

## ORDINANCE 45A

### REAL ESTATE SALES EXCISE TAX

1. Title. This ordinance shall be known as the Tulalip Real Estate Sales Excise Tax Ordinance of 1987.
2. Findings. The Board of Directors, after carefully considering the need for further implementation of taxing powers in regard to reservation activities, finds:
  - 2.1 Owners of real property on the Tulalip Indian Reservation benefit from a number of tribal governmental services, including, but not limited to, maintenance of roads and bridges, tribal programs to enhance and protect natural resources and amenities of the reservation, comprehensive land use planning, growth management, programs to improve and expand sewer and water services, and fire protection.
  - 2.2 With increasing growth and land use pressures on reservation lands, the demands for such tribal governmental services are increasing.
  - 2.3 The Tribe lacks sufficient revenue for the provisions of such services and the operation of its tribal government. Decreased financial support from the federal government and the increased cost of government operations have made the Tribes' revenue needs acute.
  - 2.4 The sale of real estate is an activity commonly taxed by other government as a legitimate form of revenue raising. An owner's sale of real estate on the reservation is a business activity which can significantly affect service demands upon the Tribes.
3. Purposed/Appropriation of Funds. In order to generate badly needed revenues for tribal self-government, territorial management, and governmental services, there is hereby imposed an excise tax on the sale of real estate, subject to the following provisions. All revenues raised by this tax shall be used in implementation of the Tulalip Planning Enabling Act, Ordinance No. 56, for construction and maintenance of Tribal roads and bridges, and for such other tribal governmental operations and services as the Tulalip Board of Directors may further designate by resolution.
4. Definitions.
  - 4.1 Sale. As used in this ordinance, the term "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 contract for such conveyance, grant, assignment, quitclaim, 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.

Nothing herein is intended to impose a tribal tax on a sale by or to the Tribe or by or to the United States in trust for the Tribe or an Indian person(s). Nor is this tax intended to be applied to a sale of real property subject to a restriction on alienation by the United States. Nor shall this tax apply to sales by persons who are not enrolled members of the Tulalip Tribes, except a) where authorized by Congress; or b) where such nonmembers have consensual relationships with the Tribes through commercial dealing, contracts, leases, or other arrangements; or c) where such nonmembers' conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribes.

4.2 Exclusions. The term "sale" also 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 or forfeiture of a vendor'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 vendor'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 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 of any political subdivision thereto, or a municipal corporation, a mortgage or other 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 foreclosures proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage, a trustee's conveyance pursuant to a power of sale in a non-judicial foreclosure, a conveyance to the Federal Housing Administration or Veterans 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 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 any sale by or to the United States, nor any sale by the State of Washington or any political sub-division or a municipal corporation thereof, nor a sale by or to the Tribe, nor a sale of property held in trust by or subject to a restriction on alienation by the United States.

The Term sale shall further not include a transfer to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or children: PROVIDED, that if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse, or children voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case maybe, to other than 1) the transferor and/or the transferor's spouse or children; 2) a trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of the transfer to the trust; or 3) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within five (5) years of the original transfer to which this exemption applies, excise taxes shall become due and payable on the original transfer as otherwise provided by law.

4.3 Seller. As usual in this ordinance the term "seller" unless otherwise indicated by the context, shall mean any individual, receiver, assignee trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, quasi municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit otherwise; but it shall not include the Tulalip Tribes, the United States or the State of Washington.

4.4 Selling Price. As used in this ordinance, the term "selling price" means the total or gross 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 Tribes, the state, or a municipal corporation for the taxes, special benefits, or improvements.

4.5 Real Estate, Real Property, Used Mobile Home, Mobile Home, Used Floating Home, and Floating Home. Unless the context clearly requires otherwise, the definitions in this section apply throughout this ordinance.

4.5.1 "Real estate" or "real property" means real property but includes used mobile homes and used floating homes.

4.5.2 "Used mobile home" means a mobile home which has been previously sold at retail and the immediately preceding sale has already been subject to tax under chapter 82.08 RCW, or which has been previously used and the immediately preceding use has already been subjected to the tax under chapter 82.12 RWC, and which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

4.5.3 "Mobile Home" means a mobile home as defined by RCW 46.04.302, as now or hereafter amended.

4.5.4 "Used floating home" means a floating home in respect to which tax has been paid under chapter 82.08 or 82.18 RCW.

4.5.5 "Floating home" means a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located.

5. Determining Selling Price of Lease with Option to Purchase - Mining Property - Payment, Security when Selling Price not Separately Stated. The tribal tax administrator shall provide by rule for the determination of the selling price in the case of leases with option to purchase, and shall further provide that the tax shall not be payable, where inequity will otherwise result, until and unless the option is exercised and accepted. A conditional sale of mining property in which the buyer has the right to terminate the contract at any time, and 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 shall be taxable at the time of execution only on the consideration received by the seller or lessor for execution of such contract, but the rule shall further provide that the tax due on any additional consideration paid by the buyer and received by the seller shall be paid to the Tribe 1) at the time of termination, or 2) at the time that all of the consideration due to the seller has been paid and 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 occurs first.

The term "mining property" means property containing or believed to contain metallic minerals and sold or leases under terms which require the purchaser or lessor to conduct exploration or mining work thereon and for no other use. The term "metallic minerals" does not include clays, coal, sand and gravel, peat, gypsite, or stone, including limestone.

The tribal tax administrator shall further provide by rules for case whether the selling price is not separately stated or is not separately stated or is not ascertainable at the time of sale, for the payment of the tax at a time when the selling price is ascertained, in which case suitable security may be required for payment of the tax, any may further provide for the termination of the selling price by appraisal shall be prima facie evidence of the selling price of the real property.

6. Tax Imposed on Sale of Property - Additional Tax Imposed. There is hereby imposed as of the effective date of this Ordinance, an excise tax upon each sale of real property at the rate of one percent (1.00%) of the selling price.

7. Tax is Seller's obligation - Choice of Remedies. The tax levied under this ordinance shall be the obligation of the seller and the tribal tax administrator may enforce the obligation through an action of debt against the seller and/or may proceed in the manner prescribed for the foreclosure of mortgages as provided in the Revised Code of Washington and resort to one

course of enforcement shall not be an election not to pursue the other.

8. Payment of Tax. The tax imposed by this ordinance shall be paid to the collection by the tribal tax administrator.

9. Tax Payable at Time of Sale - Interest, Penalty, on Unpaid or Delinquent Taxes - Prohibition of Certain Assessments or Refunds.

9.1 The tax imposed under this ordinance is due and payable immediately at the time of sale, and if not paid within thirty (30) days thereafter shall bear interest at the rate of one percent (1%) per month from the time of sale until the date of payment.

9.2 If upon examination of any affidavits or from other information obtained by the tribal tax administrator or his agents it appears that all or a portion of the tax is unpaid, the administrator shall assess against the taxpayer the additional amount found to be due plus interest as provided in subsection 9.1 of this section. If the administrator finds that all or any part of the deficiency resulted from an intent to evade the tax payable under this ordinance, a penalty of fifty percent (50%) of the additional tax found to be due shall be added.

9.3 No assessment or refund may be made by the administrator more than four years after the date of sale except upon a showing of fraud or of failure by the taxpayer to record documentation of sale or otherwise report the sale to the county treasurer.

10. Single Family Residential Property, Tax Credit When Subsequent Transfer Within Nine Months for Like Property. Where single family residential property is being transferred as the entire family residential property and a license real estate broker or one of the parties to the transaction accepts transfer of said property, a credit for the amount of the tax due upon a subsequent transfer of the property by the broker or party if said transfer is made within nine months of the transfer to the broker or party: PROVIDED, that if the tax which would be due on the subsequent transfer from the broker or party is greater than the tax paid for the prior transfer to said broker or party the difference shall be paid, but of the tax initially paid is greater than the amount of the tax which would be due on the subsequent transfer no refund shall be allowed.

11. Rules for Reporting, Application and Collections of Tax - Real Estate Excise Tax Affidavit Form, Contents, Use. The tribal tax administrator is authorized to and shall prescribe, in writing, minimum rules for uniformity in reporting, application, and collection of the real estate excise tax imposed by this ordinance. The Tribal tax administrator shall also prescribe a real estate tax affidavit form which shall require the following:

11.1 Identification of the seller and purchaser;

- 11.2 Description of the property involved including the tax parcel or account number(s);
- 11.3 Date of sale, type of instrument of sale, nature of transfer;
- 11.4 Total or gross sales price;
- 11.5 Whether or not the land is exempt under this ordinance or federal law;
- 11.6 Such additional information as the tax administrator by rule or regulation deems appropriate.

The affidavit shall be signed by either the seller or the buyer, or the agent of either, under oath attesting to the truth of all required information.

## 12. Applicability of General Administrative Provisions - Department Rules, Scope - Department Audit.

12.1 In addition to other rules and procedures to be adopted under this ordinance, the tribal tax administrator shall by rule provide for such other procedures and standards for the effective administration of this ordinance. The rules may include a manual which defines transactions which are taxable under this ordinance. The tribal tax administrator shall also annually conduct audits of transactions and affidavits filed under this ordinance.

12.2 The tribal tax administrator shall be appointed by and be responsible to the Board of Directors of the Tulalip Tribes of Washington.

12.3 All rules and procedures of the tribal tax administrator shall be first reviewed and approved by the Board of Directors of the Tulalip Tribes of Washington. Such rules and procedures may further set forth and define the role and responsibility of the tribal tax administrator.

13. Tribal Court Review. Any person may seek review in the Tribal Court, pursuant to the Court's civil procedures, of a tax imposed by this Ordinance, so long as administrative remedies have first been exhausted, and provided further, that nothing herein shall be ordered, adjudged or decreed except to the extent of the tax in question so paid.

## 14. Review and Savings Clause.

14.1 Effective Date: This ordinance shall become effective forthwith as provided by Article VI, Section 2 of the Constitution and By-laws of the Tulalip Tribes of Washington.

14.2 Savings Clause: If any section, paragraph, clause or word of this ordinance shall not be approved by the Secretary of the Interior or for any reason be adjudged invalid, such shall not invalidate the remainder thereof but shall be confined in its operation to said section, paragraph, clause or word.

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*Legislative History*

Adopted Laws of May 22, 1987

Approved June 1, 1987, Superintendent, Puget Sound Agency, BIA

Amended by Tulalip Resolution No. 89-0164, Laws of December 15, 1989

Approved, December 28, 1989, Superintendent, Puget Sound Agency, BIA

Amended by Tulalip Resolution No. 04-022, Laws of January 16, 2004

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*Related Laws*

Ordinance #36, Laws of July 19, 1977 (Tobacco Regulation and Tax)

Ordinance #41, Laws of April 5, 1980 (Business Organizations)

Ordinance #43, Adopted by Laws of April 14, 1977 (Utility Tax)

Ordinance #45, Adopted by Laws of November 6, 1979 (Business Licenses & Tax)

Ordinance #46, Laws of April 5, 1980 (Revising and Repealing Certain Ordinances)

Ordinance #46, Laws of May 10, 1980 (Revising and Repealing Certain Ordinances)