

My Comments:

WAC 458-61A-201 (1) (a) – I recommend removing the proposed sentence and replacing it with “See WAC 458-61A-102.” Also, how does this address the circumstance where a joint owner (and a joint obligor on a home loan) conveys their interest in the property to the other joint owner and is removed from the loan? The remaining joint owner has not assumed any debt because the remaining joint owner continues to be obligated for the entire outstanding balance of the loan.

WAC 458-61A-201 (1) (b) – I am not sure why the language was stricken. Does the removal of this language affect any exemption for a partial gift?

WAC 458-61A-201 (2) – The second sentence does not state anything new, but effectively admits the challenges in providing more definite regulations regarding imposition of the excise tax.

WAC 458-61A-201 (3) (a) – I recommend revising the definition of “consideration” in WAC 458-61A-102.

WAC 458-61A-201 (3) (b) – Does the WAC really need to define “equity”?

WAC 458-61A-201 (4) (b) – Refinances the property at any time? How about one year later when the interest rates have dropped?

WAC 458-61A-201 (4) (a) – Why refer to a due on sale clause at all, especially if the actual debt does not change?

WAC 458-61A-201 (5) (c) – What happens in the case where a lender has given prior consent?

WAC 458-61A-201 (5) (b) – Is there a proposed update to the Supplemental Statement?

Example 3 – I recommend that the word “mortgage” not be inserted. Instead, this example could use the phrase “debt secured by an interest in the property.”

Example 3 – Existing debt with an enforceable due on sale clause. This permissible acceleration clause is enforceable only if Josh has not received lender’s prior consent. Typically, there are other clauses in the loan documents that permit the lender to accelerate the debt as well. Also, the loan may or may not require prior written consent. The example is drafted as if due on sale clause is always require prior written consent.

Example 4 – This is a “mixed bag” example, dealing with 1) unenforceable due on sale clause, and 2) historic and future monies contributed toward the joint account from which payments are made (along with groceries, utilities, etc.). This example also appears to contemplate contributions made after the transfer. At the time of the transfer (and thus the potential imposition of excise tax), there is no proof of contributions after the transaction. Also, Bob’s debt is \$175,000. After conveying the property to himself and Jane as tenants-in-common, Bob and Jane each own 50% of the property. Bob will be required to have obtained lender approval anyway to reduce the security on the loan to 50% of his original ownership interest.

Example 5 – Why is Bill’s equity only \$15,000? What evidence is necessary to prove (or disprove) that Melanie is “taking over the payment on the mortgage”? As a joint owner, Bill’s fractional interest in the property is not 50% – it is 100%.

Example 6 – This example does not specify whether Casey and Erin were joint obligors on the loan. As joint owners and as joint obligors, Casey and Erin were each obligated for 100% of the total debt on the property. As a joint owner, Casey’s fractional interest in the property is not 50% – it is 100%.

Example 7 – I strongly recommend not using the gender-specific descriptor “girlfriend.” As joint owners and likely joint obligors on the debt, there has been no transfer or relief of one half of the underlying debt.

Example 8 – This example refers to WAC 458-61A-215. Is this example solely for the purpose of showing that this transaction would more appropriately be exempted under WAC 458-61A-215 and not as a gift under WAC 458-61A-201?

Example 9 – By its language, this example creates a rebuttable presumption of taxability based on the appearance that it is “a business arrangement” or a “business venture.” Those phrases are likely not otherwise defined in the WACs. There is no discussion of what information or circumstances will constitute a sufficient rebuttal of the presumption. Like Example 4, this example takes into consideration financial transactions that may occur between the parties after the conveyance, regardless of when those financial transactions are contemplated or actually consummated.