

SB 6096 - S AMD 618
By Senator Prentice

ADOPTED 04/19/2005

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

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that on February
4 3, 2005, the Washington state supreme court decided in *Estate of*
5 *Hemphill v. Dep't of Rev.*, Docket No. 74974-4, that Washington's estate
6 tax is tied to the current federal Internal Revenue Code. The
7 legislature finds that the revenue loss resulting from the *Hemphill*
8 decision will severely affect the legislature's ability to fund
9 programs vital to the peace, health, safety, and support of the
10 citizens of this state. The legislature intends to address the adverse
11 fiscal impact of the *Hemphill* decision and provide funding for
12 education by creating a stand-alone state estate tax.

13 **Sec. 2.** RCW 83.100.020 and 2001 c 320 s 15 are each amended to
14 read as follows:

15 As used in this chapter:

16 (1) "Decedent" means a deceased individual;

17 (2) "Department" means the department of revenue, the director of
18 that department, or any employee of the department exercising authority
19 lawfully delegated to him by the director;

20 (3) (~~"Federal credit" means (a) for a transfer, the maximum amount~~
21 ~~of the credit for state taxes allowed by section 2011 of the Internal~~
22 ~~Revenue Code; and (b) for a generation skipping transfer, the maximum~~
23 ~~amount of the credit for state taxes allowed by section 2604 of the~~
24 ~~Internal Revenue Code;~~

25 ~~(4))~~ "Federal return" means any tax return required by chapter 11
26 (~~or 13~~) of the Internal Revenue Code;

27 ~~((5))~~ (4) "Federal tax" means (~~(a) for a transfer,~~) a tax under
28 chapter 11 of the Internal Revenue Code; (~~and (b) for a generation-~~

1 ~~skipping transfer, the tax under chapter 13 of the Internal Revenue~~
2 ~~Code;~~

3 ~~(6) "Generation skipping transfer" means a "generation skipping~~
4 ~~transfer" as defined and used in section 2611 of the Internal Revenue~~
5 ~~Code;~~

6 ~~(7))~~ (5) "Gross estate" means "gross estate" as defined and used
7 in section 2031 of the Internal Revenue Code;

8 ~~((8) "Nonresident" means a decedent who was domiciled outside~~
9 ~~Washington at his death;~~

10 ~~(9))~~ (6) "Person" means any individual, estate, trust, receiver,
11 cooperative association, club, corporation, company, firm, partnership,
12 joint venture, syndicate, or other entity and, to the extent permitted
13 by law, any federal, state, or other governmental unit or subdivision
14 or agency, department, or instrumentality thereof;

15 ~~((10))~~ (7) "Person required to file the federal return" means any
16 person required to file a return required by chapter 11 ~~((or 13))~~ of
17 the Internal Revenue Code, such as the personal representative of an
18 estate ~~((; or a transferor, trustee, or beneficiary of a generation-~~
19 ~~skipping transfer; or a qualified heir with respect to qualified real~~
20 ~~property, as defined and used in section 2032A(c) of the Internal~~
21 ~~Revenue Code));~~

22 ~~((11))~~ (8) "Property" means ~~((a) for a transfer,)~~ property
23 included in the gross estate ~~((; and (b) for a generation skipping~~
24 ~~transfer, all real and personal property subject to the federal tax));~~

25 ~~((12))~~ (9) "Resident" means a decedent who was domiciled in
26 Washington at time of death;

27 ~~((13))~~ (10) "Taxpayer" means a person upon whom tax is imposed
28 under this chapter, including an estate or a person liable for tax
29 under RCW 83.100.120;

30 (11) "Transfer" means "transfer" as used in section 2001 of the
31 Internal Revenue Code ~~(, or a disposition or cessation of qualified use~~
32 ~~as defined and used in section 2032A(c) of the Internal Revenue Code)).~~
33 However, "transfer" does not include a qualified heir disposing of an
34 interest in property qualifying for a deduction under section 4 of this
35 act or ceasing to use the property for farming purposes;

36 ~~((14) "Trust" means "trust" under Washington law and any~~
37 ~~arrangement described in section 2652 of the Internal Revenue Code; and~~

1 ~~(15))~~ (12) "Internal Revenue Code" means, for the purposes of this
2 chapter and RCW 83.110.010, the United States Internal Revenue Code of
3 1986, as amended or renumbered as of January 1, ~~((2001))~~ 2005;

4 (13) "Washington taxable estate" means the federal taxable estate,
5 less: (a) One million five hundred thousand dollars for decedents
6 dying before January 1, 2006; and (b) two million dollars for decedents
7 dying on or after January 1, 2006; and (c) the amount of any deduction
8 allowed under section 4 of this act; and

9 (14) "Federal taxable estate" means the taxable estate as
10 determined under chapter 11 of the Internal Revenue Code without regard
11 to: (a) The termination of the federal estate tax under section 2210
12 of the Internal Revenue Code or any other provision of law, and (b) the
13 deduction for state estate, inheritance, legacy, or succession taxes
14 allowable under section 2058 of the Internal Revenue Code.

15 **Sec. 3.** RCW 83.100.040 and 1988 c 64 s 4 are each amended to read
16 as follows:

17 (1) A tax in an amount computed as provided in this section is
18 imposed on every transfer of property located in Washington ~~((of every~~
19 ~~nonresident))~~. For the purposes of this section, any intangible
20 property owned by a resident is located in Washington.

21 ~~((The tax shall be computed by multiplying the federal credit~~
22 ~~by a fraction, the numerator of which is the value of the property~~
23 ~~located in Washington, and the denominator of which is the value of the~~
24 ~~decedent's gross estate.~~

25 ~~(3) The transfer of the property of a nonresident is exempt from~~
26 ~~the tax imposed by this section to the extent that the property of~~
27 ~~residents is exempt from taxation under the laws of the state in which~~
28 ~~the nonresident is domiciled.))~~ (a) Except as provided in (b) of this
29 subsection, the amount of tax is the amount provided in the following
30 table:

31

<u>If Washington Taxable</u>		<u>The amount of Tax Equals</u>		<u>Of Washington</u>
<u>Estate is at least</u>	<u>But Less Than</u>	<u>Initial Tax Amount</u>	<u>Plus Tax Rate %</u>	<u>Taxable Estate Value</u>
<u>\$0</u>	<u>\$1,000,000</u>	<u>\$0</u>	<u>10.00%</u>	<u>\$0</u>

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1	<u>\$1,000,000</u>	<u>\$2,000,000</u>	<u>\$100,000</u>	<u>14.00%</u>	<u>\$1,000,000</u>
2	<u>\$2,000,000</u>	<u>\$3,000,000</u>	<u>\$240,000</u>	<u>15.00%</u>	<u>\$2,000,000</u>
3	<u>\$3,000,000</u>	<u>\$4,000,000</u>	<u>\$390,000</u>	<u>16.00%</u>	<u>\$3,000,000</u>
4	<u>\$4,000,000</u>	<u>\$6,000,000</u>	<u>\$550,000</u>	<u>17.00%</u>	<u>\$4,000,000</u>
5	<u>\$6,000,000</u>	<u>\$7,000,000</u>	<u>\$890,000</u>	<u>18.00%</u>	<u>\$6,000,000</u>
6	<u>\$7,000,000</u>	<u>\$9,000,000</u>	<u>\$1,070,000</u>	<u>18.50%</u>	<u>\$7,000,000</u>
7	<u>Above \$9,000,000</u>		<u>\$1,440,000</u>	<u>19.00%</u>	<u>Above \$9,000,000</u>

8 (b) If any property in the decedent's estate is located outside of
9 Washington, the amount of tax is the amount determined in (a) of this
10 subsection multiplied by a fraction. The numerator of the fraction is
11 the value of the property located in Washington. The denominator of
12 the fraction is the value of the decedent's gross estate. Property
13 qualifying for a deduction under section 4 of this act shall be
14 excluded from the numerator and denominator of the fraction.

15 (3) The tax imposed under this section is a stand-alone estate tax
16 that incorporates only those provisions of the Internal Revenue Code as
17 amended or renumbered as of January 1, 2005, that do not conflict with
18 the provisions of this chapter. The tax imposed under this chapter is
19 independent of any federal estate tax obligation and is not affected by
20 termination of the federal estate tax.

21 NEW SECTION. Sec. 4. A new section is added to chapter 83.100 RCW
22 to read as follows:

23 (1) For the purposes of determining the Washington taxable estate,
24 a deduction is allowed from the federal taxable estate for the value of
25 qualified real property and the value of any tangible personal property
26 used primarily for farming purposes conducted on the qualified real
27 property, reduced by any amounts allowable as a deduction in respect of
28 the qualified real property and tangible personal property under
29 section 2053(a)(4) of the Internal Revenue Code, if the decedent was at
30 the time of his or her death a citizen or resident of the United
31 States. For the purposes of determining the deduction amount, the
32 value of property is its value as used to determine the value of the
33 gross estate.

34 (2) Property shall be considered to have been acquired from or to
35 have passed from the decedent if:

36 (a) The property is so considered under section 1014(b) of the
37 Internal Revenue Code;

1 (b) The property is acquired by any person from the estate; or

2 (c) The property is acquired by any person from a trust, to the
3 extent the property is includible in the gross estate of the decedent.

4 (3) If the decedent and the decedent's surviving spouse at any time
5 held qualified real property as community property, the interest of the
6 surviving spouse in the property shall be taken into account under this
7 section to the extent necessary to provide a result under this section
8 with respect to the property which is consistent with the result which
9 would have obtained under this section if the property had not been
10 community property.

11 (4) In the case of any qualified woodland, the value of trees
12 growing on the woodland may be deducted if otherwise qualified under
13 this section.

14 (5) If property is qualified real property with respect to a
15 decedent, hereinafter in this subsection referred to as the "first
16 decedent," and the property was acquired from or passed from the first
17 decedent to the surviving spouse of the first decedent, active
18 management of the farm by the surviving spouse shall be treated as
19 material participation by the surviving spouse in the operation of the
20 farm.

21 (6) Property owned indirectly by the decedent may qualify for a
22 deduction under this section if owned through an interest in a
23 corporation, partnership, or trust as the terms corporation,
24 partnership, or trust are used in section 2032A(g) of the Internal
25 Revenue Code. In order to qualify for a deduction under this
26 subsection, the interest, in addition to meeting the other tests for
27 qualification under this section, must qualify under section 6166(b)(1)
28 of the Internal Revenue Code as an interest in a closely held business
29 on the date of the decedent's death and for sufficient other time,
30 combined with periods of direct ownership, to equal at least five years
31 of the eight-year period preceding the death.

32 (7)(a) If, on the date of the decedent's death, the requirements of
33 subsection (10)(f)(i)(C)(II) of this section with respect to the
34 decedent for any property are not met, and the decedent (i) was
35 receiving old age benefits under Title II of the social security act
36 for a continuous period ending on such date, or (ii) was disabled for
37 a continuous period ending on this date, then subsection
38 (10)(f)(i)(C)(II) of this section shall be applied with respect to the

1 property by substituting "the date on which the longer of such
2 continuous periods began" for "the date of the decedent's death" in
3 subsection (10)(f)(i)(C) of this section.

4 (b) For the purposes of (a) of this subsection, an individual shall
5 be disabled if the individual has a mental or physical impairment which
6 renders that individual unable to materially participate in the
7 operation of the farm.

8 (8) Property may be deducted under this section whether or not
9 special valuation is elected under section 2032A of the Internal
10 Revenue Code on the federal return.

11 (9)(a) In the case of any qualified replacement property, any
12 period during which there was ownership, qualified use, or material
13 participation with respect to the replaced property by the decedent or
14 any member of the decedent's family shall be treated as a period during
15 which there was ownership, use, or material participation, as the case
16 may be, with respect to the qualified replacement property.

17 (b) Subsection (9)(a) of this section shall not apply to the extent
18 that the fair market value of the qualified replacement property, as of
19 the date of its acquisition, exceeds the fair market value of the
20 replaced property, as of the date of its disposition.

21 (c) For the purposes of this subsection (9), the following
22 definitions apply:

23 (i) "Qualified replacement property" means any real property:

24 (A) Which is acquired in an exchange which qualifies under section
25 1031 of the Internal Revenue Code; or

26 (B) The acquisition of which results in the nonrecognition of gain
27 under section 1033 of the Internal Revenue Code.

28 The term "qualified replacement property" only includes property
29 which is used for the same qualified use as the replaced property was
30 being used before the exchange.

31 (ii) "Replaced property" means the property was:

32 (A) Transferred in the exchange which qualifies under section 1031
33 of the Internal Revenue Code; or

34 (B) Compulsorily or involuntarily converted within the meaning of
35 section 1033 of the Internal Revenue Code.

36 (10) For the purposes of this section, the following definitions
37 apply:

1 (a) "Active management" means the making of the management
2 decisions of a farm, other than the daily operating decisions.

3 (b) "Farm" includes stock, dairy, poultry, fruit, furbearing
4 animal, and truck farms; plantations; ranches; nurseries; ranges;
5 greenhouses or other similar structures used primarily for the raising
6 of agricultural or horticultural commodities; and orchards and
7 woodlands.

8 (c) "Farming purposes" means:

9 (i) Cultivating the soil or raising or harvesting any agricultural
10 or horticultural commodity, including the raising, shearing, feeding,
11 caring for, training, and management of animals on a farm;

12 (ii) Handling, drying, packing, grading, or storing on a farm any
13 agricultural or horticultural commodity in its unmanufactured state,
14 but only if the owner, tenant, or operator of the farm regularly
15 produces more than one-half of the commodity so treated; and

16 (iii)(A) The planting, cultivating, caring for, or cutting of
17 trees; or

18 (B) The preparation, other than milling, of trees for market.

19 (d) "Member of the family" means, with respect to any individual,
20 only:

21 (i) An ancestor of the individual;

22 (ii) The spouse of the individual;

23 (iii) A lineal descendant of the individual, of the individual's
24 spouse, or of a parent of the individual; or

25 (iv) The spouse of any lineal descendant described in (d)(iii) of
26 this subsection.

27 For the purposes of this subsection (10)(d), a legally adopted
28 child of an individual shall be treated as the child of such individual
29 by blood.

30 (e) "Qualified heir" means, with respect to any property, a member
31 of the decedent's family who acquired property, or to whom property
32 passed, from the decedent.

33 (f)(i) "Qualified real property" means real property which was
34 acquired from or passed from the decedent to a qualified heir of the
35 decedent and which, on the date of the decedent's death, was being used
36 for a qualified use by the decedent or a member of the decedent's
37 family, but only if:

1 (A) Fifty percent or more of the adjusted value of the gross estate
2 consists of the adjusted value of real or personal property which:

3 (I) On the date of the decedent's death, was being used for a
4 qualified use by the decedent or a member of the decedent's family; and

5 (II) Was acquired from or passed from the decedent to a qualified
6 heir of the decedent;

7 (B) Twenty-five percent or more of the adjusted value of the gross
8 estate consists of the adjusted value of real property which meets the
9 requirements of (f)(i)(A)(II) and (f)(i)(C) of this subsection; and

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

13 (I) The real property was owned by the decedent or a member of the
14 decedent's family and used for a qualified use by the decedent or a
15 member of the decedent's family; and

16 (II) There was material participation by the decedent or a member
17 of the decedent's family in the operation of the farm. For the
18 purposes of this subsection (f)(i)(C)(II), material participation shall
19 be determined in a manner similar to the manner used for purposes of
20 section 1402(a)(1) of the Internal Revenue Code.

21 (ii) For the purposes of this subsection, the term "adjusted value"
22 means:

23 (A) In the case of the gross estate, the value of the gross estate,
24 determined without regard to any special valuation under section 2032A
25 of the Internal Revenue Code, reduced by any amounts allowable as a
26 deduction under section 2053(a)(4) of the Internal Revenue Code; or

27 (B) In the case of any real or personal property, the value of the
28 property for purposes of chapter 11 of the Internal Revenue Code,
29 determined without regard to any special valuation under section 2032A
30 of the Internal Revenue Code, reduced by any amounts allowable as a
31 deduction in respect of such property under section 2053(a)(4) of the
32 Internal Revenue Code.

33 (g) "Qualified use" means the property is used as a farm for
34 farming purposes. In the case of real property which meets the
35 requirements of (f)(i)(C) of this subsection, residential buildings and
36 related improvements on the real property occupied on a regular basis
37 by the owner or lessee of the real property or by persons employed by
38 the owner or lessee for the purpose of operating or maintaining the

1 real property, and roads, buildings, and other structures and
2 improvements functionally related to the qualified use shall be treated
3 as real property devoted to the qualified use.

4 (h) "Qualified woodland" means any real property which:

5 (i) Is used in timber operations; and

6 (ii) Is an identifiable area of land such as an acre or other area
7 for which records are normally maintained in conducting timber
8 operations.

9 (i) "Timber operations" means:

10 (i) The planting, cultivating, caring for, or cutting of trees; or

11 (ii) The preparation, other than milling, of trees for market.

12 **Sec. 5.** RCW 83.100.050 and 1988 c 64 s 6 are each amended to read
13 as follows:

14 (1) ~~((The))~~ A Washington return must be filed if: (a) A federal
15 return is required to be filed; or (b) for decedents dying prior to
16 January 1, 2006, the gross estate exceeds one million five hundred
17 thousand dollars; or (c) for decedents dying on or after January 1,
18 2006, the gross estate exceeds two million dollars.

19 (2)(a) A person required to file ((the)) a federal return shall
20 file with the department on or before the date the federal return is
21 required to be filed, including any extension of time for filing ((the
22 federal return:

23 (a)) under subsection (4) of this section, a Washington return for
24 the tax due under this chapter((; and

25 (b) A copy of the federal return.

26 No Washington return need be filed if no federal return is
27 required)).

28 (b) If no federal return is required to be filed, a taxpayer shall
29 file with the department on or before the date a federal return would
30 have been required to be filed, including any extension of time for
31 filing under subsection (5) of this section, a Washington return for
32 the tax due under this chapter.

33 (3) A Washington return delivered to the department by United
34 States mail shall be considered to have been received by the department
35 on the date of the United States postmark stamped on the cover in which
36 the return is mailed, if the postmark date is within the time allowed
37 for filing the Washington return, including extensions.

1 ~~((2))~~ (4) In addition to the Washington return required to be
2 filed in subsection (2) of this section, a person, if required to file
3 a federal return, shall file with the department on or before the date
4 the federal return, is required to be filed a copy of the federal
5 return along with all supporting documentation. If the person required
6 to file the federal return has obtained an extension of time for filing
7 the federal return, the person shall file the Washington return within
8 the same time period and in the same manner as provided for the federal
9 return. A copy of the federal extension shall be filed with the
10 department on or before the date the Washington return is due, not
11 including any extension of time for filing, or within thirty days of
12 issuance, whichever is later.

13 (5) A person who is required to file a Washington return under
14 subsection (2) of this section, but is not required to file a federal
15 return, may obtain an extension of time for filing the Washington
16 return as provided by rule of the department.

17 **Sec. 6.** RCW 83.100.060 and 1988 c 64 s 7 are each amended to read
18 as follows:

19 (1) The taxes imposed by this chapter shall be paid by the person
20 required to file ~~((the federal))~~ a Washington return on or before the
21 date the Washington return is required to be filed under RCW
22 83.100.050, not including any extension of time for filing. Payment
23 delivered to the department by United States mail shall be considered
24 to have been received by the department on the date of the United
25 States postmark stamped on the cover in which payment is mailed, if the
26 postmark date is within the time allowed for making the payment,
27 including any extensions.

28 (2) If the person ~~((required to file the federal return))~~ has
29 obtained an extension of time for payment of the federal tax or has
30 elected to pay such tax in installments, the person may elect to pay
31 the tax imposed by this chapter within the same time period and in the
32 same manner as provided for payment of the federal tax. A copy of the
33 federal extension shall be filed on or before the date the tax imposed
34 by this chapter is due, not including any extension of time for
35 payment, or within thirty days of issuance, whichever is later.

36 (3) A person who is required to file a Washington return under RCW

1 83.100.050, but is not required to file a federal return, may obtain an
2 extension of time for payment of the Washington tax or elect to pay
3 such tax in installments as provided by rule of the department.

4 (4) The periods of limitation in RCW 83.100.130 and section 14 of
5 this act shall extend an additional three years beyond the due date of
6 the last scheduled installment payment authorized under this section.

7 **Sec. 7.** RCW 83.100.070 and 2000 c 105 s 1 are each amended to read
8 as follows:

9 (1) For periods before January 2, 1997, any tax due under this
10 chapter which is not paid by the due date under RCW 83.100.060(1) shall
11 bear interest at the rate of twelve percent per annum from the date the
12 tax is due until the date of payment.

13 (2) Interest imposed under this section for periods after January
14 1, 1997, shall be computed at the rate as computed under RCW
15 82.32.050(2). The rate so computed shall be adjusted on the first day
16 of January of each year.

17 (3)(a) If the Washington return is not filed when due under RCW
18 83.100.050 and the person required to file the (~~federal~~) Washington
19 return under RCW 83.100.050 voluntarily (~~reports the filing and~~)
20 files (~~both~~) the (~~state and federal estate tax returns~~) Washington
21 return with the department before the department notifies the person in
22 writing that the department has determined that the person has not
23 filed a Washington return, no penalty is imposed on the person required
24 to file the (~~federal~~) Washington return.

25 (b) If the Washington return is not filed when due under RCW
26 83.100.050 and the person required to file the (~~federal~~) Washington
27 return under RCW 83.100.050 does not file a return with the department
28 before the department notifies the person in writing that the
29 department has determined that the person has not filed a (~~state~~
30 estate tax)) Washington return, the person required to file the
31 (~~federal~~) Washington return shall pay, in addition to interest, a
32 penalty equal to five percent of the tax due for each month after the
33 date the return is due until filed. However, in no instance may the
34 penalty exceed the lesser of twenty-five percent of the tax due or one
35 thousand five hundred dollars.

36 (c) If the department finds that a return due under this chapter
37 has not been filed by the due date, and the delinquency was the result

1 of circumstances beyond the control of the responsible person, the
2 department shall waive or cancel any penalties imposed under this
3 chapter with respect to the filing of such a tax return. The
4 department shall adopt rules for the waiver or cancellation of the
5 penalties imposed by this section.

6 **Sec. 8.** RCW 83.100.090 and 1988 c 64 s 10 are each amended to read
7 as follows:

8 Notwithstanding the periods of limitation in section 14 of this act
9 and RCW 83.100.130:

10 (1) If the person required to file the (~~federal~~) Washington
11 return under RCW 83.100.050 files an amended federal return, that
12 person shall immediately file with the department an amended Washington
13 return with a copy of the amended federal return. If the amended
14 Washington return requires payment of an additional tax under this
15 chapter, the tax shall be paid in accordance with RCW 83.100.060 and
16 interest shall be paid in accordance with RCW 83.100.070.

17 (2) Upon any adjustment in, or final determination of, the amount
18 of federal tax due, the person required to file the (~~federal~~)
19 Washington return under RCW 83.100.050 shall notify the department in
20 writing within (~~sixty~~) one hundred twenty days after the adjustment
21 or final determination. If the adjustment or final determination
22 requires payment of an additional tax under this chapter, the tax shall
23 be paid in accordance with RCW 83.100.060 and interest shall be paid in
24 accordance with RCW 83.100.070.

25 (3) If the department determines the amended Washington return,
26 adjustment, or final determination requires payment of an additional
27 tax under this chapter, the department may assess against the taxpayer
28 an additional amount found to be due within one year of receipt of the
29 amended Washington return or written notice as required by this
30 section, or at any time if no amended Washington return is filed or
31 notice is provided as required by this section. The execution of a
32 written waiver at the request of the department by the person required
33 to file the Washington return under RCW 83.100.050 may extend this
34 limitation. Interest shall be added to the amount of tax assessed by
35 the department in accordance with RCW 83.100.070. The department shall
36 notify the taxpayer by mail of the additional amount, and the

1 additional amount shall become due and shall be paid within thirty days
2 from the date of the notice, or within such further time as the
3 department may provide.

4 (4) If the department determines the amended Washington return,
5 adjustment, or final determination requires the refund of overpaid tax,
6 penalties, or interest under this chapter, the department shall refund
7 the amount of the overpayment with interest in accordance with RCW
8 83.100.130. The person required to file the Washington return under
9 RCW 83.100.050 shall provide the department with any additional
10 information or supporting documents necessary to determine if a refund
11 is due. The execution of a written waiver to extend the period for
12 assessment under subsection (3) of this section shall extend the time
13 for making a refund, if prior to the expiration of the waiver period an
14 application for refund of the taxes is made by the person required to
15 file the Washington return under RCW 83.100.050, or the department
16 discovers a refund is due.

17 **Sec. 9.** RCW 83.100.110 and 1988 c 64 s 11 are each amended to read
18 as follows:

19 (1) Unless any tax due under this chapter is sooner paid in full,
20 it shall be a lien upon the property subject to the tax for a period of
21 ten years from the date of the transfer (~~or the generation skipping~~
22 ~~transfer)), except that any part of the property which is used for the~~
23 payment of claims against the property or expenses of its
24 administration, allowed by any court having jurisdiction thereof, shall
25 be divested of the lien. Liens created under this subsection shall be
26 qualified as follows:

27 (a) Any part of the property subject to the tax which is sold to a
28 bona fide purchaser shall be divested of the lien and the lien shall be
29 transferred to the proceeds of the sale; and

30 (b) The lien shall be subordinate to any mortgage or deed of trust
31 on the property pursuant to an order of court for payment of claims
32 against the property or expenses of administration. The lien shall
33 attach to any proceeds from the sale of the property in excess of the
34 obligations secured by the mortgage or deed of trust and the expenses
35 of sale, including a reasonable charge by the trustee and by his or her
36 attorney where the property has been sold by a nonjudicial trustee's
37 sale pursuant to chapter 61.24 RCW, and including court costs and any

1 attorneys' fees awarded by the superior court of the county in which
2 the property is sold at sheriff's sale pursuant to a judicial
3 foreclosure of the mortgage or deed of trust.

4 (2) If the person required to file the (~~federal~~) Washington
5 return under RCW 83.100.050 has obtained an extension of time for
6 payment of the (~~federal~~) tax or has elected to pay such tax in
7 installments, the tax lien under this section shall be extended as
8 necessary to prevent its expiration prior to twelve months following
9 the expiration of any such extension or the installment.

10 (3) The tax lien shall be extended as necessary to prevent its
11 expiration prior to twelve months following the conclusion of
12 litigation of any question affecting the determination of the amount of
13 tax due if a lis pendens has been filed with the auditor of the county
14 in which the property is located.

15 **Sec. 10.** RCW 83.100.130 and 1997 c 157 s 6 are each amended to
16 read as follows:

17 (1) (~~Whenever~~) If, upon receipt of an application by a taxpayer
18 for a refund, or upon examination of the returns or records of any
19 taxpayer, the department determines that within the statutory period
20 for assessment of taxes, penalties, or interest prescribed by section
21 14 of this act a person required to file the (~~federal~~) Washington
22 return under RCW 83.100.050 has overpaid the tax due under this
23 chapter, the department shall refund the amount of the overpayment,
24 together with interest (~~at the then existing rate under RCW~~
25 83.100.070(1)) as provided in subsection (2) of this section. If the
26 application for refund, with supporting documents, is filed within
27 (~~four months~~) one hundred twenty days after an adjustment or final
28 determination of federal tax liability, the department shall pay
29 interest until the date the refund is mailed. If the application for
30 refund, with supporting documents, is filed after (~~four months~~) one
31 hundred twenty days after the adjustment or final determination, the
32 department shall pay interest only until the end of the (~~four-month~~)
33 one hundred twenty-day period.

34 (2) Interest refunded under this section for periods before January
35 2, 1997, shall be computed at the rate provided in RCW 83.100.070(1).
36 Interest refunded under this section for periods after January 1, 1997,
37 through December 31, 1998, shall be computed on a daily basis at the

1 rate as computed under RCW 82.32.050(2) less one percentage point.
2 Interest allowed for periods after December 31, 1998, shall be computed
3 at the rate as computed under RCW 82.32.050(2). Except as provided in
4 subsection (1) of this section, interest shall be refunded from the
5 date of overpayment until the date the refund is mailed. The rate so
6 computed shall be adjusted on the first day of January of each year.

7 (3) Except as otherwise provided in subsection (4) of this section
8 and RCW 83.100.090, no refund shall be made for taxes, penalties, or
9 interest paid more than four years prior to the beginning of the
10 calendar year in which the refund application is made or an examination
11 of records is complete.

12 (4) The execution of a written waiver under section 14 of this act
13 shall extend the time for making a refund if, prior to the expiration
14 of the waiver period, an application for refund is made by the taxpayer
15 or the department discovers a refund is due.

16 (5) An application for refund shall be on a form prescribed by the
17 department and shall contain any information and supporting documents
18 the department requires.

19 **Sec. 11.** RCW 83.100.140 and 1988 c 64 s 13 are each amended to
20 read as follows:

21 Any person required to file the (~~federal~~) Washington return who
22 (~~wilfully~~) willfully fails to file a Washington return when required
23 by this chapter or who (~~wilfully~~) willfully files a false return
24 commits a gross misdemeanor as defined in Title 9A RCW and shall be
25 punished as provided in Title 9A RCW for the perpetration of a gross
26 misdemeanor.

27 **Sec. 12.** RCW 83.100.150 and 1988 c 64 s 14 are each amended to
28 read as follows:

29 (~~(1)~~) The department may collect the estate tax imposed under RCW
30 (~~(83.100.030 and)~~) 83.100.040, including interest and penalties, and
31 shall represent this state in all matters pertaining to the same,
32 either before courts or in any other manner. At any time after the
33 Washington return is due, the department may file its findings
34 regarding the amount of the tax(~~, the federal credit~~) computed as
35 provided in RCW 83.100.040, the person required to file the (~~federal~~)
36 Washington return under RCW 83.100.050, and all persons having an

1 interest in property subject to the tax with the clerk of the superior
2 court in the matter of the estate of the decedent or, if no probate or
3 administration proceedings have been commenced in any court of this
4 state, of the superior court for the county in which the decedent was
5 a resident, if the resident was a domiciliary, or, if the decedent was
6 a nondomiciliary, of any superior court which has jurisdiction over the
7 property. Such a court first acquiring jurisdiction shall retain
8 jurisdiction to the exclusion of every other court.

9 ~~((2) The department may collect the generation skipping transfer
10 tax under RCW 83.100.045, including interest and penalties, and shall
11 represent this state in all matters pertaining to the same, either
12 before courts or in any other manner. At any time after the Washington
13 return is due, the department may file its findings regarding the
14 amount of the tax, the federal credit, the person required to file the
15 federal return, and all persons having an interest in property subject
16 to the tax with the clerk of the superior court in the matter of the
17 trust or the estate of the decedent, if any, or, if no trust, probate
18 or administration proceedings have been commenced in any court of this
19 state, of any superior court which has jurisdiction over the property.
20 Such a court first acquiring jurisdiction shall retain jurisdiction to
21 the exclusion of every other court.))~~

22 NEW SECTION. **Sec. 13.** A new section is added to chapter 83.100
23 RCW to read as follows:

24 (1) If the federal taxable estate on the federal return is
25 determined by making an election under section 2056 or 2056A of the
26 Internal Revenue Code, or if no federal return is required to be filed,
27 the department may provide by rule for a separate election on the
28 Washington return, consistent with section 2056 or 2056A of the
29 Internal Revenue Code, for the purpose of determining the amount of tax
30 due under this chapter. The election shall be binding on the estate
31 and the beneficiaries, consistent with the Internal Revenue Code. All
32 other elections or valuations on the Washington return shall be made in
33 a manner consistent with the federal return, if a federal return is
34 required, and such rules as the department may provide.

35 (2) Amounts deducted for federal income tax purposes under section
36 642(g) of the Internal Revenue Code of 1986, shall not be allowed as
37 deductions in computing the amount of tax due under this chapter.

1 NEW SECTION. **Sec. 14.** A new section is added to chapter 83.100
2 RCW to read as follows:

3 (1) If upon examination of any returns or from other information
4 obtained by the department it appears that a tax or penalty has been
5 paid less than that properly due, the department shall assess against
6 the taxpayer an additional amount found to be due and shall add
7 interest as provided in RCW 83.100.070 on the tax only. The department
8 shall notify the taxpayer by mail of the additional amount, and the
9 additional amount shall become due and shall be paid within thirty days
10 from the date of the notice, or within such further time as the
11 department may provide.

12 (2) Interest shall be computed from the original due date of the
13 Washington return until the due date of the notice. If payment in full
14 is not made by the due date of the notice, additional interest shall be
15 computed until the date of payment.

16 (3) No assessment or correction of an assessment for additional
17 taxes, penalties, or interest due may be made by the department more
18 than four years after the close of the calendar year in which a
19 Washington return is due under this chapter, including any extension of
20 time for filing, except upon a showing of fraud or of misrepresentation
21 of a material fact by the taxpayer or as provided under subsection (4)
22 or (5) of this section or as otherwise provided in this chapter.

23 (4) For persons liable for tax under RCW 83.100.120, the period for
24 assessment or correction of an assessment shall extend an additional
25 three years beyond the period described in subsection (3) of this
26 section.

27 (5) A taxpayer may extend the periods of limitation under
28 subsection (3) or (4) of this section by executing a written waiver.
29 The execution of the waiver shall also extend the period for making a
30 refund as provided in RCW 83.100.130.

31 **Sec. 15.** RCW 83.100.210 and 1996 c 149 s 18 are each amended to
32 read as follows:

33 (1) The following provisions of chapter 82.32 RCW have full force
34 and application with respect to the taxes imposed under this chapter
35 unless the context clearly requires otherwise: RCW 82.32.110,
36 82.32.120, 82.32.130, 82.32.320, and 82.32.340. The definitions in

1 this chapter have full force and application with respect to the
2 application of chapter 82.32 RCW to this chapter unless the context
3 clearly requires otherwise.

4 (2) The department may enter into closing agreements as provided in
5 RCW 82.32.350 and 82.32.360.

6 NEW SECTION. Sec. 16. A new section is added to chapter 83.100
7 RCW to read as follows:

8 All receipts from taxes, penalties, interest, and fees collected
9 under this chapter must be deposited into the education legacy trust
10 account.

11 NEW SECTION. Sec. 17. A new section is added to chapter 83.100
12 RCW to read as follows:

13 This act shall be liberally construed to carry out the
14 legislature's intent to impose a stand-alone Washington estate tax to
15 provide funding for education.

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

18 (1) RCW 83.100.030 (Residents--Estate tax imposed--Credit for tax
19 paid other state) and 1988 c 64 s 3 & 1981 2nd ex.s. c 7 s 83.100.030;
20 and

21 (2) RCW 83.100.045 (Generation-skipping transfers--Tax imposed--
22 Credit for tax paid to another state) and 1988 c 64 s 5.

23 NEW SECTION. Sec. 19. The repealed sections in section 18 of this
24 act do not affect any existing right acquired or liability or
25 obligation incurred under the statutes repealed or under any rule or
26 order adopted under those statutes nor do they affect any proceeding
27 instituted under them.

28 **Sec. 20.** RCW 83.100.010 and 1988 c 64 s 1 are each amended to read
29 as follows:

30 This chapter may be cited as the "Estate and Transfer Tax Act (~~of~~
31 ~~1988~~))."

1 NEW SECTION. **Sec. 21.** This act applies prospectively only and not
2 retroactively. Sections 2 through 18 of this act apply only to estates
3 of decedents dying on or after the effective date of this section.

4 NEW SECTION. **Sec. 22.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 23.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and takes effect
11 immediately."

SB 6096 - S AMD 618
By Senator Prentice

ADOPTED 04/19/2005

12 On page 1, line 2 of the title, after "funding;" strike the
13 remainder of the title and insert "amending RCW 83.100.020, 83.100.040,
14 83.100.050, 83.100.060, 83.100.070, 83.100.090, 83.100.110, 83.100.130,
15 83.100.140, 83.100.150, 83.100.210, and 83.100.010; adding new sections
16 to chapter 83.100 RCW; creating new sections; repealing RCW 83.100.030
17 and 83.100.045; and declaring an emergency."

--- END ---