

ORDINANCE NO. 15 1965ORDINANCE RELATING TO SALES OF REAL ESTATE AND
LEVYING AN EXCISE TAX THEREON

BE IT ORDAINED by the Board of County Commissioners of Clallam County, State of Washington as follows:

SECTION I

Definition: "Sale" shall have its ordinary meaning and shall in addition include any conveyance, grant, assignment, quit-claim, or transfer of ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quit-claim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein, or any contract under which possession of the property is given to the purchaser or any other person by his direction while title is retained by the seller as security for the payment of the purchase price, but shall not include transfers by gift, devise or inheritance, nor a sale by the United States or the State of Washington, nor a transfer by appropriation or decree in condemnation proceedings brought by the United States, The State, or a municipal corporation, nor a transfer in compliance with the terms of any lease or contract upon which a tax as imposed by this ordinance has been paid or where such lease or contract was entered into prior to May 1, 1951, nor to the sale of any grave or lot in an established cemetery, nor a mortgage or other transfer of an interest in real property merely to secure a debt, nor the assignment thereof; PROVIDED, any transfer or conveyance pursuant to any proceedings for the foreclosure of any mortgage, lien or other incumbrance, except a satisfaction thereof, whether executed by the sheriff by public sale or by anyone by public or private sale to satisfy a debt shall be subject to this tax.

The assignment or other transfer of a seller's interest in a contract for the sale of real property or any estate or interest therein, even though accompanied by a conveyance of the seller's interest in the real property shall not be taxable under this ordinance where such assignment or transfer was made on or after September 6, 1951 but where such assigned contract is forfeited, foreclosed, or otherwise not performed, and the assignee thereby obtains the interest of the purchaser therein, a taxable sale of real property shall then be deemed to have occurred and the balance then due on such contract at the time of forfeiture shall be deemed to be the selling price.

PROVIDED, on or after June 11, 1953, the term "sale" shall be defined as follows:

"Sale" shall have its ordinary meaning and shall in addition include any conveyance, grant, assignment, quit-claim, or transfer of ownership of or title to real property, including standing timber, or any estate or interest therein, for a valuable consideration and any contract for such grant, assignment, quit-claim or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser or any other person by his direction while title is retained by the seller as security and the payment of the purchase price, but shall not include transfers by gift, devise, or inheritance, nor a sale by or to the United States, the State of Washington, or any political subdivision thereof or a municipal corporation of this State, nor a transfer by appropriation or decree in condemnation proceedings brought by the United States, the State or any political subdivisions thereof or a municipal corporation, nor a mortgage or other transfer of the interest in real property merely to secure a debt, nor the assignment thereof, nor any transfer or conveyance made pursuant to an order or sale by the Court in any mortgage or lien foreclosure proceeding or upon execution of judgement, or a deed in lieu of foreclosure to satisfy a mortgage or a conveyance to the Federal Housing Administration or Veteran's Administration by an authorized mortgage made pursuant to a contract of insurance or guaranty with the Federal Housing Administration, nor a transfer or assignment of a vendor's interest in a contract for the sale of real property even though accompanied by a conveyance of the vendor's interest in the real property involved, nor a transfer in compliance with the terms of any lease or contract upon which a tax as imposed by this ordinance has been paid or where such lease or contract was entered into prior to May 1, 1951, nor the sale of any grave or lot in an established cemetery.

PROVIDED, from and after June 9, 1953, as used in this ordinance, the term "sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quit-claim or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quit-claim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person by his direction, which title is retained by the vendor as security for the payment of the purchase price.

The term shall not include a transfer by gift, devise, or inheritance, a transfer of any leasehold interest other than of the type mentioned above, a cancellation of forfeiture of the vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage or the assumption by a grantee of the balance owing on an obligation which is secured by a mortgage or deed in lieu of forfeiture of the vendee's interest in a contract of sale where no consideration passed otherwise or the partition of property by tenants in common by agreement or as the result of a court decree any transfer, conveyance, or assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement incident thereto, the assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved, transfers by appropriation or decree in condemnation proceedings brought by the United States, the State or any political subdivision thereof, or a municipal corporation, a mortgage or transfer of an interest in real property merely to secure a debt, or the assignment thereof any transfer or conveyance made pursuant to an order of sale by the court in any mortgage or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage, a conveyance to the federal housing administration by an authorized mortgage made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration, nor a transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed, nor the sale of any grave or lot in an established cemetery, nor a sale by or to the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

"Seller" shall include any individual, assignee, receiver, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club company, joint stock company, business trust, corporation, municipal or quasi-municipal corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise, but shall not include the United States or the State of Washington:

PROVIDED, on or after June 11, 1953, political subdivision of the State of Washington and municipal corporations of this State shall likewise be excluded from the term "Seller".

"Selling price" shall mean the consideration, in money or anything of value, paid or delivered or contracted to be paid or delivered in return for the transfer of the real property or estate or interest therein and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance given to secure payment of the purchase price or any part thereof, or remaining unpaid on such property at the time of such sale, including the amount of any lien or incumbrance existing against the property and agreed to be paid by the purchaser, but shall not include the amount of any outstanding lien or incumbrance in favor of the United States, the State, or a municipal corporation for taxes, special benefits, or improvements.

SECTION II

There is hereby levied and there shall be collected by the Treasurer on each sale of any real property situated in Clallam County a tax equal to one per cent of the selling price.

SECTION III

The tax imposed by this ordinance shall be the obligation of the seller and the Treasurer may proceed to collect the same from the seller by a civil action for debt: PROVIDED, the tax shall also constitute a lien against the real property, the sale of which is involved, until paid and may be enforced by the treasurer in the manner prescribed for the foreclosure of mortgages; PROVIDED FURTHER, an election on the part of the treasurer to pursue one remedy shall in no event operate to waive his right to pursue the other remedy until the full tax, together with interest, penalty, and costs shall have been received.

SECTION IV

The tax herein levied shall be paid to and collected by the treasurer who shall cause to be affixed to the instrument of sale and appropriate stamp or stamps evidencing satisfaction of the lien imposed hereunder and shall further issue a receipt acknowledging such payment which receipt shall be evidence of the satisfaction of the lien imposed hereunder and may be recorded in the manner prescribed for recording satisfaction of mortgages.

SECTION V

No instrument of sale or conveyance, a tax on which is imposed by this ordinance, shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the stamp or stamps evidencing such payments have been affixed to the instrument or, where no tax is levied hereunder, a stamp indicating such.

SECTION VI

It shall be the duty of the seller, within thirty days after the date of sale to furnish to the treasurer, in triplicate, on forms to be supplied by the treasurer, an affidavit containing the full name and address of the seller, the full name and address of the purchaser, the description of the real property involved, the date of sale or other transfer, the nature of the transfer, and the sale price, which affidavit shall be subscribed and sworn to by the seller, buyer, or the agent of either, before a notary public, the treasurer, or his duly authorized deputy.

Where the transaction involves the exchange in whole or in part of any real property or any estate or interest therein or any contract right thereto for any other real property or estate or interest therein or contract right thereto, there shall be filed by or on behalf of each grantor the above affidavit, which said affidavit shall state the fair market value of the property so exchanged, and a tax shall be levied and collected as to each transfer.

Where the transaction involved is a lease with an option to the lessee to buy real property or any estate or interest therein or contract right thereto, and the selling price is not stated in the instrument, the grantor, grantee or the agent of either shall, by affidavit, state the option price intended and the tax levied hereunder shall be on such stated option price; PROVIDED, that if, upon execution and delivery of instrument of conveyance or transfer pursuant to such option, the actual consideration passing be greater than the option price stated in the affidavit filed at the time the lease with option was executed, there is hereby levied and there shall be collected under this ordinance the tax on such additional amounts prior to the time the deed is accepted for recording; PROVIDED FURTHER, that where, by the instrument of lease, the lease payments do not apply on the ultimate sales price, the tax levied hereunder shall not be payable until the option is exercised and accepted.

Where the transaction involved constitutes a sale of standing timber under this ordinance and the selling price is stated in such conveyance as being determinable in the future on the basis of footage removed or on a stumpage basis, it shall be the duty of the seller to execute and file with the County treasurer the foregoing affidavit stating, in addition to the other requirements, the legal description of the real property on which such standing timber is located and an estimate, to the best of his knowledge, of the selling price, ultimately to be received and shall pay to the county treasurer under this ordinance a sum equal to one per cent of such estimated selling price, which sum shall not be credited by the treasurer to the school fund but shall be retained in a separate account.

On the expiration date of such timber contract, if not extended, or at the time cutting and removal is completed, whichever is earlier, it shall be the duty of the seller to execute and file with the county treasurer an additional affidavit in the above form setting out the selling price actually paid. In the event such amount results in a tax greater than the sum there-to-fore paid on the estimate the seller shall pay such additional amount to the county treasurer who shall there-upon place this amount, together with the sum originally deposited, to the credit of the school fund in the usual manner. In the event such amount be less than the original estimate the treasurer is hereby directed to refund the excess to the taxpayer and credit the balance to the school fund as above.

SECTION VII

The treasurer shall retain and file the original of such affidavit and shall furnish one copy to the county assessor.

SECTION VIII

Failure to furnish such affidavit to the treasurer within thirty days after sale shall be a misdemeanor and, upon conviction thereof, the seller shall be fined not less than ten nor more than fifty dollars.

SECTION IX

Any person knowingly swearing falsely to any statement of any material matter in such affidavit shall, upon conviction thereof, in addition to any penalty imposed by the laws of the State of Washington, be fined not less than one hundred nor more than five hundred dollars.

SECTION X

The tax imposed here-under shall become due and payable immediately at the time of sale, and, if not so paid within thirty days thereafter, shall bear interest and penalty at the rate of one per cent per month from date of sale, which interest and penalty shall be added to the tax and likewise bear interest and penalty thereafter.

SECTION XI

If upon written application by a taxpayer to the treasurer for a refund here-under, or upon examination of the records by the treasurer without such application, it appears that within one year preceding such application or examination a tax has been paid hereunder in excess of the amount actually due or upon a sale or other transfer therein declared to be exempt from tax hereunder, such excess amount or improper payment shall be refunded by the treasurer to the taxpayer. No refund shall be made with respect to any payment made more than one (1) year before the date of application or examination.

SECTION XIII

The proceeds of the tax imposed hereunder shall be credited to the county school fund monthly for distribution to the school districts entitled thereto, PROVIDED, that one per cent of the proceeds of this tax shall be credited to the Current Expense Fund of the county, out of which all cost and expense of administering this ordinance, including cost of printing stamps and forms of affidavits and receipts and other forms which may be necessary, shall be paid.

SECTION XIII

This ordinance is deemed severable and any declaration by any court that any section or sections, or portions thereof, are invalid, shall have no effect on the remainder of this ordinance.

SECTION XIV

This ordinance is necessary for the immediate support of county government and its existing public institution and shall take effect May 1, 1965.

PASSED AND ADOPTED THIS 20th DAY OF APRIL, 1965.

BOARD OF CLALLAM COUNTY COMMISSIONERS

Harvey E. Eckett
Chairman

B. J. Sturtevant

Shaw N. Mansfield

ATTEST:

Harold A. Fleming
Clerk of the Board