
SUBSTITUTE SENATE BILL 5052

State of Washington 59th Legislature 2005 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Johnson, Kline and Rockefeller)

READ FIRST TIME 03/02/05.

1 AN ACT Relating to uniform estate tax apportionment; amending RCW
2 83.100.020; adding a new chapter to Title 83 RCW; creating a new
3 section; repealing RCW 83.110.010, 83.110.020, 83.110.030, 83.110.040,
4 83.110.050, 83.110.060, 83.110.070, 83.110.080, 83.110.090, 83.110.900,
5 83.110.901, 83.110.902, 83.110.903, and 83.110.904; providing an
6 effective date; and declaring an emergency.

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

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

10 NEW SECTION. **Sec. 2.** DEFINITIONS. The following definitions
11 apply throughout this chapter unless the context clearly requires
12 otherwise.

13 (1) "Apportionable estate" means the value of the gross estate as
14 finally determined for purposes of the estate tax to be apportioned
15 reduced by:

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

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

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

6 (2) "Estate tax" means a federal, state, or foreign tax imposed
7 because of the death of an individual and interest and penalties
8 associated with the tax. The term does not include an inheritance tax,
9 income tax, or generation-skipping transfer tax other than a
10 generation-skipping transfer tax incurred on a direct skip taking
11 effect at death.

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

14 (4) "Person" means an individual, corporation, business trust,
15 estate, trust, partnership, limited liability company, association,
16 joint venture, public corporation, government, governmental
17 subdivision, agency, or instrumentality, or any other legal or
18 commercial entity.

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

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

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

33 (8) "Internal Revenue Code" has the same meaning as provided in RCW
34 83.100.020.

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

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

4 (b) Any portion of an estate tax not apportioned pursuant to (a) of
5 this subsection must be apportioned in accordance with any provision of
6 a revocable trust of which the decedent was the settlor which provides
7 for the apportionment of an estate tax. If conflicting apportionment
8 provisions appear in two or more revocable trust instruments, the
9 provision in the most recently dated instrument prevails. For purposes
10 of this subsection (1)(b):

11 (i) A trust is revocable if it was revocable immediately after the
12 trust instrument was executed, even if the trust subsequently becomes
13 irrevocable; and

14 (ii) The date of an amendment to a revocable trust instrument is
15 the date of the amended instrument only if the amendment contains an
16 apportionment provision.

17 (c) If any portion of an estate tax is not apportioned pursuant to
18 (a) or (b) of this subsection, and a provision in any other dispositive
19 instrument provides that any interest in the property disposed of by
20 the instrument is or is not to be applied to the payment of the estate
21 tax attributable to the interest disposed of by the instrument, the
22 provision controls the apportionment of the tax to that interest.

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

25 (a) If an apportionment provision provides that a person receiving
26 an interest in property under an instrument is to be exonerated from
27 the responsibility to pay an estate tax that would otherwise be
28 apportioned to the interest:

29 (i) The tax attributable to the exonerated interest must be
30 apportioned among the other persons receiving interests passing under
31 the instrument; or

32 (ii) If the values of the other interests are less than the tax
33 attributable to the exonerated interest, the deficiency must be
34 apportioned ratably among the other persons receiving interests in the
35 apportionable estate that are not exonerated from apportionment of the
36 tax.

37 (b) If an apportionment provision provides that an estate tax is to
38 be apportioned to an interest in property a portion of which qualifies

1 for a marital or charitable deduction, the estate tax must first be
2 apportioned ratably among the holders of the portion that does not
3 qualify for a marital or charitable deduction and then apportioned
4 ratably among the holders of the deductible portion to the extent that
5 the value of the nondeductible portion is insufficient.

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

12 (d) If an apportionment provision provides that an estate tax is to
13 be apportioned to the holders of interests in property in which one or
14 more time-limited interests exist and a charity has an interest that
15 otherwise qualifies for an estate tax charitable deduction, the tax
16 must first be apportioned, to the extent feasible, to interests in
17 property that have not been distributed to the persons entitled to
18 receive the interests. No tax shall be paid from a charitable
19 remainder annuity trust or a charitable remainder unitrust described in
20 section 664 of the Internal Revenue Code and created during the
21 decedent's life.

22 (3) A provision that apportions an estate tax is ineffective to the
23 extent that it increases the tax apportioned to a person having an
24 interest in the gross estate over which the decedent had no power to
25 transfer immediately before the decedent executed the instrument in
26 which the apportionment direction was made. For purposes of this
27 section, a testamentary power of appointment is a power to transfer the
28 property that is subject to the power.

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

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

36 (2) A generation-skipping transfer tax incurred on a direct skip

1 taking effect at death is charged to the person to which the interest
2 in property is transferred.

3 (3) If property is included in the decedent's gross estate because
4 of section 2044 of the Internal Revenue Code or any similar estate tax
5 provision, the difference between the total estate tax for which the
6 decedent's estate is liable and the amount of estate tax for which the
7 decedent's estate would have been liable if the property had not been
8 included in the decedent's gross estate is apportioned ratably among
9 the holders of interests in the property. The balance of the tax, if
10 any, is apportioned ratably to each other person having an interest in
11 the apportionable estate.

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

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

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

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

27 (2) A credit for state or foreign estate taxes inures ratably to
28 the benefit of all persons to which the estate tax is apportioned,
29 except that the amount of a credit for a state or foreign tax paid by
30 a beneficiary of the property on which the state or foreign tax was
31 imposed, directly or by a charge against the property, inures to the
32 benefit of the beneficiary.

33 (3) If payment of a portion of an estate tax is deferred because of
34 the inclusion in the gross estate of a particular interest in property,
35 the benefit of the deferral inures ratably to the persons to which the
36 estate tax attributable to the interest is apportioned. The burden of
37 any interest charges incurred on a deferral of taxes and the benefit of

1 any tax deduction associated with the accrual or payment of the
2 interest charge is allocated ratably among the persons receiving an
3 interest in the property.

4 NEW SECTION. **Sec. 6.** INSULATED PROPERTY--ADVANCEMENT OF TAX. (1)

5 As used in this section:

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

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

12 (c) "Insulated property" means property subject to a time-limited
13 interest which is included in the apportionable estate and is
14 unavailable for payment of an estate tax because of impossibility or
15 impracticability. Insulated property does not include property from
16 which the beneficial holder has the unilateral right to cause
17 distribution to himself or herself.

18 (d) "Uninsulated holder" means a person who has an interest in
19 uninsulated property.

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

22 (2) If an estate tax is to be advanced pursuant to subsection (3)
23 of this section by persons holding interests in uninsulated property
24 subject to a time-limited interest other than property to which section
25 7 of this act applies, the tax must be advanced, without further
26 apportionment, from the principal of the uninsulated property.

27 (3) Subject to section 9 (2) and (4) of this act, an estate tax
28 attributable to interests in insulated property must be advanced
29 ratably by uninsulated holders.

30 (4) A court having jurisdiction to determine the apportionment of
31 an estate tax may require a beneficiary of an interest in insulated
32 property to pay all or part of the estate tax otherwise apportioned to
33 the interest if the court finds that it would be substantially more
34 equitable for that beneficiary to bear the tax liability personally
35 than for that part of the tax to be advanced by uninsulated holders.

36 (5) Upon payment by an uninsulated holder of estate tax required to
37 be advanced, a court may require the beneficiary of an interest in

1 insulated property to provide a bond or other security, including a
2 recordable lien on the property of the beneficiary, for repayment of
3 the advanced tax.

4 (6) When a distribution of insulated property is made, each
5 uninsulated holder may recover from the distributee a ratable portion
6 of the advanced fraction of the property distributed. To the extent
7 that undistributed insulated property ceases to be insulated, each
8 uninsulated holder may recover from the property a ratable portion of
9 the advanced fraction of the total undistributed property.

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

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

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

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

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

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

21 (2) If an election is made for one or more special elective
22 benefits, an initial apportionment of a hypothetical estate tax must be
23 computed as if no election for any of those benefits had been made.
24 The aggregate reduction in estate tax resulting from all elections made
25 must be allocated among holders of interests in the specified property
26 in the proportion that the amount of deduction, reduced valuation, or
27 exclusion attributable to each holder's interest bears to the aggregate
28 amount of deductions, reduced valuations, and exclusions obtained by
29 the decedent's estate from the elections. If the estate tax initially
30 apportioned to the holder of an interest in specified property is
31 reduced to zero, any excess amount of reduction reduces ratably the
32 estate tax apportioned to other persons that receive interests in the
33 apportionable estate.

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

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

5 (2) A fiduciary may withhold from a distributee the estate tax
6 apportioned to and the estate tax required to be advanced by the
7 distributee.

8 (3) As a condition to a distribution, a fiduciary may require the
9 distributee to provide a bond or other security for the estate tax
10 apportioned to and the estate tax required to be advanced by the
11 distributee.

12 NEW SECTION. **Sec. 9.** COLLECTION OF ESTATE TAX BY FIDUCIARY. (1)
13 A fiduciary responsible for payment of an estate tax may collect from
14 any person the estate tax apportioned to and the estate tax required to
15 be advanced by the person.

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

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

22 (b) Any other person having an interest in the apportionable
23 estate;

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

25 (3) A domiciliary fiduciary may recover from an ancillary personal
26 representative the estate tax apportioned to the property controlled by
27 the ancillary personal representative.

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

30 NEW SECTION. **Sec. 10.** RIGHT OF REIMBURSEMENT. (1) A person
31 required under section 9 of this act to pay an estate tax greater than
32 the amount due from the person under section 3 or 4 of this act has a
33 right to reimbursement from another person to the extent that the other
34 person has not paid the tax required by section 3 or 4 of this act and
35 a right to reimbursement ratably from other persons to the extent that

1 each has not contributed a portion of the amount collected under
2 section 9(2) of this act.

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

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

12 NEW SECTION. **Sec. 12.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.
13 In applying and construing this uniform act, consideration must be
14 given to the need to promote uniformity of the law with respect to its
15 subject matter among states that enact it.

16 NEW SECTION. **Sec. 13.** SEVERABILITY. If any provision of this act
17 or its application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 14.** APPLICATION DATE. (1) This act takes
21 effect for estate tax due on account of decedents who die on or after
22 January 1, 2006.

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

28 **Sec. 15.** RCW 83.100.020 and 2001 c 320 s 15 are each amended to
29 read as follows:

- 30 As used in this chapter:
- 31 (1) "Decedent" means a deceased individual;
 - 32 (2) "Department" means the department of revenue, the director of

1 that department, or any employee of the department exercising authority
2 lawfully delegated to him by the director;

3 (3) "Federal credit" means (a) for a transfer, the maximum amount
4 of the credit for state taxes allowed by section 2011 of the Internal
5 Revenue Code; and (b) for a generation-skipping transfer, the maximum
6 amount of the credit for state taxes allowed by section 2604 of the
7 Internal Revenue Code;

8 (4) "Federal return" means any tax return required by chapter 11 or
9 13 of the Internal Revenue Code;

10 (5) "Federal tax" means (a) for a transfer, a tax under chapter 11
11 of the Internal Revenue Code; and (b) for a generation-skipping
12 transfer, the tax under chapter 13 of the Internal Revenue Code;

13 (6) "Generation-skipping transfer" means a "generation-skipping
14 transfer" as defined and used in section 2611 of the Internal Revenue
15 Code;

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

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

20 (9) "Person" means any individual, estate, trust, receiver,
21 cooperative association, club, corporation, company, firm, partnership,
22 joint venture, syndicate, or other entity and, to the extent permitted
23 by law, any federal, state, or other governmental unit or subdivision
24 or agency, department, or instrumentality thereof;

25 (10) "Person required to file the federal return" means any person
26 required to file a return required by chapter 11 or 13 of the Internal
27 Revenue Code, such as the personal representative of an estate; or a
28 transferor, trustee, or beneficiary of a generation-skipping transfer;
29 or a qualified heir with respect to qualified real property, as defined
30 and used in section 2032A(c) of the Internal Revenue Code;

31 (11) "Property" means (a) for a transfer, property included in the
32 gross estate; and (b) for a generation-skipping transfer, all real and
33 personal property subject to the federal tax;

34 (12) "Resident" means a decedent who was domiciled in Washington at
35 time of death;

36 (13) "Transfer" means "transfer" as used in section 2001 of the
37 Internal Revenue Code, or a disposition or cessation of qualified use
38 as defined and used in section 2032A(c) of the Internal Revenue Code;

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

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

6 NEW SECTION. **Sec. 16.** The following acts or parts of acts are
7 each repealed:

8 (1) RCW 83.110.010 (Definitions) and 2000 c 129 s 1, 1998 c 292 s
9 402, 1994 c 221 s 71, 1993 c 73 s 10, 1989 c 40 s 1, & 1986 c 63 s 1;

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

12 (3) RCW 83.110.030 (Apportionment procedure) and 2000 c 129 s 3,
13 1990 c 180 s 6, 1989 c 40 s 3, & 1986 c 63 s 3;

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

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

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

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

24 (8) RCW 83.110.080 (Action by nonresident--Reciprocity) and 1986 c
25 63 s 8;

26 (9) RCW 83.110.090 (Coordination with federal law) and 2000 c 129
27 s 6, 1989 c 40 s 6, & 1986 c 63 s 9;

28 (10) RCW 83.110.900 (Construction) and 1986 c 63 s 10;

29 (11) RCW 83.110.901 (Short title) and 1986 c 63 s 11;

30 (12) RCW 83.110.902 (Captions) and 1986 c 63 s 13;

31 (13) RCW 83.110.903 (Application) and 1988 c 64 s 26 & 1986 c 63 s
32 14; and

33 (14) RCW 83.110.904 (Severability--1986 c 63) and 1986 c 63 s 12.

34 NEW SECTION. **Sec. 17.** CAPTIONS NOT LAW. Captions used in this
35 chapter are not part of the law.

1 NEW SECTION. **Sec. 18.** (1) This act takes effect January 1, 2006,
2 except for section 15 of this act.

3 (2) Section 15 of this act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 immediately.

7 NEW SECTION. **Sec. 19.** The repealed sections of law in section 16
8 of this act shall not be construed as affecting any existing right,
9 liability, or obligation incurred, under the repealed sections or under
10 any rule or order adopted under those sections, nor as affecting any
11 proceeding instituted under those sections.

12 NEW SECTION. **Sec. 20.** Sections 1 through 14 and 17 of this act
13 constitute a new chapter in Title 83 RCW.

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