Transfers of real property to certain qualifying entities will no longer be subject to real estate excise tax in Washington State, effective on January 1, 2023. The Washington State Legislature passed Engrossed House Bill 1643 (to be codified at RCW 82.45.010(v)) with the goal of increasing the availability of affordable housing for low-income Washingtonians. The bill identifies an "affordable housing crisis," noting that the state's housing gap is among the most severe in the nation, with only 29 affordable and available rental homes for every 100 extremely low-income households. The stated intent of EHB 1643 is to incentivize real property transfers to nonprofit housing providers, public housing authorities, or local governments to increase the availability of affordable housing for low-income Washingtonians. This update provides a brief explanation of the basics of Washington's real estate excise tax, then describes the exemption created by EHB 1643.

Real Estate Excise Tax Overview

All transfers of real property in Washington State (and transfers of a controlling interest in an entity that owns real property) are subject to a real estate excise tax under Chapter 82.45 RCW, unless a specific exemption applies to the transfer. The tax is imposed on the seller, although the buyer can be liable for the tax if it is not otherwise paid. Beginning in 2020, Washington imposes real estate excise tax using a graduated rate structure with the highest rate (3% plus the local rate) applicable to transactions with a sales price of more than $3 million.

Washington's excise tax statute provides for numerous exemptions. EHB 1643 adds to the list of transactions exempt from the definition of "sale" and therefore not subject to real estate excise tax.

Qualifying Entities and Use

In order for a sale or transfer of real property to be exempt from real estate excise tax under EHB 1643, the entity acquiring the property must be a nonprofit entity, cooperative association, housing authority, public corporation, county, or other municipality. In addition, the property must be used for housing for low-income persons, as defined by the Washington State Department of Revenue, but the household income may not exceed 80% of median household income in the relevant county. The entity must also qualify for an exemption from real and personal property taxes under certain specified state statutes, including (1) the property tax exemption provided to nonprofit organizations that provide rental housing to very low-income households under RCW 84.36.560 and (2) the property tax exemption for nonprofit home-ownership development for low-income households under RCW 84.36.049. The other eligible exemptions apply specifically to housing authorities, public corporations, and governmental entities.

Covenants and Time Limits

Counties and municipal corporations qualifying for the exemption under EHB 1643 must record a covenant that prohibits use of the property for anything other than low-income housing for at least 10 years. All grantees must comply with certain other requirements for the exemption to apply. For existing housing, the entity acquiring the property must ensure that the property is used as low-income housing and must also qualify the property for a tax exemption under certain enumerated statutes, all within one year of the transfer. For property that will undergo development as new housing, the grantee must comply with the same requirements within five years of the transfer. And if the property will be substantially rehabilitated, then it must meet the above requirements within three years of transfer. Proof of such compliance must be submitted to the Washington State Department of Revenue. An entity that does not fulfill the above requirements within the prescribed timelines must pay the real estate excise tax that would have been due at the time of transfer plus interest.

Implications and Takeaways From EHB 1643

There is little doubt that EHB 1643 will make it less expensive to sell real property for use as low-income housing, resulting in savings for qualifying low-income housing developers and owners as well as incentivizing sale to such entities. Those wishing to take advantage of the benefits of EHB 1643 should consult with qualified legal counsel to discuss the applicability of the law to their specific transaction and any potential risks.

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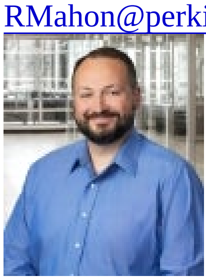

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