



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)

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DATE: November 06, 2018

TIME: 10:38 AM

WSR 18-22-111

Agency: Department of Revenue

Subject of possible rule making: WAC 458-61A-103 Transfers involving an underlying debt.

Statutes authorizing the agency to adopt rules on this subject: RCW 82.01.060(2), RCW 82.32.300, and RCW 82.45.150.

Reasons why rules on this subject may be needed and what they might accomplish: The Department plans to amend WAC 458-61A-103. 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 also renumbered to reflect additional examples.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: N/A

Process for developing new rule (check all that apply):

Negotiated rule making

Pilot rule making

Agency study

Other (describe) Parties interested in this rule making may contact the individual listed below. The public may also participate by providing written comments throughout this rule making or by giving oral testimony at the public meeting.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

Name: Rex Munger

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Other:

(If necessary)

Name:

Address:

Phone:

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Email:

Web site:

Other:

Additional comments: Written comments may be submitted by mail or email and should be directed to Rex Munger using one of the contact methods above.

Written and oral comments will be accepted at the Public Meeting.


Date: December 13, 2018 Time: 1:30

Public Meeting Location:

Conference Room 252

6400 Linderson Way SW

Tumwater, Washington 98501

Date: November 6, 2018	Signature: 
Name: Erin T Lopez	
Title: Rules Coordinator	

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.