
HOUSE BILL 1920

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Ormsby, Carlyle, Hunter, and Pollet; by request of Department of Revenue

Read first time 02/18/13. Referred to Committee on Finance.

1 AN ACT Relating to preserving funding deposited into the education
2 legacy trust account used to support common schools and access to
3 higher education by restoring the application of the Washington estate
4 and transfer tax to certain property transfers; amending RCW
5 83.100.020, 83.100.047, and 83.100.047; creating new sections;
6 providing an effective date; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** (1) In 2005, to address an unexpected
9 significant loss of tax revenue resulting from the *Estate of Hemphill*
10 decision and to provide additional funding for public education, the
11 legislature enacted a stand-alone estate and transfer tax, effective
12 May 17, 2005. The stand-alone estate and transfer tax applies to the
13 transfer of property at death. By defining the term "transfer" to mean
14 a "transfer as used in section 2001 of the internal revenue code," the
15 legislature clearly expressed its intent that a "transfer" for purposes
16 of determining the federal taxable estate is also a "transfer" for
17 purposes of determining the Washington taxable estate.

18 (2) In *In re Estate of Bracken*, Docket No. 84114-4, the Washington

1 supreme court narrowly construed the term "transfer" as defined in the
2 Washington estate tax code.

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

8 (4) The legislature further finds that it is necessary to prevent
9 the adverse fiscal impacts of the *Bracken* decision by reaffirming its
10 intent that the term "transfer" as used in the Washington estate and
11 transfer tax is to be given its broadest possible meaning consistent
12 with established United States supreme court precedents, subject only
13 to the limits and exceptions expressly provided by the legislature.

14 (5) As curative, clarifying, and remedial, the legislature intends
15 for this act to apply both prospectively and retroactively to estates
16 of decedents dying on or after May 17, 2005.

17 **Sec. 2.** RCW 83.100.020 and 2005 c 516 s 2 are each amended to read
18 as follows:

19 ~~((As used in this chapter:))~~ The following definitions in this
20 section apply throughout this chapter unless the context clearly
21 requires otherwise.

- 22 (1) "Decedent" means a deceased individual((+)).
- 23 (2) "Department" means the department of revenue, the director of
24 that department, or any employee of the department exercising authority
25 lawfully delegated to him by the director((+)).
- 26 (3) "Federal return" means any tax return required by chapter 11 of
27 the internal revenue code((+)).
- 28 (4) "Federal tax" means a tax under chapter 11 of the internal
29 revenue code((+)).
- 30 (5) "Gross estate" means "gross estate" as defined and used in
31 section 2031 of the internal revenue code((+)).
- 32 (6) "Person" means any individual, estate, trust, receiver,
33 cooperative association, club, corporation, company, firm, partnership,
34 joint venture, syndicate, or other entity and, to the extent permitted
35 by law, any federal, state, or other governmental unit or subdivision
36 or agency, department, or instrumentality thereof((+)).

1 (7) "Person required to file the federal return" means any person
2 required to file a return required by chapter 11 of the internal
3 revenue code, such as the personal representative of an estate((+)).

4 (8) "Property" means property included in the gross estate((+)).

5 (9) "Resident" means a decedent who was domiciled in Washington at
6 time of death((+)).

7 (10) "Taxpayer" means a person upon whom tax is imposed under this
8 chapter, including an estate or a person liable for tax under RCW
9 83.100.120((+)).

10 (11) "Transfer" means "transfer" as used in section 2001 of the
11 internal revenue code and includes any shifting upon death of the
12 economic benefit in property or any power or legal privilege incidental
13 to the ownership or enjoyment of property. However, "transfer" does
14 not include a qualified heir disposing of an interest in property
15 qualifying for a deduction under RCW 83.100.046 or ceasing to use the
16 property for farming purposes((+)).

17 (12) "Internal revenue code" means(~~(, for the purposes of this~~
18 ~~chapter and RCW 83.110.010,)~~) the United States internal revenue code
19 of 1986, as amended or renumbered as of January 1, 2005((+)).

20 (13) "Washington taxable estate" means the federal taxable estate
21 and includes, but is not limited to, the value of any property included
22 in the gross estate under section 2044 of the internal revenue code,
23 regardless of whether the decedent's interest in such property was
24 acquired before May 17, 2005, (a) plus amounts required to be added to
25 the Washington taxable estate under RCW 83.100.047, (b) less:
26 ~~((+))~~(i) One million five hundred thousand dollars for decedents
27 dying before January 1, 2006; and ~~((+))~~(ii) two million dollars for
28 decedents dying on or after January 1, 2006; and ~~((+))~~(iii) the
29 amount of any deduction allowed under RCW 83.100.046; and (iv) amounts
30 allowed to be deducted from the Washington taxable estate under RCW
31 83.100.047.

32 (14) "Federal taxable estate" means the taxable estate as
33 determined under chapter 11 of the internal revenue code without regard
34 to: (a) The termination of the federal estate tax under section 2210
35 of the internal revenue code or any other provision of law, and (b) the
36 deduction for state estate, inheritance, legacy, or succession taxes
37 allowable under section 2058 of the internal revenue code.

1 **Sec. 3.** RCW 83.100.047 and 2005 c 516 s 13 are each amended to
2 read as follows:

3 (1) If the federal taxable estate on the federal return is
4 determined by making an election under section 2056 or 2056A of the
5 internal revenue code, or if no federal return is required to be filed,
6 the department may provide by rule for a separate election on the
7 Washington return, consistent with section 2056 or 2056A of the
8 internal revenue code, for the purpose of determining the amount of tax
9 due under this chapter. The election (~~((shall be))~~) is binding on the
10 estate and the beneficiaries, consistent with the internal revenue
11 code. All other elections or valuations on the Washington return
12 (~~((shall))~~) must be made in a manner consistent with the federal return,
13 if a federal return is required, and such rules as the department may
14 provide.

15 (2) Amounts deducted for federal income tax purposes under section
16 642(g) of the internal revenue code of 1986(~~((, shall))~~) are not (~~((be))~~)
17 allowed as deductions in computing the amount of tax due under this
18 chapter.

19 (3) Notwithstanding any department rule, if a taxpayer makes an
20 election consistent with section 2056 of the internal revenue code as
21 permitted under this section, the taxpayer's Washington taxable estate,
22 and the surviving spouse's Washington taxable estate, must be adjusted
23 as follows:

24 (a) For the taxpayer that made the election, any amount deducted by
25 reason of section 2056(b)(7) of the internal revenue code is added to,
26 and the value of property for which a Washington election under this
27 section was made is deducted from, the Washington taxable estate.

28 (b) For the estate of the surviving spouse, the amount included in
29 the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of
30 the internal revenue code is deducted from, and the value of any
31 property for which an election under this section was previously made
32 is added to, the Washington taxable estate.

33 **Sec. 4.** RCW 83.100.047 and 2009 c 521 s 192 are each amended to
34 read as follows:

35 (1)(a) If the federal taxable estate on the federal return is
36 determined by making an election under section 2056 or 2056A of the
37 internal revenue code, or if no federal return is required to be filed,

1 the department may provide by rule for a separate election on the
2 Washington return, consistent with section 2056 or 2056A of the
3 internal revenue code and (b) of this subsection, for the purpose of
4 determining the amount of tax due under this chapter. The election
5 (~~shall be~~) is binding on the estate and the beneficiaries, consistent
6 with the internal revenue code and (b) of this subsection. All other
7 elections or valuations on the Washington return (~~shall~~) must be made
8 in a manner consistent with the federal return, if a federal return is
9 required, and such rules as the department may provide.

10 (b) The department (~~shall~~) must provide by rule that a state
11 registered domestic partner is deemed to be a surviving spouse and
12 entitled to a deduction from the Washington taxable estate for any
13 interest passing from the decedent to his or her domestic partner,
14 consistent with section 2056 or 2056A of the internal revenue code but
15 regardless of whether such interest would be deductible from the
16 federal gross estate under section 2056 or 2056A of the internal
17 revenue code.

18 (2) Amounts deducted for federal income tax purposes under section
19 642(g) of the internal revenue code of 1986 (~~shall~~) are not (~~be~~)
20 allowed as deductions in computing the amount of tax due under this
21 chapter.

22 (3) Notwithstanding any department rule, if a taxpayer makes an
23 election consistent with section 2056 of the internal revenue code as
24 permitted under this section, the taxpayer's Washington taxable estate,
25 and the surviving spouse's Washington taxable estate, must be adjusted
26 as follows:

27 (a) For the taxpayer that made the election, any amount deducted by
28 reason of section 2056(b)(7) of the internal revenue code is added to,
29 and the value of property for which a Washington election under this
30 section was made is deducted from, the Washington taxable estate.

31 (b) For the estate of the surviving spouse, the amount included in
32 the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of
33 the internal revenue code is deducted from, and the value of any
34 property for which an election under this section was previously made
35 is added to, the Washington taxable estate.

36 NEW SECTION. Sec. 5. Sections 2 and 3 of this act apply both

1 prospectively and retroactively to all estates of decedents dying on or
2 after May 17, 2005.

3 NEW SECTION. **Sec. 6.** This act does not affect any final judgment,
4 no longer subject to appeal, entered by a court of competent
5 jurisdiction before the effective date of this section.

6 NEW SECTION. **Sec. 7.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 8.** Section 3 of this act expires January 1,
11 2014.

12 NEW SECTION. **Sec. 9.** Section 4 of this act takes effect January
13 1, 2014.

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