**PREPROPOSAL STATEMENT OF INQUIRY**

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

Do **NOT** use for expedited rule making

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

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

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**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

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**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.

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

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(If necessary)

**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
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<tr>
<td>Name:</td>
<td>Erin T Lopez</td>
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<tr>
<td>Title:</td>
<td>Rules Coordinator</td>
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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.

(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.