

HOUSE BILL REPORT

HB 2224

As Passed Legislature

Title: An act relating to Washington estate tax apportionment.

Brief Description: Concerning Washington estate tax apportionment.

Sponsors: Representatives Nealey and Pedersen; by request of Washington State Bar Association.

Brief History:

Committee Activity:

Judiciary: 1/11/12, 1/12/12 [DP].

Floor Activity:

Passed House: 2/9/12, 93-0.

Passed Senate: 3/1/12, 45-3.

Passed Legislature.

Brief Summary of Bill

- Exonerates small gifts of money or tangible personal property from estate tax apportionment.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Hansen, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Omeara Harrington (786-7136).

Background:

The estate tax is a tax on the value of the estate of a person living in Washington at the time of their death or a non-resident who owns property in Washington at the time of their death. The personal representative of a decedent's estate is required to file a state tax return within nine months of the decedent's death if the gross estate or taxable estate plus any taxable gifts is valued at \$2 million or more. Washington's estate tax ranges from 10 percent to 19 percent

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of the taxable estate, depending on the estate's value. The taxable estate is calculated by subtracting \$2 million and any other applicable statutory deductions from the gross estate.

Washington has adopted the Uniform Estate Tax Apportionment Act (Act). The Act provides a default system for apportioning estate taxes among those interested in an estate in the event that a decedent has not done so. If a decedent's will or revocable trust provides for apportionment of the estate tax among beneficiaries, that provision will be followed. However, if no such provision is made, or to the extent that the apportionment provision is incomplete, the estate tax is apportioned ratably among each person who has an interest in the estate, with some exceptions.

Summary of Bill:

The Washington Uniform Estate Tax Apportionment Act is modified to provide that beneficiaries receiving specific pecuniary gifts or specific gifts of tangible personal property are exonerated from apportionment of estate tax up to a certain amount. Beneficiaries receiving specific gifts of tangible personal property are exonerated from apportionment of the estate tax up to the value of property permitted to pass by affidavit for small estates pursuant to probate code (currently \$100,000), and beneficiaries receiving specific gifts of money are exonerated from apportionment of the estate tax up to half the value of property permitted to pass by affidavit for small estates pursuant to probate code (currently \$50,000). The tax associated with the exonerated gifts is reapportioned among the beneficiaries receiving non-exonerated gifts.

If the aggregate value of a decedent's gifts of money or tangible personal property exceeds the exoneration ceiling for that kind of gift, each beneficiary receiving that kind of gift will share the maximum exoneration amount (either \$50,000 or \$100,000 depending on whether the gift is pecuniary or in the form of tangible personal property) on a pro rata basis with the other beneficiaries receiving that kind of gift. That is, a percentage of each beneficiary's gift of money or tangible personal property will be exonerated in the amount of the total exoneration limit that reflects that beneficiary's proportional share of all gifts of money or tangible personal property from the estate.

Gifts must meet certain criteria to qualify for exoneration. First, the exoneration only applies to specific gifts. If a gift is made of the residual estate, this apportionment exoneration will not apply. Second, the exoneration will only apply to qualifying gifts of money and tangible personal property.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) In the event you have an estate tax and the lawyer does not specifically put in the will or the trust who is to be paying the estate tax, the smaller beneficiaries (up to \$100,000) have to share in that estate tax. All this does is try to make it fair, so that the people receiving a small inheritance will not have to pay a disproportionate share of the tax.

This bill makes a positive difference in real people's lives at no cost to the state. This is a bill that realizes grandma's or grandpa's intent.

This was a statute that came out of the Washington State Gift and Estate Tax Committee, a committee made up primarily of estate planners. This legislation has been in planning for more than three years. It is a minor piece of legislation that is not a concern to the Department of Revenue and it will not reduce the revenues to the state from estate tax or require rulemaking. What it does is relieve some of the smaller beneficiaries from having the duty to pay their apportioned part of estate tax, but the estate would still pay the full tax due and owing. The tax is coming out of the corpus of the estate, and then it has to be allocated among the people who are receiving the gifts. Absent this statute, all of the beneficiaries receiving all of the gifts, whether it is a small amount of cash or a piece of jewelry or some other item of property that has value, would have to pay a portion of the estate tax.

People will bequeath a piece of jewelry or a small pecuniary bequest to a person that is special to them, but not a relative or beneficiary of the estate in general. The estate's fiduciary has the task of going to this beneficiary for the estate tax apportioned to the gift. This is especially distasteful when the decedent gives an old lifelong friend her ruby diamond necklace and the recipient is old or sick and has no cash to give. This is a relatively small exemption from estate tax for people who are receiving a relatively small gift and it will allow the testator to really effect the intent of that particular gift. They do not intend for those beneficiaries to have to pay a portion of the estate tax.

In terms of magnitude, in Washington there is a \$2 million exemption so the only estates at issue here are greater than \$2 million.

(Opposed) None.

Persons Testifying: Representative Nealey, prime sponsor; and Kathryn Leathers and Ben Porter, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.