

Ordinance 760

Creating Chapter 5.02, Second Quarter Percent Real Estate Sales Excise Tax

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

**Chapter 5.02**

**SECOND QUARTER PERCENT REAL ESTATE SALES EXCISE TAX**

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**5.02.010 Definitions.**

(1) "Sale" shall have its ordinary meaning and 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; 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 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 a 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 the 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 of 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 or Veteran's Administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the Federal Housing Administration or Veteran's 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 by or to the United States, this State or any political subdivision thereof, or a municipal corporation of this State.

(2) "Seller," unless otherwise indicated by the context of this chapter, means any individual, receiver, assignee, trustee in bankruptcy, trust estate, firm, co-partnership, joint venture, club, company, joint stock company, 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.

(3) "Selling price" means 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 encumbrance, 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.

#### **5.02.020 Rate.**

Pursuant to RCW 82.46.035, 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 .25 of 1 percent of the selling price.

#### **5.02.030 Lien against property.**

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 by the foreclosure of mortgages.

#### **5.02.040 Seller obligation.**

The tax levied under this chapter 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.

#### **5.02.050 Payment – Stamp.**

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 chapter 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 notification of such fact has been made on the instrument by the Treasurer.

**5.02.060 Affidavit.**

It shall be the duty of the seller, within 30 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 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.

**5.02.070 Sale price unavailable.**

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.

**5.02.080 Mining property.**

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 (3) events occurs first.

For the purpose of this chapter, 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, sypsite, or stone, including limestone.

**5.02.090 Affidavit – Treasurer.**

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

**5.02.100 Affidavit – Failure to furnish.**

Failure to furnish such affidavit to the Treasurer within 30 days after sale shall be a misdemeanor and, upon conviction thereof, the seller shall be fined not less than \$10 or more than \$50.

**5.02.110 Affidavit – False statement.**

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 \$100 or more than \$500.

**5.02.120 Interest.**

The tax imposed hereunder shall become due and payable immediately at the time of sale and, if not so paid within 30 days thereafter, shall bear interest at the rate of 1 percent per month from date of sale.

**5.02.130 Disposition and use.**

The proceeds of the tax imposed hereunder pursuant to RCW 82.46.035 shall be disposed of as follows:

(1) The excise tax of .25 of 1 percent collected pursuant to RCW 82.46.035 shall be placed in the County Second Quarter Real Estate Excise Tax Fund; provided, that 1 percent of the total amount collected at the rate of .25 of 1 percent shall be placed in the County current expense fund to defray costs of collection.

(2) Proceeds deposited into either Real Estate Excise Tax Fund shall be used in accordance with applicable state statutes. In addition, proceeds deposited into the Second Quarter Real Estate Excise Tax Fund shall be used only for eligible projects designated on the County's budget adoption resolution. Eligible projects in the unincorporated areas of the County must either be on the County's 10-year Capital Facilities Plan, 6-year Transportation Improvement Plan, Parks Improvement Plan, or projects in unincorporated areas of the County proposed by other governmental jurisdictions and determined by the Board of Commissioners to be for necessary infrastructure.

**5.02.140 Refunds.**

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 paid 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 year before the date of application or examination.

**5.02.150 Review required.**

No later than December 31, 2009 and every 10 years thereafter, the County shall hold a public hearing to consider public input regarding the continued need for the tax collected pursuant to RCW 86.42.035.

Following the public hearing, the Board of Commissioners shall determine whether to continue collecting the tax or proceed to repeal of the tax. The Board of Commissioners shall consider, among other things, whether there is a continued need for funding of projects eligible under State statutes and this ordinance, whether alternative funding sources exist and are adequate, whether any or all of the revenue is used for payment of debt service, and whether projects funded in the past have served their intended purpose.

**5.02.160 Severability.**

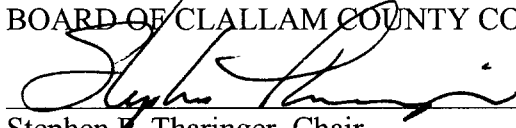
This chapter is deemed severable, and any declaration by any court that any section or sections, or portions thereof, are invalid shall have no effect on the remainder of this chapter.

**5.02.170 Effective date.**

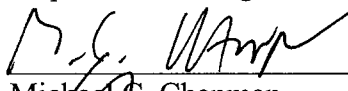
This chapter is necessary for the immediate support of County government and its existing public institutions and shall take effect 10 days after adoption.

ADOPTED this twenty-eighth day of September 2004

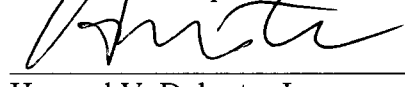
BOARD OF CLALLAM COUNTY COMMISSIONERS



Stephen P. Tharinger, Chair

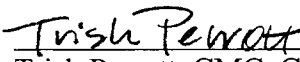


Michael C. Chapman



Howard V. Doherty, Jr.

ATTEST:



Trish Perrott, CMC, Clerk of the Board