale, with a selling price of $1,920,000. As a result, the proper amount of tax due for the transaction is $29,850. The department will assess $7,020 in additional real estate excise tax.

Example 8. Tax avoidance - Real property sale involving classified and nonclassified land.

Facts: Janice is selling 2 parcels of real property, Parcel A and Parcel B, to Samuel. The selling price is $5,000,000. Parcel A is classified land (agricultural land that is approved by the County Assessor for continued use by Samuel) and Parcel B is nonclassified land. Parcel A is 1,500,000 square feet. Parcel B is 500,000 square feet. The county assessed value of Parcel A is $900,000. The county assessed value of Parcel B is $3,600,000. The predominant use factors, discussed in subsection (7)(a) of this rule, for Parcels A and B are computed as follows:

- Square footage factor: 0.75 (1,500,000 sq. ft./2,000,000 sq. ft.);
- Value factor: 0.20 ($900,000/$4,500,000).

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Adding the two factors and dividing by two yields 0.475 ((0.80 + 0.16)/2). Because this result is less than 0.5, a combined sale of Parcels A and B would be treated as nonclassified land subject to the graduated tax rates.

After determining that the combined sale of Parcels A and B would be subject to graduated tax rates and a total tax liability of $119,550, Janice and Samuel agree to restructure the transaction as two separate sales. Parcel A is sold for $1,000,000 and Parcel B is sold for $4,000,000, resulting in a REET liability of $102,350.

Result: Based on the intent of the parties to restructure the transaction as two separate transactions to avoid tax, the department will disregard the form of the reported sales and treat the sales as a single transaction.

Example 9. Tax avoidance - Real property sale involving classified and nonclassified land.

Facts: Property, Inc. is selling property used as a motor vehicle sales and service center, located in Seattle, WA (Property A). The area of Property A is 130,680 square feet, and its selling price is $23,500,000. Property, Inc. is separately selling a 297 acre parcel (12,937,320 square feet) of agricultural land located in Lincoln County (Property B). The selling price of Property B is $300,000.

Auto Dealer agrees to purchase Property A, which it will use to operate an auto dealership in Seattle. Property, Inc. and Auto Dealer also agree to include Property B in the sale (approved for continued use as classified land by the County Assessor). Auto Dealer is not capable of using the classified land as agricultural land. The agreement between Property, Inc. and Auto Dealer requires Property, Inc. to assist Auto Dealer in reselling Property B and cover certain selling expenses.

At the time of completing the sale, Property, Inc. completes REET affidavits reporting a combined sale of both properties subject to a flat REET rate of 1.28 percent for the entire transaction, and a total liability of $304,640 in state REET. Had Property A and Property B been sold separately, the total REET on the transactions would have been $678,390, a difference of $373,750. Thus, the potential tax savings exceeded the price of including Property B in the sale.

The parties do not provide a substantial nontax reason for arranging the sale of both properties as a single transaction.

Result: The circumstances indicate the transaction was designed to avoid tax. Therefore, the department will disregard the form and treat the transaction as two separate sales.

AMENDATORY SECTION (Amending WSR 20-04-063, filed 1/31/20, effective 3/2/20)

WAC 458-61A-102 Definitions. For the purposes of chapter 458-61A WAC, the following definitions apply unless the context requires otherwise:

(1) **"Affidavit"** means the real estate excise tax affidavit provided by the department for use by taxpayers in reporting transfers of real property. Both the seller/grantor and the buyer/grantee, or their agents, sign the affidavit under penalty of perjury. The term also includes the form used to report to the department transfers and acquis-

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itions of a controlling interest in an entity owning real property in this state under WAC 458-61A-101.

(2) **"Agricultural land"** means farm and agricultural land and farm and agricultural conservation land, as those terms are defined in RCW 84.34.020, including any structures on such land.

(3) **"Consideration"** means money or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property. The term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale. For example, Lee purchases a home for $250,000. He puts down $50,000, and finances the balance of $200,000. The full consideration paid for the house is $250,000.

(a) "Consideration" includes the issue of an ownership interest in any entity in exchange for a transfer of real property to the entity. For example, if Julie transfers title to 20 acres of commercial property to Smith Development, LLC in exchange for a 50% ownership interest in the company, that constitutes consideration for the transfer. In the case of partnerships, consideration includes the increase in the capital account of the partner made as a result of the partner's transfer of real property to the partnership, unless the transfer is otherwise specifically exempt under WAC 458-61A-211 or 458-61A-212.

(b) "Consideration" includes the assumption of an underlying debt on the property by the buyer at the time of transfer. For example, Ben buys a residence, valued at $300,000, from Liza. Liza was purchasing the property on a real estate contract that has an outstanding balance of $175,000. Ben gives Liza $125,000 in cash and he assumes the obligation on the real estate contract, which Liza assigns to him. Real estate excise tax is due on $300,000, which is the total consideration for the sale.

(c) "Consideration" 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. For example, Mel buys residential property for $300,000. The title is encumbered by a lien for unpaid property taxes in the amount of $12,000, and a lien for municipal sidewalk improvements in the amount of $6,000. Although Mel will become liable for those liens in order to take title to the property, they are not considered part of the purchase price for the purpose of calculating real estate excise tax. The real estate excise tax is due only on the purchase price of $300,000.

(4) **"Consumer price index for shelter"** means the most current seasonally adjusted index for the shelter expenditure category of the consumer price index for all urban consumers (CPI-U) as published by July 31st by the Bureau of Labor Statistics of the United States Department of Labor.

(5) **"Controlling interest"** means:

(a) In the case of a profit corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(b) In the case of any other corporation, or a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in the corporation, partnership, association, trust, or other entity.

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(6) **"County"** means the county treasurer or its agent.

(7) **"Date of sale"** means the date (normally shown on the instrument of conveyance or sale) that ownership of or title to real property, or control of the controlling interest in an entity that has a beneficial interest in real property, is delivered to the buyer/transferee in exchange for valuable consideration. In the case of a lease with option to purchase, the date of sale is the date when the purchase option is exercised and the property is transferred. "Date of sale," "date of transfer," "conveyance date," and "transaction date" all have the same meaning and may be used interchangeably in this chapter. The real estate excise tax is due on the date of sale.

(8) **"Department"** means the department of revenue.

(9) **"Domestic partner"** has the same meaning as defined in chapter 26.60 RCW.

(10) **"Floating home"** means a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self-propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located.

(11) **"Governmental entity"** means:

(a) The United States;

(b) The state of Washington ("state"), including its departments and institutions, as distinct from its corporate agencies or instrumentalities; and

(c) Any municipal corporation or political subdivision of the state of Washington.

(12) **"Growth of the consumer price index for shelter"** means the percentage increase in the consumer price index for shelter as measured from data published by the Bureau of Labor Statistics of the United States Department of Labor by July 31st for the most recent three-year period for the selling price threshold adjustment in 2022, and the most recent four-year period for subsequent selling price threshold adjustments.

(13) **"Mining property"** is property containing or believed to contain metallic or nonmetallic minerals, and sold or leased under terms that require the buyer or lessee to conduct exploration or mining work thereon, and for no other purpose.

(14) **"Mobile home"** means a mobile home as defined by RCW 46.04.302.

(15) **"Mortgage"** has its ordinary meaning, and includes a "deed of trust" for the purposes of this chapter, unless the context clearly indicates otherwise. The term "underlying debt" may also be used to refer to a mortgage or other security interest.

(16) **"Municipal corporation or political subdivision of the state of Washington"** means any county, city, town, school district, fire protection district, or other authority identified as a municipal corporation or political subdivision of the state of Washington by statute and that qualifies for the property tax exemption provided by Article VII of the Washington state Constitution.

(17) **"Park model trailer"** means a park model trailer as defined in RCW 46.04.622.

(18) **"Real estate"** or **"real property"** means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity that owns land, or anything affixed to land, including standing timber and crops. The term includes condominiums and individual apartments for which the buyer receives a warranty deed. The term includes used mo-

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bile homes, used park model trailers, used floating homes, and improvements constructed upon leased land. The term also includes any part of an irrigation system that is underground or affixed to the land. The term does not include irrigation equipment that is above the ground or that is not affixed to land. See RCW 82.12.020 for the tax treatment of sales of irrigation equipment that is not included in the definition of "real estate."

(19) **"Real estate contract"** or **"contract"** means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for the payment of the purchase price. The term does not include earnest money agreements or options to purchase real property.

(20) **"Sale"** means:

(a) Any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such a conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term includes the grant, relinquishment, or assignment of a life estate in property. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(b) The term "sale" also includes the transfer or acquisition within any thirty-six-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration. For the purposes of this chapter, all acquisitions of persons acting in concert are aggregated for the purpose of determining whether a transfer or acquisition of a controlling interest has taken place. For purposes of establishing the applicable thirty-six-month period for a transfer or acquisition pursuant to the exercise of an option, see WAC 458-61A-101.

(c) The term "sale" also applies to successive sales of the same property. An owner of real property is subject to payment of the real estate excise tax upon the entry of each successive contract for the sale of the same parcel of property. For example, Bob owns a house that he sells to Sam on a real estate contract. Real estate excise tax is paid on the transfer from Bob to Sam. Sam makes several payments, until he becomes unemployed. Since Sam can no longer make payments on the property, he conveys it back to Bob. Bob then makes a subsequent sale of the house to Sally. Real estate excise tax is due on the transfer from Bob to Sally. See WAC 458-61A-209 for the tax implications on the conveyance from Sam back to Bob.

(d) The term "sale" does not include:

(i) Those real property transfers that are excluded from the definition of "sale" and exempted from the real estate excise tax under RCW 82.45.010(3) and this chapter, including transfers without valuable consideration.

(ii) The transfer of lots or graves in an established cemetery. An established cemetery is one that meets the requirements for ad valorem property tax exemption under chapter 84.36 RCW.

(iii) The transfer of an interest in real property merely to secure a debt or the assignment of a security interest, release of a se-

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curity interest, satisfaction of a mortgage, or reconveyance under the terms of a mortgage or deed of trust.

(iv) A deed given to a purchaser under a real estate contract upon fulfillment of the terms of the contract provided that the proper tax was paid on the original transaction. The fulfillment deed must be stamped by the county treasurer as required by WAC 458-61A-301, and the stamp must show the affidavit number of the sale for which the deed is fulfilling.

(v) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030.

(e) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not be taxable. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) John paid off his home mortgage and wants to get a loan to make improvements and buy a new car. John obtains an equity loan, secured by his home as collateral. This transaction is not subject to the real estate excise tax.

(ii) Bob purchased real property from Sam pursuant to a real estate contract. Real estate excise tax was paid on the purchase price at the time of the sale. Bob has now paid off the property, and Sam is issuing a fulfillment deed to Bob indicating that the real estate contract has been satisfied. The fulfillment deed from Sam to Bob is not subject to the real estate excise tax.

(iii) Diane has made the final payment on her mortgage, and the bank issues a full reconveyance of her property, indicating that the mortgage is paid in full. The reconveyance is not subject to the real estate excise tax.

(iv) Bill is refinancing his mortgage for a lower interest rate. There is a balloon payment on the new loan that will require that he refinance again in five years. Neither transaction is subject to the real estate excise tax.

(21) **"Seller"** means any individual, receiver, assignee, trustee for a deed of trust, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, limited liability company, business trust, municipal corporation, quasi municipal corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, but it does not include the United States or the state of Washington. The term "grantor" is used interchangeably with the term "seller" in this chapter and has the same meaning for purposes of the real estate excise tax.

(22) **"Selling price"** means the true and fair value of the property conveyed. There is a rebuttable presumption that the true and fair value is equal to the total consideration paid or contracted to be paid to the seller or to another person for the seller's benefit.

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

(i) A fair market appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made under section 1060 of the Internal Revenue Code of 1986, as amended.

(b) When the true and fair value of the property at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property main-

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tained in the county property tax rolls at the time of sale will be used as the selling price. RCW 82.45.030.

(c) When the sale is of a partial interest in real property, the principal balance of any debt remaining unpaid at the time of sale will be multiplied by the percentage of ownership transferred, and that amount added to any other consideration to determine the selling price.

(d) In the case of a lease with option to purchase, the selling price is the true and fair value of the property conveyed at the time the option is exercised.

(23) **"Timberland"** means land ((~~classified under chapter 84.34 RCW or designated under chapter 84.33 RCW~~)), including any structures and standing timber on such land, and standing timber sold apart from the land upon which it sits, that is either:

(i) Classified under chapter 84.34 RCW;

(ii) Designated under chapter 84.33 RCW; or

(iii) Transferred or sold to a governmental entity if the governmental entity manages the land in the same manner as designated forestland under chapter 84.33 RCW or property classified as timberland under chapter 84.34 RCW. The governmental entity must comply with the requirements under RCW 84.33.140 (13)(j) or 84.34.108 (6)(m).

(24) **"United States"** means:

(a) The federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality of the federal government or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity depends on the benefits and immunities conferred upon it be Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(b) "United States" does not include entities associated with but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

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