

SSB 5052 - H COMM AMD  
By Committee on Judiciary

ADOPTED 04/12/2005

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be cited as  
4 the Washington Uniform Estate Tax Apportionment Act of 2005.

5 NEW SECTION. **Sec. 2.** DEFINITIONS. The following definitions  
6 apply throughout this chapter unless the context clearly requires  
7 otherwise.

8 (1) "Apportionable estate" means the value of the gross estate as  
9 finally determined for purposes of the estate tax to be apportioned  
10 reduced by:

11 (a) Any claim or expense allowable as a deduction for purposes of  
12 the tax;

13 (b) The value of any interest in property that, for purposes of the  
14 tax, qualifies for a marital or charitable deduction or otherwise is  
15 deductible or is exempt; and

16 (c) Any amount added to the decedent's gross estate because of a  
17 gift tax on transfers made before death.

18 (2) "Estate tax" means a federal, state, or foreign tax imposed  
19 because of the death of an individual and interest and penalties  
20 associated with the tax. The term does not include an inheritance tax,  
21 income tax, or generation-skipping transfer tax other than a  
22 generation-skipping transfer tax incurred on a direct skip taking  
23 effect at death.

24 (3) "Gross estate" means, with respect to an estate tax, all  
25 interests in property subject to the tax.

26 (4) "Person" means an individual, corporation, business trust,  
27 estate, trust, partnership, limited liability company, association,  
28 joint venture, public corporation, government, governmental

1 subdivision, agency, or instrumentality, or any other legal or  
2 commercial entity.

3 (5) "Ratable" means apportioned or allocated pro rata according to  
4 the relative values of interests to which the term is to be applied.  
5 "Ratably" has a corresponding meaning.

6 (6) "Time-limited interest" means an interest in property which  
7 terminates on a lapse of time or on the occurrence or nonoccurrence of  
8 an event or which is subject to the exercise of discretion that could  
9 transfer a beneficial interest to another person. The term does not  
10 include a cotenancy unless the cotenancy itself is a time-limited  
11 interest.

12 (7) "Value" means, with respect to an interest in property, fair  
13 market value as finally determined for purposes of the estate tax that  
14 is to be apportioned, reduced by any outstanding debt secured by the  
15 interest without reduction for taxes paid or required to be paid or for  
16 any special valuation adjustment.

17 (8) "Internal Revenue Code" means the United States Internal  
18 Revenue Code of 1986, as amended or renumbered as of January 1, 2005.

19 NEW SECTION. **Sec. 3.** APPORTIONMENT BY WILL OR OTHER DISPOSITIVE  
20 INSTRUMENT. (1) Except as otherwise provided in subsection (3) of this  
21 section, the following rules apply:

22 (a) To the extent that a provision of a decedent's will provides  
23 for the apportionment of an estate tax, the tax must be apportioned  
24 accordingly.

25 (b) Any portion of an estate tax not apportioned pursuant to (a) of  
26 this subsection must be apportioned in accordance with any provision of  
27 a revocable trust of which the decedent was the settlor which provides  
28 for the apportionment of an estate tax. If conflicting apportionment  
29 provisions appear in two or more revocable trust instruments, the  
30 provision in the most recently dated instrument prevails. For purposes  
31 of this subsection (1)(b):

32 (i) A trust is revocable if it was revocable immediately after the  
33 trust instrument was executed, even if the trust subsequently becomes  
34 irrevocable; and

35 (ii) The date of an amendment to a revocable trust instrument is  
36 the date of the amended instrument only if the amendment contains an  
37 apportionment provision.

1 (c) If any portion of an estate tax is not apportioned pursuant to  
2 (a) or (b) of this subsection, and a provision in any other dispositive  
3 instrument provides that any interest in the property disposed of by  
4 the instrument is or is not to be applied to the payment of the estate  
5 tax attributable to the interest disposed of by the instrument, the  
6 provision controls the apportionment of the tax to that interest.

7 (2) Subject to subsection (3) of this section, and unless the  
8 decedent provides to the contrary, the following rules apply:

9 (a) If an apportionment provision provides that a person receiving  
10 an interest in property under an instrument is to be exonerated from  
11 the responsibility to pay an estate tax that would otherwise be  
12 apportioned to the interest:

13 (i) The tax attributable to the exonerated interest must be  
14 apportioned among the other persons receiving interests passing under  
15 the instrument; or

16 (ii) If the values of the other interests are less than the tax  
17 attributable to the exonerated interest, the deficiency must be  
18 apportioned ratably among the other persons receiving interests in the  
19 apportionable estate that are not exonerated from apportionment of the  
20 tax.

21 (b) If an apportionment provision provides that an estate tax is to  
22 be apportioned to an interest in property a portion of which qualifies  
23 for a marital or charitable deduction, the estate tax must first be  
24 apportioned ratably among the holders of the portion that does not  
25 qualify for a marital or charitable deduction and then apportioned  
26 ratably among the holders of the deductible portion to the extent that  
27 the value of the nondeductible portion is insufficient.

28 (c) Except as otherwise provided in (d) of this subsection, if an  
29 apportionment provision provides that an estate tax be apportioned to  
30 property in which one or more time-limited interests exist, other than  
31 interests in specified property under section 7 of this act, the tax  
32 must be apportioned to the principal of that property, regardless of  
33 the deductibility of some of the interests in that property.

34 (d) If an apportionment provision provides that an estate tax is to  
35 be apportioned to the holders of interests in property in which one or  
36 more time-limited interests exist and a charity has an interest that  
37 otherwise qualifies for an estate tax charitable deduction, the tax  
38 must first be apportioned, to the extent feasible, to interests in

1 property that have not been distributed to the persons entitled to  
2 receive the interests. No tax shall be paid from a charitable  
3 remainder annuity trust or a charitable remainder unitrust described in  
4 section 664 of the Internal Revenue Code and created during the  
5 decedent's life.

6 (3) A provision that apportions an estate tax is ineffective to the  
7 extent that it increases the tax apportioned to a person having an  
8 interest in the gross estate over which the decedent had no power to  
9 transfer immediately before the decedent executed the instrument in  
10 which the apportionment direction was made. For purposes of this  
11 section, a testamentary power of appointment is a power to transfer the  
12 property that is subject to the power.

13 NEW SECTION. **Sec. 4.** STATUTORY APPORTIONMENT OF ESTATE TAXES. To  
14 the extent that apportionment of an estate tax is not controlled by an  
15 instrument described in section 3 of this act and except as otherwise  
16 provided in sections 6 and 7 of this act, the following rules apply:

17 (1) Subject to subsections (2), (3), and (4) of this section, the  
18 estate tax is apportioned ratably to each person that has an interest  
19 in the apportionable estate.

20 (2) A generation-skipping transfer tax incurred on a direct skip  
21 taking effect at death is charged to the person to which the interest  
22 in property is transferred.

23 (3) If property is included in the decedent's gross estate because  
24 of section 2044 of the Internal Revenue Code or any similar estate tax  
25 provision, the difference between the total estate tax for which the  
26 decedent's estate is liable and the amount of estate tax for which the  
27 decedent's estate would have been liable if the property had not been  
28 included in the decedent's gross estate is apportioned ratably among  
29 the holders of interests in the property. The balance of the tax, if  
30 any, is apportioned ratably to each other person having an interest in  
31 the apportionable estate.

32 (4) Except as otherwise provided in section 3(2)(d) of this act and  
33 except as to property to which section 7 of this act applies, an estate  
34 tax apportioned to persons holding interests in property subject to a  
35 time-limited interest must be apportioned, without further  
36 apportionment, to the principal of that property.

1 (5) If the court finds that it is inequitable to apportion interest  
2 and penalties in the manner provided in this chapter because of special  
3 circumstances, it may direct apportionment thereon in the manner it  
4 finds equitable.

5 NEW SECTION. **Sec. 5.** CREDITS AND DEFERRALS. Except as otherwise  
6 provided in sections 6 and 7 of this act, the following rules apply to  
7 credits and deferrals of estate taxes:

8 (1) A credit resulting from the payment of gift taxes or from  
9 estate taxes paid on property previously taxed inures ratably to the  
10 benefit of all persons to which the estate tax is apportioned.

11 (2) A credit for state or foreign estate taxes inures ratably to  
12 the benefit of all persons to which the estate tax is apportioned,  
13 except that the amount of a credit for a state or foreign tax paid by  
14 a beneficiary of the property on which the state or foreign tax was  
15 imposed, directly or by a charge against the property, inures to the  
16 benefit of the beneficiary.

17 (3) If payment of a portion of an estate tax is deferred because of  
18 the inclusion in the gross estate of a particular interest in property,  
19 the benefit of the deferral inures ratably to the persons to which the  
20 estate tax attributable to the interest is apportioned. The burden of  
21 any interest charges incurred on a deferral of taxes and the benefit of  
22 any tax deduction associated with the accrual or payment of the  
23 interest charge is allocated ratably among the persons receiving an  
24 interest in the property.

25 NEW SECTION. **Sec. 6.** INSULATED PROPERTY--ADVANCEMENT OF TAX. (1)  
26 As used in this section:

27 (a) "Advanced fraction" means a fraction that has as its numerator  
28 the amount of the advanced tax and as its denominator the value of the  
29 interests in insulated property to which that tax is attributable.

30 (b) "Advanced tax" means the aggregate amount of estate tax  
31 attributable to interests in insulated property which is required to be  
32 advanced by uninsulated holders under subsection (3) of this section.

33 (c) "Insulated property" means property subject to a time-limited  
34 interest which is included in the apportionable estate and is  
35 unavailable for payment of an estate tax because of impossibility or

1 impracticability. Insulated property does not include property from  
2 which the beneficial holder has the unilateral right to cause  
3 distribution to himself or herself.

4 (d) "Uninsulated holder" means a person who has an interest in  
5 uninsured property.

6 (e) "Uninsulated property" means property included in the  
7 apportionable estate other than insulated property.

8 (2) If an estate tax is to be advanced pursuant to subsection (3)  
9 of this section by persons holding interests in uninsured property  
10 subject to a time-limited interest other than property to which section  
11 7 of this act applies, the tax must be advanced, without further  
12 apportionment, from the principal of the uninsured property.

13 (3) Subject to section 9 (2) and (4) of this act, an estate tax  
14 attributable to interests in insulated property must be advanced  
15 ratably by uninsured holders.

16 (4) A court having jurisdiction to determine the apportionment of  
17 an estate tax may require a beneficiary of an interest in insulated  
18 property to pay all or part of the estate tax otherwise apportioned to  
19 the interest if the court finds that it would be substantially more  
20 equitable for that beneficiary to bear the tax liability personally  
21 than for that part of the tax to be advanced by uninsured holders.

22 (5) Upon payment by an uninsured holder of estate tax required to  
23 be advanced, a court may require the beneficiary of an interest in  
24 insulated property to provide a bond or other security, including a  
25 recordable lien on the property of the beneficiary, for repayment of  
26 the advanced tax.

27 (6) When a distribution of insulated property is made, each  
28 uninsured holder may recover from the distributee a ratable portion  
29 of the advanced fraction of the property distributed. To the extent  
30 that undistributed insulated property ceases to be insulated, each  
31 uninsured holder may recover from the property a ratable portion of  
32 the advanced fraction of the total undistributed property.

33 NEW SECTION. **Sec. 7.** APPORTIONMENT AND RECAPTURE OF SPECIAL  
34 ELECTIVE BENEFITS. (1) As used in this section:

35 (a) "Special elective benefit" means a reduction in an estate tax  
36 obtained by an election for:

1 (i) A reduced valuation of specified property that is included in  
2 the gross estate;

3 (ii) A deduction from the gross estate, other than a marital or  
4 charitable deduction, allowed for specified property; or

5 (iii) An exclusion from the gross estate of specified property.

6 (b) "Specified property" means property for which an election has  
7 been made for a special elective benefit.

8 (2) If an election is made for one or more special elective  
9 benefits, an initial apportionment of a hypothetical estate tax must be  
10 computed as if no election for any of those benefits had been made.  
11 The aggregate reduction in estate tax resulting from all elections made  
12 must be allocated among holders of interests in the specified property  
13 in the proportion that the amount of deduction, reduced valuation, or  
14 exclusion attributable to each holder's interest bears to the aggregate  
15 amount of deductions, reduced valuations, and exclusions obtained by  
16 the decedent's estate from the elections. If the estate tax initially  
17 apportioned to the holder of an interest in specified property is  
18 reduced to zero, any excess amount of reduction reduces ratably the  
19 estate tax apportioned to other persons that receive interests in the  
20 apportionable estate.

21 (3) An additional estate tax imposed to recapture all or part of a  
22 special elective benefit must be charged to the persons that are liable  
23 for the additional tax under the law providing for the recapture.

24 NEW SECTION. **Sec. 8.** SECURING PAYMENT OF ESTATE TAX FROM PROPERTY  
25 IN POSSESSION OF FIDUCIARY. (1) A fiduciary may defer a distribution  
26 of property until the fiduciary is satisfied that adequate provision  
27 for payment of the estate tax has been made.

28 (2) A fiduciary may withhold from a distributee the estate tax  
29 apportioned to and the estate tax required to be advanced by the  
30 distributee.

31 (3) As a condition to a distribution, a fiduciary may require the  
32 distributee to provide a bond or other security for the estate tax  
33 apportioned to and the estate tax required to be advanced by the  
34 distributee.

35 NEW SECTION. **Sec. 9.** COLLECTION OF ESTATE TAX BY FIDUCIARY. (1)

1 A fiduciary responsible for payment of an estate tax may collect from  
2 any person the estate tax apportioned to and the estate tax required to  
3 be advanced by the person.

4 (2) Except as otherwise provided in section 6 of this act, any  
5 estate tax due from a person that cannot be collected from the person  
6 may be collected by the fiduciary from other persons in the following  
7 order of priority:

8 (a) Any person having an interest in the apportionable estate which  
9 is not exonerated from the tax;

10 (b) Any other person having an interest in the apportionable  
11 estate;

12 (c) Any person having an interest in the gross estate.

13 (3) A domiciliary fiduciary may recover from an ancillary personal  
14 representative the estate tax apportioned to the property controlled by  
15 the ancillary personal representative.

16 (4) The total tax collected from a person pursuant to this chapter  
17 may not exceed the value of the person's interest.

18 NEW SECTION. **Sec. 10.** RIGHT OF REIMBURSEMENT. (1) A person  
19 required under section 9 of this act to pay an estate tax greater than  
20 the amount due from the person under section 3 or 4 of this act has a  
21 right to reimbursement from another person to the extent that the other  
22 person has not paid the tax required by section 3 or 4 of this act and  
23 a right to reimbursement ratably from other persons to the extent that  
24 each has not contributed a portion of the amount collected under  
25 section 9(2) of this act.

26 (2) A fiduciary may enforce the right of reimbursement under  
27 subsection (1) of this section on behalf of the person that is entitled  
28 to the reimbursement and shall take reasonable steps to do so if  
29 requested by the person.

30 NEW SECTION. **Sec. 11.** ACTION TO DETERMINE OR ENFORCE CHAPTER--  
31 APPLICATION OF CHAPTER 11.96A RCW. Chapter 11.96A RCW applies to  
32 issues, questions, or disputes that arise under or that relate to this  
33 chapter. Any and all such issues, questions, or disputes may be  
34 resolved judicially or nonjudicially under chapter 11.96A RCW.



1           NEW SECTION.   **Sec. 12.**   UNIFORMITY OF APPLICATION AND CONSTRUCTION.

2   In applying and construing this uniform act, consideration must be  
3   given to the need to promote uniformity of the law with respect to its  
4   subject matter among states that enact it.

5           NEW SECTION.   **Sec. 13.**   SEVERABILITY.  If any provision of this act

6   or its application to any person or circumstance is held invalid, the  
7   remainder of the act or the application of the provision to other  
8   persons or circumstances is not affected.

9           NEW SECTION.   **Sec. 14.**   APPLICATION DATE.  (1) This act takes

10   effect for estate tax due on account of decedents who die on or after  
11   January 1, 2006.

12           (2) Sections 2 through 7 of this act do not apply to a decedent who  
13   dies after December 31, 2005, if the decedent continuously lacked  
14   testamentary capacity from January 1, 2006, until the date of death.  
15   For such a decedent, estate tax must be apportioned pursuant to the law  
16   in effect immediately before the effective date of this act.

17           NEW SECTION.   **Sec. 15.**   The following acts or parts of acts are  
18   each repealed:

19           (1) RCW 83.110.010 (Definitions) and 2000 c 129 s 1, 1998 c 292 s  
20   402, 1994 c 221 s 71, 1993 c 73 s 10, 1989 c 40 s 1, & 1986 c 63 s 1;

21           (2) RCW 83.110.020 (Apportionment of tax) and 2000 c 129 s 2, 1989  
22   c 40 s 2, & 1986 c 63 s 2;

23           (3) RCW 83.110.030 (Apportionment procedure) and 2000 c 129 s 3,  
24   1990 c 180 s 6, 1989 c 40 s 3, & 1986 c 63 s 3;

25           (4) RCW 83.110.040 (Collection of tax from persons interested in  
26   the estate--Security) and 1986 c 63 s 4;

27           (5) RCW 83.110.050 (Allowance for exemptions, deductions, and  
28   credits) and 2000 c 129 s 4, 1993 c 73 s 11, 1989 c 40 s 4, & 1986 c 63  
29   s 5;

30           (6) RCW 83.110.060 (Apportionment between temporary and remainder  
31   interests) and 2000 c 129 s 5, 1989 c 40 s 5, & 1986 c 63 s 6;

32           (7) RCW 83.110.070 (Time for recovery of tax from persons  
33   interested in the estate--Exoneration of fiduciary--Recovery of  
34   uncollectible taxes) and 1986 c 63 s 7;

- 1 (8) RCW 83.110.080 (Action by nonresident--Reciprocity) and 1986 c  
2 63 s 8;  
3 (9) RCW 83.110.090 (Coordination with federal law) and 2000 c 129  
4 s 6, 1989 c 40 s 6, & 1986 c 63 s 9;  
5 (10) RCW 83.110.900 (Construction) and 1986 c 63 s 10;  
6 (11) RCW 83.110.901 (Short title) and 1986 c 63 s 11;  
7 (12) RCW 83.110.902 (Captions) and 1986 c 63 s 13;  
8 (13) RCW 83.110.903 (Application) and 1988 c 64 s 26 & 1986 c 63 s  
9 14; and  
10 (14) RCW 83.110.904 (Severability--1986 c 63) and 1986 c 63 s 12.

11 NEW SECTION. **Sec. 16.** CAPTIONS NOT LAW. Captions used in this  
12 chapter are not part of the law.

13 NEW SECTION. **Sec. 17.** This act takes effect January 1, 2006.

14 NEW SECTION. **Sec. 18.** The repealed sections of law in section 15  
15 of this act shall not be construed as affecting any existing right,  
16 liability, or obligation incurred, under the repealed sections or under  
17 any rule or order adopted under those sections, nor as affecting any  
18 proceeding instituted under those sections.

19 NEW SECTION. **Sec. 19.** Sections 1 through 14 and 16 of this act  
20 constitute a new chapter in Title 83 RCW."

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**ADOPTED 04/12/2005**

21 On page 1, line 1 of the title, after "apportionment;" strike the  
22 remainder of the title and insert "adding a new chapter to Title 83  
23 RCW; creating a new section; repealing RCW 83.110.010, 83.110.020,  
24 83.110.030, 83.110.040, 83.110.050, 83.110.060, 83.110.070, 83.110.080,  
25 83.110.090, 83.110.900, 83.110.901, 83.110.902, 83.110.903, and  
26 83.110.904; and providing an effective date."

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