

RCW 83.100.048 Deduction—Qualified family-owned business

interests. (1) For the purposes of determining the tax due under this chapter, a deduction is allowed for the value of the decedent's qualified family-owned business interests, not to exceed two million five hundred thousand dollars, if:

(a) The value of the decedent's qualified family-owned business interests exceed fifty percent of the decedent's Washington taxable estate determined without regard to the deduction for the applicable exclusion amount;

(b) During the eight-year period ending on the date of the decedent's death, there have been periods aggregating five years or more during which:

(i) Such interests were owned by the decedent or a member of the decedent's family;

(ii) There was material participation, within the meaning of section 2032A(e)(6) of the internal revenue code, by the decedent or a member of the decedent's family in the operation of the trade or business to which such interests relate;

(c) The qualified family-owned business interests are acquired by any qualified heir from, or passed to any qualified heir from, the decedent, within the meaning of RCW 83.100.046(2), and the decedent was at the time of his or her death a citizen or resident of the United States; and

(d) The value of the decedent's qualified family-owned business interests is not more than six million dollars.

(2)(a) Only amounts included in the decedent's federal taxable estate may be deducted under this subsection.

(b) Amounts deductible under RCW 83.100.046 may not be deducted under this section.

(3)(a) There is imposed an additional estate tax on a qualified heir if, within three years of the decedent's death and before the date of the qualified heir's death:

(i) The material participation requirements described in section 2032A(c)(6)(b)(ii) of the internal revenue code are not met with respect to the qualified family-owned business interest which was acquired or passed from the decedent;

(ii) The qualified heir disposes of any portion of a qualified family-owned business interest, other than by a disposition to a member of the qualified heir's family or a person with an ownership interest in the qualified family-owned business or through a qualified conservation contribution under section 170(h) of the internal revenue code;

(iii) The qualified heir loses United States citizenship within the meaning of section 877 of the internal revenue code or with respect to whom section 877(e)(1) applies, and such heir does not comply with the requirements of section 877(g) of the internal revenue code; or

(iv) The principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

(b) The amount of the additional estate tax imposed under this subsection is equal to the amount of tax savings under this section with respect to the qualified family-owned business interest acquired or passed from the decedent.

(c) Interest applies to the tax due under this subsection for the period beginning on the date that the estate tax liability was due

under this chapter and ending on the date the additional estate tax due under this subsection is paid. Interest under this subsection must be computed as provided in RCW 83.100.070(2).

(d) The tax imposed by this subsection is due the day that is six months after any taxable event described in (a) of this subsection occurred and must be reported on a return as provided by the department.

(e) The qualified heir is personally liable for the additional tax imposed by this subsection unless he or she has furnished a bond in favor of the department for such amount and for such time as the department determines necessary to secure the payment of amounts due under this subsection. The qualified heir, on furnishing a bond satisfactory to the department, is discharged from personal liability for any additional tax and interest under this subsection and is entitled to a receipt or writing showing such discharge.

(f) Amounts due under this subsection attributable to any qualified family-owned business interest are secured by a lien in favor of the state on the property in respect to which such interest relates. The lien under this subsection (3)(f) arises at the time the Washington return is filed on which a deduction under this section is taken and continues in effect until: (i) The tax liability under this subsection has been satisfied or has become unenforceable by reason of lapse of time; or (ii) the department is satisfied that no further tax liability will arise under this subsection.

(g) Security acceptable to the department may be substituted for the lien imposed by (f) of this subsection.

(h) For purposes of the assessment or correction of an assessment for additional taxes and interest imposed under this subsection, the limitations period in RCW 83.100.095 begins to run on the due date of the return required under (d) of this subsection.

(i) For purposes of this subsection, a qualified heir may not be treated as disposing of an interest described in section 2057(e)(1)(A) of the internal revenue code by reason of ceasing to be engaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of the qualified heir's family.

(4)(a) The department may require a taxpayer claiming a deduction under this section to provide the department with the names and contact information of all qualified heirs.

(b) The department may also require any qualified heir to submit to the department on an ongoing basis such information as the department determines necessary or useful in determining whether the qualified heir is subject to the additional tax imposed in subsection (3) of this section. The department may not require such information more frequently than twice per year. The department may impose a penalty on a qualified heir who fails to provide the information requested within thirty days of the date the department's written request for the information was sent to the qualified heir. The amount of the penalty under this subsection is five hundred dollars and may be collected in the same manner as the tax imposed under subsection (3) of this section.

(5) For purposes of this section, references to section 2057 of the internal revenue code refer to section 2057 of the internal revenue code, as existing on December 31, 2003.

(6) For purposes of this section, the following definitions apply:

(a) "Member of the decedent's family" and "member of the qualified heir's family" have the same meaning as "member of the family" in RCW 83.100.046(10).

(b) "Qualified family-owned business interest" has the same meaning as provided in section 2057(e) of the internal revenue code of 1986.

(c) "Qualified heir" has the same meaning as provided in section 2057(i) of the internal revenue code of 1986.

(7) This section applies to the estates of decedents dying on or after January 1, 2014. [2013 2nd sp.s. c 2 s 3.]

Findings—Intent—2013 2nd sp.s. c 2: "(1) In 2005, to address an unexpected significant loss of tax revenue resulting from the *Estate of Hemphill* decision and to provide additional funding for public education, the legislature enacted a stand-alone estate and transfer tax, effective May 17, 2005. The stand-alone estate and transfer tax applies to the transfer of property at death. By defining the term "transfer" to mean a "transfer as used in section 2001 of the internal revenue code," the legislature clearly expressed its intent that a "transfer" for purposes of determining the federal taxable estate is also a "transfer" for purposes of determining the Washington taxable estate.

(2) In *In re Estate of Bracken*, Docket No. 84114-4, the Washington supreme court narrowly construed the term "transfer" as defined in the Washington estate tax code.

(3) The legislature finds that it is well established that the term "transfer" as used in the federal estate tax code is construed broadly and extends to the "shifting from one to another of any power or privilege incidental to the ownership or enjoyment of property" that occurs at death. *Fernandez v. Wiener*, 326 U.S. 340, 352 (1945).

(4) The legislature further finds that: The Bracken decision held certain qualified terminable interest property (QTIP) of married couples was transferred without incurring Washington state estate tax liability, which: (a) Creates an inequity never intended by the legislature because unmarried individuals did not enjoy any similar opportunities to avoid or greatly reduce their potential Washington estate tax liability; and (b) may create disparate treatment between QTIP property and other property transferred between spouses that is eligible for the marital deduction.

(5) Therefore, the legislature finds that it is necessary to reinstate the legislature's intended meaning when it enacted the estate tax, restore parity between married couples and unmarried individuals, restore parity between QTIP property and other property eligible for the marital deduction, and prevent the adverse fiscal impacts of the Bracken decision by reaffirming its intent that the term "transfer" as used in the Washington estate and transfer tax is to be given its broadest possible meaning consistent with established United States supreme court precedents, subject only to the limits and exceptions expressly provided by the legislature.

(6) As curative, clarifying, and remedial, the legislature intends for this act to apply both prospectively and retroactively to estates of decedents dying on or after May 17, 2005." [2013 2nd sp.s. c 2 s 1.]

Final judgment—Affect—2013 2nd sp.s. c 2: "This act does not affect any final judgment, no longer subject to appeal, entered by a

court of competent jurisdiction before June 14, 2013." [2013 2nd sp.s. c 2 s 10.]

Effective dates—2013 2nd sp.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 14, 2013], except for sections 3, 4, and 6 of this act which take effect January 1, 2014." [2013 2nd sp.s. c 2 s 14.]