

SENATE BILL REPORT

SSB 5052

As Passed Senate, March 14, 2005

Title: An act relating to uniform estate tax apportionment.

Brief Description: Creating the uniform estate tax apportionment act.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Johnson, Kline and Rockefeller).

Brief History:

Committee Activity: Judiciary: 1/12/05, 3/2/05 [DPS].

Passed Senate: 3/14/05, 46-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5052 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

Staff: Lidia Mori (786-7755)

Background: Current estate tax apportionment law is contained in chapter 83.110 RCW. It is based on the original uniform estate tax apportionment act of 1964. The National Conference of Commissioners on Uniform State Laws adopted a new version of that act in 2003. The Estate and Gift Tax Committee of the Washington State Bar Association Tax Section has reviewed the 2003 Uniform Estate Tax Apportionment Act (UETAA) and is in support of its adoption, subject to several minor variations. It continues to advance the principle of the 1964 Act in that the decedent's expressed intentions govern apportionment of an estate tax. The statute only applies when there is no clear and effective provision by the decedent as to how estate taxes are to be apportioned.

Summary of Bill: If a decedent does not make a valid provision as to how estate taxes are to be apportioned, the statutory apportionment rules of the UETAA apply. A decedent's estate tax is apportioned among those interested in the estate, essentially on the basis of their shares in the net estate. All property and interests that are subject to the estate tax are addressed, including joint tenancy assets, retirement accounts, and life insurance. An interest in property that qualifies for a deduction bears a portion of the tax only if there is no other source from which to pay the tax.

"Insulated property" is property subject to a time-limited interest which is included in the apportionable estate and is unavailable for payment of an estate tax because of impossibility or impracticability. The tax apportioned to the holders of interests in insulated property is collected ratably from persons who receive uninsulated property. These people participate in

the appreciation or depreciation of the insulated property and, if it ever ceases to be insulated, those who advanced the tax can collect their percentage from the property at that time.

The date of the cross-reference to the internal revenue code is January 1, 2005. Section 15 takes effect immediately and the remaining provisions of the legislation take effect January 1, 2006. A savings clause addresses any outstanding rights, liabilities, or obligations that may exist under the apportionment statute that is being repealed in the legislation.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on August 1, 2005.

Testimony For: This bill will help personal representatives administer the estate. Under current law, taxes are apportioned based on the gross estate. This bill says it is the net amount that the tax is based on. The bill also contains some good procedural mechanisms for the person filing the tax.

Testimony Against: None.

Other: Washington citizens eliminated the estate tax by initiative. From the state's point of view, Washington does have an estate tax. This bill doesn't create an estate tax, it apportions it. But, by doing so, it legitimizes the notion that there is an estate tax. There is a case pending in the Supreme Court on this exact issue. The Committee should wait until the Supreme Court issues its opinion before passing this bill.

Who Testified: PRO: Marcia Fujimoto, Washington State Bar Association. OTHER: Jill Mackie, Seattle Times; Carolyn Logue, National Federation of Independent Businesses.

House Amendment(s): The substitute bill contains a reference to the 2005 version of the Internal Revenue Code that applies to both the estate tax apportionment chapter and the estate tax chapter itself. The amendment makes that reference only with respect to the apportionment chapter. The substitute bill has an emergency clause that makes the reference to the 2005 version of the Internal Revenue Code take effect immediately. The amendment has no emergency clause.

Passed House: 98-0.