

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5998

66th Legislature
2019 Regular Session

Passed by the Senate April 25, 2019
Yeas 26 Nays 22

President of the Senate

Passed by the House April 27, 2019
Yeas 56 Nays 42

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5998** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5998

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Nguyen, Lovelett, Hasegawa, Salomon, and Hunt)

1 AN ACT Relating to establishing a graduated real estate excise
2 tax; amending RCW 82.45.060, 82.45.033, 43.07.390, and 82.45.220;
3 reenacting and amending RCW 82.45.010; adding new sections to chapter
4 82.45 RCW; creating a new section; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 82.45.060 and 2017 3rd sp.s. c 10 s 13 are each
7 amended to read as follows:

8 (1) There is imposed an excise tax upon each sale of real
9 property ((at the rate of one and twenty-eight one-hundredths percent
10 of the selling price. Beginning July 1, 2013, and ending June 30,
11 2023)).

12 (a) Through December 31, 2019, the rate of the tax imposed under
13 this section is 1.28 percent of the selling price.

14 (b) Beginning January 1, 2020, except as provided in (c) of this
15 subsection, the rate of the tax imposed under this section is as
16 follows:

17 (i) 1.1 percent of the portion of the selling price that is less
18 than or equal to five hundred thousand dollars;

19 (ii) 1.28 percent of the portion of the selling price that is
20 greater than five hundred thousand dollars and equal to or less than
21 one million five hundred thousand dollars;

1 (iii) 2.75 percent of the portion of the selling price that is
2 greater than one million five hundred thousand dollars and equal to
3 or less than three million dollars;

4 (iv) Three percent of the portion of the selling price that is
5 greater than three million dollars.

6 (c) The sale of real property that is classified as timberland or
7 agricultural land is subject to the tax imposed under this section at
8 a rate of 1.28 percent of the selling price.

9 (2) Beginning July 1, 2022, and every fourth year thereafter:

10 (a) The department must adjust the selling price threshold in
11 subsection (1)(b)(i) of this section to reflect the lesser of the
12 growth of the consumer price index for shelter or five percent. If
13 the growth is equal to or less than zero percent, the current selling
14 price threshold continues to apply.

15 (b) The department must adjust the selling price thresholds in
16 subsection (1)(b)(ii) through (iv) of this section by the dollar
17 amount of any increase in the selling price threshold in subsection
18 (1)(b)(i) of this section.

19 (c) The department must publish updated selling price thresholds
20 by September 1, 2022, and September 1st of every fourth year
21 thereafter. Updated selling price thresholds will apply beginning
22 January 1, 2023, and January 1st every fourth year thereafter.
23 Adjusted selling price thresholds must be rounded to the nearest one
24 thousand dollars. No changes may be made to adjusted selling price
25 thresholds once such adjustments take effect.

26 (d) The most recent selling price threshold becomes the base for
27 subsequent adjustments.

28 (e) The department must report adjustments to the selling price
29 thresholds to the fiscal committees of the legislature, beginning
30 December 1, 2022, and December 1st every fourth year thereafter.

31 (3)(a) The department must publish guidance to assist sellers in
32 properly classifying real property on the real estate excise tax
33 affidavit for purposes of determining the proper amount of tax due
34 under this section. Real property with multiple uses must be
35 classified according to the property's predominant use. The
36 department's guidance must include factors for use in determining the
37 predominant use of real property.

38 (b) County treasurers are not responsible for verifying that the
39 seller has properly classified real property reported on a real
40 estate excise tax affidavit. The department is solely responsible for

1 such verification as part of its audit responsibilities under RCW
2 82.45.150.

3 (4) (a) Beginning July 1, 2013, and ending December 31, 2019, an
4 amount equal to two percent of the proceeds of this tax must be
5 deposited in the public works assistance account created in RCW
6 43.155.050, (~~and~~) an amount equal to four and one-tenth percent
7 must be deposited in the education legacy trust account created in
8 RCW 83.100.230 (~~. Thereafter, an amount equal to six and one-tenth~~
9 percent of the proceeds of this tax to the state treasurer must be
10 deposited in the public works assistance account created in RCW
11 43.155.050. Except as otherwise provided in this section)), an amount
12 equal to one and six-tenths percent (~~of the proceeds of this tax to~~
13 the state treasurer)) must be deposited in the city-county assistance
14 account created in RCW 43.08.290, and the remainder must be deposited
15 in the general fund.

16 (b) Beginning January 1, 2020, amounts collected from the tax
17 imposed under this section must be deposited as provided in section 2
18 of this act.

19 (5) The definitions in this subsection apply throughout this
20 section unless the context clearly requires otherwise.

21 (a) "Agricultural land" means farm and agricultural land and farm
22 and agricultural conservation land, as those terms are defined in RCW
23 84.34.020, including any structures on such land.

24 (b) "Consumer price index for shelter" means the most current
25 seasonally adjusted index for the shelter expenditure category of the
26 consumer price index for all urban consumers (CPI-U) as published by
27 July 31st by the bureau of labor statistics of the United States
28 department of labor.

29 (c) "Growth of the consumer price index for shelter" means the
30 percentage increase in the consumer price index for shelter as
31 measured from data published by the bureau of labor statistics of the
32 United States department of labor by July 31st for the most recent
33 three-year period for the selling price threshold adjustment in 2022,
34 and the most recent four-year period for subsequent selling price
35 threshold adjustments.

36 (d) "Timberland" means land classified under chapter 84.34 RCW or
37 designated under chapter 84.33 RCW, including any structures and
38 standing timber on such land, and standing timber sold apart from the
39 land upon which it sits.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.45
2 RCW to read as follows:

3 (1) Beginning January 1, 2020, and ending June 30, 2023, the
4 amounts received for the tax imposed on each sale of real property
5 under RCW 82.45.060 must be deposited as follows:

6 (a) 1.7 percent must be deposited into the public works
7 assistance account created in RCW 43.155.050;

8 (b) 1.4 percent must be deposited into the city-county assistance
9 account created in RCW 43.08.290;

10 (c) 79.4 percent must be deposited into the general fund; and

11 (d) The remainder must be deposited into the educational legacy
12 trust account created in RCW 83.100.230.

13 (2) Beginning July 1, 2023, and thereafter, the amounts received
14 for the tax imposed on each sale of real property under RCW 82.45.060
15 must be deposited as follows:

16 (a) 5.2 percent must be deposited into the public works
17 assistance account created in RCW 43.155.050;

18 (b) 1.4 percent must be deposited into the city-county assistance
19 account created in RCW 43.08.290;

20 (c) 79.4 percent must be deposited into the general fund; and

21 (d) The remainder must be deposited into the education legacy
22 trust account created in RCW 83.100.230.

23 **Sec. 3.** RCW 82.45.010 and 2018 c 223 s 3 and 2018 c 221 s 1 are
24 each reenacted and amended to read as follows:

25 (1) As used in this chapter, the term "sale" has its ordinary
26 meaning and includes any conveyance, grant, assignment, quitclaim, or
27 transfer of the ownership of or title to real property, including
28 standing timber, or any estate or interest therein for a valuable
29 consideration, and any contract for such conveyance, grant,
30 assignment, quitclaim, or transfer, and any lease with an option to
31 purchase real property, including standing timber, or any estate or
32 interest therein or other contract under which possession of the
33 property is given to the purchaser, or any other person at the
34 purchaser's direction, and title to the property is retained by the
35 vendor as security for the payment of the purchase price. The term
36 also includes the grant, assignment, quitclaim, sale, or transfer of
37 improvements constructed upon leased land.

38 (2) (a) The term "sale" also includes the transfer or acquisition
39 within any (~~twelve~~) thirty-six month period of a controlling

1 interest in any entity with an interest in real property located in
2 this state for a valuable consideration.

3 (b) For the sole purpose of determining whether, pursuant to the
4 exercise of an option, a controlling interest was transferred or
5 acquired within a (~~twelve~~) thirty-six month period, the date that
6 the option agreement was executed is the date on which the transfer
7 or acquisition of the controlling interest is deemed to occur. For
8 all other purposes under this chapter, the date upon which the option
9 is exercised is the date of the transfer or acquisition of the
10 controlling interest.

11 (c) For purposes of this subsection, all acquisitions of persons
12 acting in concert must be aggregated for purposes of determining
13 whether a transfer or acquisition of a controlling interest has taken
14 place. The department must adopt standards by rule to determine when
15 persons are acting in concert. In adopting a rule for this purpose,
16 the department must consider the following:

17 (i) Persons must be treated as acting in concert when they have a
18 relationship with each other such that one person influences or
19 controls the actions of another through common ownership; and

20 (ii) When persons are not commonly owned or controlled, they must
21 be treated as acting in concert only when the unity with which the
22 purchasers have negotiated and will consummate the transfer of
23 ownership interests supports a finding that they are acting as a
24 single entity. If the acquisitions are completely independent, with
25 each purchaser buying without regard to the identity of the other
26 purchasers, then the acquisitions are considered separate
27 acquisitions.

28 (3) The term "sale" does not include:

29 (a) A transfer by gift, devise, or inheritance.

30 (b) A transfer by transfer on death deed, to the extent that it
31 is not in satisfaction of a contractual obligation of the decedent
32 owed to the recipient of the property.

33 (c) A transfer of any leasehold interest other than of the type
34 mentioned above.

35 (d) A cancellation or forfeiture of a vendee's interest in a
36 contract for the sale of real property, whether or not such contract
37 contains a forfeiture clause, or deed in lieu of foreclosure of a
38 mortgage.

39 (e) The partition of property by tenants in common by agreement
40 or as the result of a court decree.

1 (f) The assignment of property or interest in property from one
2 spouse or one domestic partner to the other spouse or other domestic
3 partner in accordance with the terms of a decree of dissolution of
4 marriage or state registered domestic partnership or in fulfillment
5 of a property settlement agreement.

6 (g) The assignment or other transfer of a vendor's interest in a
7 contract for the sale of real property, even though accompanied by a
8 conveyance of the vendor's interest in the real property involved.

9 (h) Transfers by appropriation or decree in condemnation
10 proceedings brought by the United States, the state or any political
11 subdivision thereof, or a municipal corporation.

12 (i) A mortgage or other transfer of an interest in real property
13 merely to secure a debt, or the assignment thereof.

14 (j) Any transfer or conveyance made pursuant to a deed of trust
15 or an order of sale by the court in any mortgage, deed of trust, or
16 lien foreclosure proceeding or upon execution of a judgment, or deed
17 in lieu of foreclosure to satisfy a mortgage or deed of trust.

18 (k) A conveyance to the federal housing administration or
19 veterans administration by an authorized mortgagee made pursuant to a
20 contract of insurance or guaranty with the federal housing
21 administration or veterans administration.

22 (l) A transfer in compliance with the terms of any lease or
23 contract upon which the tax as imposed by this chapter has been paid
24 or where the lease or contract was entered into prior to the date
25 this tax was first imposed.

26 (m) The sale of any grave or lot in an established cemetery.

27 (n) A sale by the United States, this state or any political
28 subdivision thereof, or a municipal corporation of this state.

29 (o) A sale to a regional transit authority or public corporation
30 under RCW 81.112.320 under a sale/leaseback agreement under RCW
31 81.112.300.

32 (p) A transfer of real property, however effected, if it consists
33 of a mere change in identity or form of ownership of an entity where
34 there is no change in the beneficial ownership. These include
35 transfers to a corporation or partnership which is wholly owned by
36 the transferor and/or the transferor's spouse or domestic partner or
37 children of the transferor or the transferor's spouse or domestic
38 partner. However, if thereafter such transferee corporation or
39 partnership voluntarily transfers such real property, or such
40 transferor, spouse or domestic partner, or children of the transferor

1 or the transferor's spouse or domestic partner voluntarily transfer
2 stock in the transferee corporation or interest in the transferee
3 partnership capital, as the case may be, to other than (i) the
4 transferor and/or the transferor's spouse or domestic partner or
5 children of the transferor or the transferor's spouse or domestic
6 partner, (ii) a trust having the transferor and/or the transferor's
7 spouse or domestic partner or children of the transferor or the
8 transferor's spouse or domestic partner as the only beneficiaries at
9 the time of the transfer to the trust, or (iii) a corporation or
10 partnership wholly owned by the original transferor and/or the
11 transferor's spouse or domestic partner or children of the transferor
12 or the transferor's spouse or domestic partner, within three years of
13 the original transfer to which this exemption applies, and the tax on
14 the subsequent transfer has not been paid within sixty days of
15 becoming due, excise taxes become due and payable on the original
16 transfer as otherwise provided by law.

17 (q) (i) A transfer that for federal income tax purposes does not
18 involve the recognition of gain or loss for entity formation,
19 liquidation or dissolution, and reorganization, including but not
20 limited to nonrecognition of gain or loss because of application of
21 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
22 revenue code of 1986, as amended.

23 (ii) However, the transfer described in (q) (i) of this subsection
24 cannot be preceded or followed within a (~~twelve~~) thirty-six month
25 period by another transfer or series of transfers, that, when
26 combined with the otherwise exempt transfer or transfers described in
27 (q) (i) of this subsection, results in the transfer of a controlling
28 interest in the entity for valuable consideration, and in which one
29 or more persons previously holding a controlling interest in the
30 entity receive cash or property in exchange for any interest the
31 person or persons acting in concert hold in the entity. This
32 subsection (3) (q) (ii) does not apply to that part of the transfer
33 involving property received that is the real property interest that
34 the person or persons originally contributed to the entity or when
35 one or more persons who did not contribute real property or belong to
36 the entity at a time when real property was purchased receive cash or
37 personal property in exchange for that person or persons' interest in
38 the entity. The real estate excise tax under this subsection
39 (3) (q) (ii) is imposed upon the person or persons who previously held
40 a controlling interest in the entity.

1 (r) A qualified sale of a manufactured/mobile home community, as
2 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
3 but before December 31, 2018.

4 (s)(i) A transfer of a qualified low-income housing development
5 or controlling interest in a qualified low-income housing
6 development, unless, due to noncompliance with federal statutory
7 requirements, the seller is subject to recapture, in whole or in
8 part, of its allocated federal low-income housing tax credits within
9 the four years prior to the date of transfer.

10 (ii) For purposes of this subsection (3)(s), "qualified low-
11 income housing development" means real property and improvements in
12 respect to which the seller or, in the case of a transfer of a
13 controlling interest, the owner or beneficial owner, was allocated
14 federal low-income housing tax credits authorized under 26 U.S.C.
15 Sec. 42 or successor statute, by the Washington state housing finance
16 commission or successor state-authorized tax credit allocating
17 agency.

18 (iii) This subsection (3)(s) does not apply to transfers of a
19 qualified low-income housing development or controlling interest in a
20 qualified low-income housing development occurring on or after July
21 1, 2035.

22 (iv) The Washington state housing finance commission, in
23 consultation with the department, must gather data on: (A) The fiscal
24 savings, if any, accruing to transferees as a result of the exemption
25 provided in this subsection (3)(s); (B) the extent to which
26 transferors of qualified low-income housing developments receive
27 consideration, including any assumption of debt, as part of a
28 transfer subject to the exemption provided in this subsection (3)(s);
29 and (C) the continued use of the property for low-income housing. The
30 Washington state housing finance commission must provide this
31 information to the joint legislative audit and review committee. The
32 committee must conduct a review of the tax preference created under
33 this subsection (3)(s) in calendar year 2033, as required under
34 chapter 43.136 RCW.

35 (t)(i) A qualified transfer of residential property by a legal
36 representative of a person with developmental disabilities to a
37 qualified entity subject to the following conditions:

38 (A) The adult child with developmental disabilities of the
39 transferor of the residential property must be allowed to reside in
40 the residence or successor property so long as the placement is safe

1 and appropriate as determined by the department of social and health
2 services;

3 (B) The title to the residential property is conveyed without the
4 receipt of consideration by the legal representative of a person with
5 developmental disabilities to a qualified entity;

6 (C) The residential property must have no more than four living
7 units located on it; and

8 (D) The residential property transferred must remain in continued
9 use for fifty years by the qualified entity as supported living for
10 persons with developmental disabilities by the qualified entity or
11 successor entity. If the qualified entity sells or otherwise conveys
12 ownership of the residential property the proceeds of the sale or
13 conveyance must be used to acquire similar residential property and
14 such similar residential property must be considered the successor
15 for continued use. The property will not be considered in continued
16 use if the department of social and health services finds that the
17 property has failed, after a reasonable time to remedy, to meet any
18 health and safety statutory or regulatory requirements. If the
19 department of social and health services determines that the property
20 fails to meet the requirements for continued use, the department of
21 social and health services must notify the department and the real
22 estate excise tax based on the value of the property at the time of
23 the transfer into use as residential property for persons with
24 developmental disabilities becomes immediately due and payable by the
25 qualified entity. The tax due is not subject to penalties, fees, or
26 interest under this title.

27 (ii) For the purposes of this subsection (3)(t) the definitions
28 in RCW 71A.10.020 apply.

29 (iii) A "qualified entity" is:

30 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)
31 of the federal internal revenue code of 1986, as amended, as of June
32 7, 2018, or a subsidiary under the same taxpayer identification
33 number that provides residential supported living for persons with
34 developmental disabilities; or

35 (B) A nonprofit adult family home, as defined in RCW 70.128.010,
36 that exclusively serves persons with developmental disabilities.

37 (iv) In order to receive an exemption under this subsection
38 (3)(t) an affidavit must be submitted by the transferor of the
39 residential property and must include a copy of the transfer
40 agreement and any other documentation as required by the department.

1 **Sec. 4.** RCW 82.45.033 and 2010 1st sp.s. c 23 s 208 are each
2 amended to read as follows:

3 (1) As used in this chapter, the term "controlling interest" has
4 the following meaning:

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

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

14 (2) The department may, at the department's option, enforce the
15 obligation of the seller under this chapter as provided in this
16 subsection (2):

17 (a) In the transfer or acquisition of a controlling interest as
18 defined in subsection (1)(a) of this section, either against the
19 corporation in which a controlling interest is transferred or
20 acquired, against the person or persons who acquired the controlling
21 interest in the corporation or, when the corporation is not a
22 publicly traded company, against the person or persons who
23 transferred the controlling interest in the corporation; and

24 (b) In the transfer or acquisition of a controlling interest as
25 defined in subsection (1)(b) of this section, either against the
26 entity in which a controlling interest is transferred or acquired or
27 against the person or persons who transferred or acquired the
28 controlling interest in the entity.

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.45
30 RCW to read as follows:

31 The legislature recognizes that in adopting a graduated tax rate
32 structure providing for increased tax rates for sales of highly
33 valued property, while also exempting certain types of property from
34 the increased tax rates, some taxpayers will attempt to avoid or
35 reduce the tax imposed in this chapter by structuring transactions in
36 a way that serves no meaningful purpose other than to reduce tax due
37 under this chapter.

38 (1)(a) When necessary to deny the tax benefit that would
39 otherwise accrue from engaging in one or more related transactions

1 designed to avoid tax under this chapter, the department is
2 authorized to disregard the form of the transaction or series of
3 transactions and determine the proper tax treatment under this
4 chapter based on the substance of the transaction or transactions. In
5 exercising this authority, the department may consider the factors
6 described in RCW 82.32.655(2) (a), (b), (c), and (f).

7 (b) The authority provided in this subsection includes, but is
8 not limited to, treating multiple sales as a single sale as necessary
9 to prevent the parties from reducing the tax liability under this
10 chapter when it appears that the parties have engaged in a concerted
11 plan intended from the outset to achieve a reduced effective tax rate
12 than had the parties collapsed the separate sales into a single sale
13 at the outset.

14 (2) The department is encouraged to provide guidance to the
15 public concerning the department's implementation of this section,
16 whether by rule or otherwise.

17 **Sec. 6.** RCW 43.07.390 and 2010 1st sp.s. c 23 s 213 are each
18 amended to read as follows:

19 (1)(a) The secretary of state must adopt rules requiring any
20 entity that is required to file an annual report with the secretary
21 of state, including entities under Titles 23, 23B, 24, and 25 RCW, to
22 disclose: (i) Any transfer of the controlling interest in the entity
23 or an interest that amounts to at least one-third of a controlling
24 interest in the entity; and (ii) the granting of any option to
25 acquire an interest (~~(in the entity if the exercise of the option~~
26 ~~would result in a sale as defined in RCW 82.45.010(2))~~) described in
27 (a)(i) of this subsection.

28 (b) The disclosure requirement in this subsection only applies to
29 entities owning an interest in real property located in this state.

30 (2) This information must be made available to the department of
31 revenue upon request for the purposes of tracking the transfer of the
32 controlling interest in entities owning real property and to
33 determine when the real estate excise tax is applicable in such
34 cases.

35 (3) For the purposes of this section, "controlling interest" has
36 the same meaning as provided in RCW 82.45.033.

37 **Sec. 7.** RCW 82.45.220 and 2010 1st sp.s. c 23 s 212 are each
38 amended to read as follows:

1 (1) An organization that fails to report (~~(a transfer of the~~
2 ~~controlling interest in the organization under RCW 43.07.390 to the~~
3 ~~secretary of state and is later determined to be subject to real~~
4 ~~estate excise taxes due to the transfer,~~) to the secretary of state
5 a transfer of an interest in the organization as required under RCW
6 43.07.390 and the transfer results in a sale as defined in RCW
7 82.45.010(2) is subject to the provisions of RCW 82.45.100 as well as
8 the evasion penalty in RCW 82.32.090(7).

9 (2) Subsection (1) of this section also applies to the failure to
10 report to the secretary of state the granting of an option to acquire
11 an interest in the organization if the exercise of the option would
12 result in a sale as defined in RCW 82.45.010(2).

13 NEW SECTION. **Sec. 8.** The provisions of RCW 82.32.805 and
14 82.32.808 do not apply to this act.

15 NEW SECTION. **Sec. 9.** This act takes effect January 1, 2020.

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