



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: January 18, 2019

TIME: 1:44 PM

WSR 19-03-131

Agency: Department of Revenue

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-22-111 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WAC 458-61A-103 Transfers involving an underlying debt.

Hearing location(s):

Date: Time: Location: (be specific) Comment:

| Date: | Time: | Location: (be specific) | Comment: |
|-------------------|------------|--|----------|
| February 27, 2019 | 10:00 a.m. | Conference Room 252 6400 Linderson Way SW Tumwater, Washington 98501 | |

Date of intended adoption: March 6, 2019 (Note: This is NOT the effective date)

Submit written comments to:

Name: Rex Munger

Address: PO Box 47453, Olympia, WA 98504-7453

Email:

Fax: 360-534-1606

Other:

By (date) _____

Assistance for persons with disabilities:

Contact Julie King or Renee Cosare

Phone: (360)704-5733 or (360) 704-5734

Fax:

TTY: 800-833-6384

Email:

Other:

By (date) _____

Purpose of the proposal and its anticipated effects, including any changes in existing rules: 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 renumbered to reflect additional examples.

Reasons supporting proposal: WAC 458-61A-103(1) is derived from RCW 82.45.030(3), and describes 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 82.45.030(3) or RCW Chapter 82.45. WAC 458-61A-103(3) is also deleted as unnecessary when section (2) is deleted. Additional examples are added to illustrate when debt is consideration.

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

Statute being implemented: RCW 82.45.030

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: WAC 458-61A-103 should be amended, as described above to conform with the statutory basis for this rule in RCW 82.45.030(3).

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

- Private
 Public
 Governmental

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------|---------------|-------------------------------------|----------------|
| Drafting: | Rex Munger | 6400 Linderson Way SW, Tumwater, WA | (360) 534-1554 |
| Implementation: | Randy Simmons | 6400 Linderson Way SW, Tumwater, WA | (360) 534-1605 |
| Enforcement: | Randy Simmons | 6400 Linderson Way SW, Tumwater, WA | (360) 534-1605 |

Is a school district fiscal impact statement required under RCW 28A.305.135?

- Yes No

If yes, insert statement here:

N/A

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

- No: Please explain: This is an interpretative rule under RCW 34.05.328(5)(c)(ii).

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: January 18, 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.