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SENATE BILL 6734

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State of Washington

61st Legislature

2010 Regular Session

By Senator King

Read first time 01/25/10. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to modifying interest rate and penalty provisions  
2 in the current use program; amending RCW 84.34.070 and 84.34.080;  
3 reenacting and amending RCW 84.34.108; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 84.34.108 and 2009 c 513 s 2, 2009 c 354 s 3, 2009 c  
6 255 s 2, and 2009 c 246 s 3 are each reenacted and amended to read as  
7 follows:

8 (1) When land has once been classified under this chapter, a  
9 notation of the classification shall be made each year upon the  
10 assessment and tax rolls and the land shall be valued pursuant to RCW  
11 84.34.060 or 84.34.065 until removal of all or a portion of the  
12 classification by the assessor upon occurrence of any of the following:

13 (a) Receipt of notice from the owner to remove all or a portion of  
14 the classification;

15 (b) Sale or transfer to an ownership, except a transfer that  
16 resulted from a default in loan payments made to or secured by a  
17 governmental agency that intends to or is required by law or regulation  
18 to resell the property for the same use as before, making all or a  
19 portion of the land exempt from ad valorem taxation;

1 (c) Sale or transfer of all or a portion of the land to a new  
2 owner, unless the new owner has signed a notice of classification  
3 continuance, except transfer to an owner who is an heir or devisee of  
4 a deceased owner shall not, by itself, result in removal of  
5 classification. The notice of continuance shall be on a form prepared  
6 by the department. If the notice of continuance is not signed by the  
7 new owner and attached to the real estate excise tax affidavit, all  
8 additional taxes calculated pursuant to subsection (4) of this section  
9 shall become due and payable by the seller or transferor at time of  
10 sale. The auditor shall not accept an instrument of conveyance  
11 regarding classified land for filing or recording unless the new owner  
12 has signed the notice of continuance or the additional tax has been  
13 paid, as evidenced by the real estate excise tax stamp affixed thereto  
14 by the treasurer. The seller, transferor, or new owner may appeal the  
15 new assessed valuation calculated under subsection (4) of this section  
16 to the county board of equalization in accordance with the provisions  
17 of RCW 84.40.038. Jurisdiction is hereby conferred on the county board  
18 of equalization to hear these appeals;

19 (d) Determination by the assessor, after giving the owner written  
20 notice and an opportunity to be heard, that all or a portion of the  
21 land no longer meets the criteria for classification under this  
22 chapter. The criteria for classification pursuant to this chapter  
23 continue to apply after classification has been granted.

24 The granting authority, upon request of an assessor, shall provide  
25 reasonable assistance to the assessor in making a determination whether  
26 the land continues to meet the qualifications of RCW 84.34.020 (1) or  
27 (3). The assistance shall be provided within thirty days of receipt of  
28 the request.

29 (2) Land may not be removed from classification because of:

30 (a) The creation, sale, or transfer of forestry riparian easements  
31 under RCW 76.13.120; or

32 (b) The creation, sale, or transfer of a fee interest or a  
33 conservation easement for the riparian open space program under RCW  
34 76.09.040.

35 (3) Within thirty days after the removal of all or a portion of the  
36 land from current use classification under subsection (1) of this  
37 section, the assessor shall notify the owner in writing, setting forth  
38 the reasons for the removal. The seller, transferor, or owner may

1 appeal the removal to the county board of equalization in accordance  
2 with the provisions of RCW 84.40.038. The removal notice must explain  
3 the steps needed to appeal the removal decision, including when a  
4 notice of appeal must be filed, where the forms may be obtained, and  
5 how to contact the county board of equalization.

6 (4) Unless the removal is reversed on appeal, the assessor shall  
7 revalue the affected land with reference to its true and fair value on  
8 January 1st of the year of removal from classification. Both the  
9 assessed valuation before and after the removal of classification shall  
10 be listed and taxes shall be allocated according to that part of the  
11 year to which each assessed valuation applies. Except as provided in  
12 subsection (6) of this section, an additional tax, applicable interest,  
13 and penalty shall be imposed which shall be due and payable to the  
14 treasurer thirty days after the owner is notified of the amount of the  
15 additional tax. As soon as possible, the assessor shall compute the  
16 amount of additional tax, applicable interest, and penalty and the  
17 treasurer shall mail notice to the owner of the amount thereof and the  
18 date on which payment is due. The amount of the additional tax,  
19 applicable interest, and penalty shall be determined as follows:

20 (a) The amount of additional tax (~~(shall be)~~) is equal to the  
21 difference between the property tax paid as "open space land," "farm  
22 and agricultural land," or "timber land" and the amount of property tax  
23 otherwise due and payable for the (~~(seven)~~) five years last past had  
24 the land not been so classified;

25 (b) The amount of applicable interest (~~(shall be equal to the~~  
26 ~~interest upon the amounts of the additional tax paid at the same~~  
27 ~~statutory rate charged on delinquent property taxes from the dates on~~  
28 ~~which the additional tax could have been paid without penalty if the~~  
29 ~~land had been assessed at a value without regard to this chapter)), to  
30 be charged on the amount of additional tax imposed under (a) of this  
31 subsection, must equal the average of the rate of inflation for each  
32 year used to calculate the total amount of additional tax. For  
33 purposes of this subsection, "rate of inflation" means the percentage  
34 change in the implicit price deflator for personal consumption  
35 expenditures for the United States as published by the bureau of  
36 economic analysis of the federal department of commerce, or any  
37 successor agency, in September for the twelve-month period that~~

1 preceded each year used to calculate the amount of additional tax due.  
2 The department of revenue must publish this rate every year by rule by  
3 December 31st;

4 (c) The amount of the penalty shall be as provided in RCW  
5 84.34.080. The penalty shall not be imposed if the removal satisfies  
6 the conditions of RCW 84.34.070.

7 (5) Additional tax, applicable interest, and penalty, shall become  
8 a lien on the land which shall attach at the time the land is removed  
9 from classification under this chapter and shall have priority to and  
10 shall be fully paid and satisfied before any recognizance, mortgage,  
11 judgment, debt, obligation or responsibility to or with which the land  
12 may become charged or liable. This lien may be foreclosed upon  
13 expiration of the same period after delinquency and in the same manner  
14 provided by law for foreclosure of liens for delinquent real property  
15 taxes as provided in RCW 84.64.050. Any additional tax unpaid on its  
16 due date shall thereupon become delinquent. From the date of  
17 delinquency until paid, interest shall be charged at the same rate  
18 applied by law to delinquent ad valorem property taxes.

19 (6) The additional tax, applicable interest, and penalty specified  
20 in subsection (4) of this section shall not be imposed if the removal  
21 of classification pursuant to subsection (1) of this section resulted  
22 solely from:

23 (a) Transfer to a government entity in exchange for other land  
24 located within the state of Washington;

25 (b)(i) A taking through the exercise of the power of eminent  
26 domain, or (ii) sale or transfer to an entity having the power of  
27 eminent domain in anticipation of the exercise of such power, said  
28 entity having manifested its intent in writing or by other official  
29 action;

30 (c) A natural disaster such as a flood, windstorm, earthquake, or  
31 other such calamity rather than by virtue of the act of the landowner  
32 changing the use of the property;

33 (d) Official action by an agency of the state of Washington or by  
34 the county or city within which the land is located which disallows the  
35 present use of the land;

36 (e) Transfer of land to a church when the land would qualify for  
37 exemption pursuant to RCW 84.36.020;

1 (f) Acquisition of property interests by state agencies or agencies  
2 or organizations qualified under RCW 84.34.210 and 64.04.130 for the  
3 purposes enumerated in those sections. At such time as these property  
4 interests are not used for the purposes enumerated in RCW 84.34.210 and  
5 64.04.130 the additional tax specified in subsection (4) of this  
6 section shall be imposed;

7 (g) Removal of land classified as farm and agricultural land under  
8 RCW 84.34.020(2)(f);

9 (h) Removal of land from classification after enactment of a  
10 statutory exemption that qualifies the land for exemption and receipt  
11 of notice from the owner to remove the land from classification;

12 (i) The creation, sale, or transfer of forestry riparian easements  
13 under RCW 76.13.120;

14 (j) The creation, sale, or transfer of a conservation easement of  
15 private forest lands within unconfined channel migration zones or  
16 containing critical habitat for threatened or endangered species under  
17 RCW 76.09.040;

18 (k) The sale or transfer of land within two years after the death  
19 of the owner of at least a fifty percent interest in the land if the  
20 land has been assessed and valued as classified forest land, designated  
21 as forest land under chapter 84.33 RCW, or classified under this  
22 chapter continuously since 1993. The date of death shown on a death  
23 certificate is the date used for the purposes of this subsection  
24 (6)(k); or

25 (l)(i) The discovery that the land was classified under this  
26 chapter in error through no fault of the owner. For purposes of this  
27 subsection (6)(l), "fault" means a knowingly false or misleading  
28 statement, or other act or omission not in good faith, that contributed  
29 to the approval of classification under this chapter or the failure of  
30 the assessor to remove the land from classification under this chapter.

31 (ii) For purposes of this subsection (6), the discovery that land  
32 was classified under this chapter in error through no fault of the  
33 owner is not the sole reason for removal of classification pursuant to  
34 subsection (1) of this section if an independent basis for removal  
35 exists. Examples of an independent basis for removal include the owner  
36 changing the use of the land or failing to meet any applicable income  
37 criteria required for classification under this chapter.

1       **Sec. 2.** RCW 84.34.070 and 1992 c 69 s 10 are each amended to read  
2 as follows:

3       (1) When land has once been classified under this chapter, it shall  
4 remain under such classification and shall not be applied to other use  
5 except as provided by subsection (2) of this section for at least ten  
6 years from the date of classification and shall continue under such  
7 classification until and unless withdrawn from classification after  
8 notice of request for withdrawal shall be made by the owner. (~~During~~  
9 ~~any year~~) After (~~eight years of~~) the initial ten-year classification  
10 period (~~have~~) has elapsed, notice of request for withdrawal of all or  
11 a portion of the land may be given by the owner to the assessor or  
12 assessors of the county or counties in which such land is situated. In  
13 the event that a portion of a parcel is removed from classification,  
14 the remaining portion must meet the same requirements as did the entire  
15 parcel when such land was originally granted classification pursuant to  
16 this chapter unless the remaining parcel has different income criteria.  
17 Within seven days the assessor shall transmit one copy of such notice  
18 to the legislative body which originally approved the application. The  
19 assessor or assessors, as the case may be, (~~shall, when two assessment~~  
20 ~~years have elapsed following the date of receipt of such notice,~~) must  
21 withdraw such land from such classification and the land shall be  
22 subject to the additional tax and applicable interest due under RCW  
23 84.34.108. Agreement to tax according to use shall not be considered  
24 to be a contract and can be abrogated at any time by the legislature in  
25 which event no additional tax or penalty shall be imposed.

26       (2) The following reclassifications are not considered withdrawals  
27 or removals and are not subject to additional tax under RCW 84.34.108:

- 28       (a) Reclassification between lands under RCW 84.34.020 (2) and (3);  
29       (b) Reclassification of land classified under RCW 84.34.020 (2) or  
30 (3) or chapter 84.33 RCW to open space land under RCW 84.34.020(1);  
31       (c) Reclassification of land classified under RCW 84.34.020 (2) or  
32 (3) to forest land classified under chapter 84.33 RCW; and  
33       (d) Reclassification of land classified as open space land under  
34 RCW 84.34.020(1)(c) and reclassified to farm and agricultural land  
35 under RCW 84.34.020(2) if the land had been previously classified as  
36 farm and agricultural land under RCW 84.34.020(2).

37       (3) Applications for reclassification shall be subject to

1 applicable provisions of RCW 84.34.037, 84.34.035, 84.34.041, and  
2 chapter 84.33 RCW.

3 (4) The income criteria for land classified under RCW 84.34.020(2)  
4 (b) and (c) may be deferred for land being reclassified from land  
5 classified under RCW 84.34.020 (1)(c) or (3), or chapter 84.33 RCW into  
6 RCW 84.34.020(2) (b) or (c) for a period of up to five years from the  
7 date of reclassification.

8 **Sec. 3.** RCW 84.34.080 and 1999 sp.s. c 4 s 705 are each amended to  
9 read as follows:

10 When land which has been classified under this chapter as open  
11 space land, farm and agricultural land, or timber land is applied to  
12 some other use, except through compliance with RCW 84.34.070, or except  
13 as a result solely from any one of the conditions listed in RCW  
14 84.34.108(6), the owner shall within sixty days notify the county  
15 assessor of such change in use and additional real property tax shall  
16 be imposed upon such land in an amount equal to the sum of the  
17 following:

18 (1) The total amount of the additional tax and applicable interest  
19 due under RCW 84.34.108; plus

20 (2) A penalty amounting to (~~twenty~~) ten percent of the amount  
21 determined in subsection (1) of this section.

22 NEW SECTION. **Sec. 4.** This act applies to taxes levied for  
23 collection in 2011 and thereafter.

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