

Temporary

ORDINANCE NO. 26, 1968

ORDINANCE RELATING TO SALES OF REAL ESTATE

AND LEVYING AN EXCISE TAX THEREON

WHEREAS, RCW 28.45, as most recently amended by Chapter 149, Laws of 1967, Ex. Session, authorizes boards of county commissioners to levy taxes on sales of real estate within their respective counties for the purposes recited in the said legislation; and

WHEREAS, the public welfare requires the imposition of taxes of the type authorized by the said legislation; Now, therefore,

BE IT ORDAINED by the Board of County Commissioners of Clallam County.

SECTION I

Definitions: "Sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, 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, quitclaim, or transfer, and any lease with an option to purchase real property subject to rules promulgated by the Washington State Department of Revenue, 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 payment of the purchase price.

The term shall not include a transfer by gift, devise, or inheritance, a transfer or any leasehold interest other than of the type mentioned above, a cancellation or 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 passes otherwise or the partition of property by tenants in common by agreement or as a result of a court decree, or 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 other transfer of any 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 judgement, or deed in lieu of foreclosure to satisfy a mortgage, a conveyance to the federal housing administration or veterans administration by an authorized mortgagee 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 ordinance 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," unless otherwise indicated by the context of this ordinance, shall mean any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company,

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business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise; but it shall not include the United States, the State of Washington, a political subdivision of the State of Washington, or a municipal corporation of this state.

"Selling Price" shall mean the consideration, including 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 in real property, and shall include the amount of any lien, mortgage, contract, indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

The term shall 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.

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 percent of the selling price.

SECTION III

The tax herein provided for and any interest or penalties thereon shall be a specific lien upon each piece of real property sold from the time of sale until the tax shall have been paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages.

SECTION IV

The tax levied under this ordinance shall be the obligation of the seller and the county treasurer may, at his option, enforce the obligation through an action of debt against the seller or he may proceed in the manner prescribed for the foreclosure of mortgages. Resort to one course of enforcement shall not be an election not to pursue the other.

SECTION V

The tax hereby imposed shall be paid to and collected by the county treasurer who shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording. A receipt issued by the county treasurer for the payment of the tax imposed under this ordinance shall be evidence of the satisfaction of the lien imposed hereunder and may be recorded in the manner prescribed for recording satisfaction of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be accepted until suitable notation of such fact has been made on the instrument by the treasurer.

SECTION VI

It shall be the duty of the seller, within thirty days after the date of sale, to furnish the treasurer, in quadruplicate, 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 authorized

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deputy. PROVIDED: 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. PROVIDED FURTHER: that if the Washington State Department of Revenue requires reports contrary with or in addition to the requirement imposed by this section the requirements of the said department shall supersede the requirements of this section to that extent.

SECTION VII

In the case of any sale, where the selling price is not separately stated or ascertainable at the time of sale, including leases with option to purchase, rules of the Washington State Department of Revenue relating to ascertainment of the tax and security for payment of the tax shall be administered by appropriate officials.

SECTION VIII

Where the transaction involved constitutes a conditional sale of mining property in which the buyer has the right to terminate the contract at any time, and/or a lease and option to buy mining property in which the lessee-buyer has the right to terminate the lease and option at any time, said transaction shall be taxable at the time of execution only on the consideration received by the seller or lessor for execution of such contract; PROVIDED: that the tax due on any additional consideration paid by the buyer and received by the seller shall be paid to the county treasurer (1) at the time of termination, or (2) at the time all of the transaction is completed except for the delivery of the deed to the buyer, or (3) at the time when the buyer unequivocally exercises an option to purchase the property, whichever of the three events occur first.

For the purpose of this ordinance, the term "mining property" shall mean property containing or believed to contain metallic minerals and sold or leased under terms which require the purchaser or lessor to conduct exploration or mining work thereon and for no other use; and the term "metallic minerals" shall not include clays, coal, sand and gravel, peat, gypsite, or stone, including limestone.

SECTION IX

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 percent 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 price actually paid. In the event such amount results in a tax greater than the sum theretofore paid on the estimate, the seller shall pay such additional amount to the county treasurer who shall thereupon 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

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directed to refund the excess payment to the taxpayer and credit the balance to the school fund as above.

SECTION X

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

SECTION XI

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 XII

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 law of the State of Washington be fined not less than one hundred nor more than five hundred dollars.

SECTION XIII

The tax imposed hereunder shall become due and payable immediately at the time of sale and, if not so paid within thirty days thereafter, shall bear interest at the rate of one percent per month from date of sale.

SECTION XIV

The proceeds of the tax imposed hereunder shall be credited to the county school fund monthly and shall be used exclusively for the support of the common schools; PROVIDED: that one percent of the proceeds of this tax, or whatever maximum authorized in RCW 28.45, shall be credited to the County Current Expense Fund, 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 XV

If, upon written application by a taxpayer to the treasurer for a refund hereunder, 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 hereunder in excess of the amount actually due or upon a sale or other transfer herein 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 more than one (1) year before the date of application or examination.

SECTION XVI

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.

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SECTION XVII

This ordinance is necessary for the immediate support of county government and its existing public institutions and shall take effect midnight April 30, 1968.

Dated this 8th day of April, 1968.

Harvey Escott
Chairman

Thos. H. Mansfield

E. H. Mansfield
Board of Classey County
Commissioners