

# Chapter 458-57 WAC

## STATE OF WASHINGTON ESTATE AND TRANSFER TAX REFORM ACT RULES

### WAC

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458-57-250	Exemptions—Aliens. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-250, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	458-57-400	Refunds. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-400, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-260	Insurance—Exemptions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-260, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	458-57-410	Escheat estates—Heirs—How located and proof. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-410, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100. Later promulgation, see WAC 458-57-640.
458-57-270	Prorating of exemptions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-270, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	458-57-420	Preliminary statement. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-420, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-280	Prorating costs and fees. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-280, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	458-57-430	Inventory and appraisal—Inventory of assets. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-430, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-290	Credit for property previously taxed. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-290, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	458-57-440	Inheritance tax returns—Duty to keep records and render statements—Filing of returns—Contents of returns. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-440, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-300	Computation formula—Property previously taxed—Class A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-300, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	458-57-450	Payment of inheritance tax—Extension of time—Basis for—Reasonable cause—Undue hardship. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-450, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-310	Computation formula—Property previously taxed—Portion of net second estate to class other than A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-310, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	458-57-460	Inheritance tax—Extension of time for payment—Failure to pay on time. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-460, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-320	Computation formula—Property previously taxed—Specific bequest second estate to class other than A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-320, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	458-57-470	Inheritance tax—Extension of time for payment—Security. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-470, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-330	Computation formula—Property previously taxed—Specific bequest and portion of net second estate to class other than A. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-330, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	458-57-480	Closely held businesses—What constitutes. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-480, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-340	Federal credit for death taxes. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-340, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.	458-57-490	Qualified or special use—Application of statutory and regulatory provisions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-490, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
458-57-350	Payment of tax. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-350, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.		

- 458-57-500 Miscellaneous provisions. [Statutory Authority: RCW 82.01.060, 83.36.005, and chapters 83.01 through 83.52 RCW. 80-03-048 (Order IT 80-1), § 458-57-500, filed 2/21/80.] Repealed by 83-17-033 (Order IT 83-2), filed 8/11/83. Statutory Authority: RCW 83.100.100.
- 458-57-510 Scope of rules. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-510, filed 8/11/83. Formerly WAC 458-57-010.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-520 Nature of estate tax. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-520, filed 8/11/83. Formerly WAC 458-57-020.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-530 Property subject to estate tax. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-530, filed 8/11/83. Formerly WAC 458-57-030.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-540 Residents—Tax imposed. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-540, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.-200.
- 458-57-550 Valuation. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-550, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-560 Imposition of tax. [Statutory Authority: RCW 83.100.-100. 83-17-033 (Order IT 83-2), § 458-57-560, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-570 Tax returns to be filed. [Statutory Authority: RCW 83.100.100. 86-12-024 (Order 86-1), § 458-57-570, filed 5/28/86; 83-17-033 (Order IT 83-2), § 458-57-570, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.-200.
- 458-57-575 Waiver or cancellation of penalties. [Statutory Authority: RCW 82.32.300 and 83.100.070. 99-03-010, § 458-57-575, filed 1/8/99, effective 2/8/99.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-580 Formula. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-580, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-590 Property "located in" Washington. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-590, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-600 Reciprocity exemption. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-600, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-610 Releases. [Statutory Authority: RCW 83.100.100. 86-12-024 (Order 86-1), § 458-57-610, filed 5/28/86; 83-17-033 (Order IT 83-2), § 458-57-610, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-620 Amended returns—Final determination. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-620, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-630 Administration—Rules. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-630, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.-200.
- 458-57-640 Escheat estates—Heirs—How located and proof. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-640, filed 8/11/83. Formerly WAC 458-57-410.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.-200.
- 458-57-650 Interest and penalties. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-650, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.-200.
- 458-57-660 Refunds. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-660, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.

### WAC 458-57-005 Nature of estate tax, definitions. (1)

**Introduction.** This rule describes the nature of Washington state's estate tax as it is imposed by chapter 83.100 RCW (Estate and Transfer Tax Act) for deaths occurring on or before May 16, 2005. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 458-57-165. It also defines terms that will be used throughout chapter 458-57 WAC (Washington Estate and Transfer Tax Reform Act Rules).

(2) **Nature of Washington's estate tax.** The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share.

(a) The state of Washington operates under RCW 83.100.020, which references the Internal Revenue Code (IRC) as it existed **January 1, 2005**. The Washington State Estate and Transfer Tax Return and the instructions for completing the return can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at 360-570-3265 (option 2).

(b) The estate tax does not apply to completed absolute lifetime transfers. Section 2035(d) of the Internal Revenue Code generally exempts such transfers. To the extent permitted by this provision, lifetime transfers are not subject to Washington estate tax. The state of Washington does not have a gift tax.

(3) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Decedent" means a deceased individual;

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

(c) "Escheat" of an estate means that whenever any person dies, whether a resident of this state or not, leaving property in an estate subject to the jurisdiction of this state and without being survived by any person entitled to that same property under the laws of this state, such estate property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.300;

(d) "Federal credit" means the maximum amount of the credit for state taxes allowed by section 2011 of the Internal Revenue Code. This credit is calculated using an "adjusted taxable estate" figure, which is simply the taxable estate, less sixty thousand dollars. However, when the term "federal credit" is used in reference to a generation-skipping transfer (GST), it means the maximum amount of the credit for state taxes allowed by section 2604 of the Internal Revenue Code;

(e) "Federal return" means any tax return required by chapter 11 (Estate tax) or chapter 13 (Tax on generation-skipping transfers) of the Internal Revenue Code;

(f) "Federal tax" means tax under chapter 11 (Estate tax) of the Internal Revenue Code. However, when used in reference to a GST, "federal tax" means the tax under chapter 13 (Tax on generation skipping transfers) of the Internal Revenue Code;

(g) "Generation-skipping transfer" or "GST" means a "generation-skipping transfer" as defined and used in section 2611 of the Internal Revenue Code;

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

(i) "Internal Revenue Code" or "IRC" means the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, 2005;

(j) "Nonresident" means a decedent who was domiciled outside Washington at the time of death;

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

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

(m) "Person responsible," means the person responsible for filing the federal and state returns and is the same person described in subsection (l) of this section;

(n) "Property," when used in reference to an estate tax transfer, means property included in the gross estate. However, when used in reference to a generation-skipping transfer, "property" means all real and personal property subject to the federal tax;

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

(p) "State return" means the Washington Estate Tax Return required by RCW 83.100.050;

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

(r) "Trust" means "trust" under Washington law and any arrangement described in section 2652 of the Internal Revenue Code.

[Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-005, filed 3/9/06, effective 4/9/06. Statutory Authority: RCW 83.100.200. 02-18-078, § 458-57-005, filed 8/30/02, effective 9/30/02; 99-15-095, § 458-57-005, filed 7/21/99, effective 8/21/99.]

**WAC 458-57-015 Valuation of property, property subject to estate tax, how to calculate the tax. (1) Introduction.** This rule applies to deaths occurring on or before May 16, 2005, and is intended to help taxpayers determine and pay the correct amount of estate tax with their state return. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 458-57-165. It explains the necessary steps for determining the tax, and provides examples of how the federal estate tax unified credit relates to the amount that must be reported on the state return. (If a nonresident decedent has property located within Washington at the time of death refer to WAC 458-57-025 to determine the amount of tax payable to Washington.)

(2) **Valuation.** The value of every item of property in a decedent's gross estate is its fair market value. However, the personal representative may elect to use the alternate valuation method under section 2032 of the Internal Revenue Code (IRC), and in that case the value is the fair market value at that date, including the adjustments prescribed in that section of the IRC.

The valuation of certain farm property and closely held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the IRC, is binding for state estate tax purposes.

(3) **Property subject to estate tax.** The estate tax is imposed on transfers of the taxable estate, as defined in section 2051 of the IRC.

(a) The first step in determining the value of the decedent's taxable estate is to determine the total value of the gross estate. The value of the gross estate includes the value of all the decedent's tangible and intangible property at the time of death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of death. A decedent's gross estate for federal estate tax purposes may therefore be different from the same decedent's estate for local probate purposes. Sections 2031 through 2046 of the IRC provide a detailed explanation of how to determine the value of the gross estate. The following are examples of items that may be included in a decedent's gross estate and not in the probate estate:

(i) Certain property transferred by the decedent during the decedent's lifetime without adequate consideration;

(ii) Property held jointly by the decedent and others;

(iii) Property over which the decedent had a general power of appointment;

(iv) Proceeds of certain policies of insurance on the decedent's life annuities; and

(v) Dower and curtesy of a surviving spouse or a statutory estate in lieu thereof.

(b) The value of the taxable estate is determined by subtracting the authorized exemption and deductions from the value of the gross estate. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. Sections 2051 through 2056A of the IRC provide a detailed explanation of how to determine the value of the taxable estate.

(4) **Imposition of Washington's estate tax.** A tax in an amount equal to the federal credit is imposed by RCW 83.100.030 upon the taxable estate of every decedent. Washington's estate tax is due in every case in which the gross estate tax exceeds the unified credit as specified in section 2010 of the IRC, and there is credit available to be taken, with the exception that all applicable federal estate tax credits are to be applied to the estate's tax liability before the state estate tax liability is computed.

(a) The following tables are taken from the IRC. They show the maximum amount of federal credit available for state death taxes. The amount of federal credit computed multiplied by the appropriate fraction is the amount of Washington estate tax due.

Calculate the credit for state death taxes

(i) Step one - calculate the adjusted taxable estate:

Worksheet

Adjusted Taxable Estate	
1. Taxable estate (from federal form 706, Part 2, Line 3) \$. . . . .	
2. Adjustment . . . . .	\$60,000
3. Adjusted taxable estate. Subtract line 2 from line 1. Use this amount to compute maximum credit for state death taxes in Table (B).	

(ii) Step two - apply Table B to the adjusted taxable estate to calculate the credit for state death taxes:

(A)—Taxable estate, equal to or more than...	(B)—and, Taxable estate, less than...	(C)—Base credit on amount in column (A)	(D)—Rate of credit on excess over amount in column (A) (AS A PER-CENT)
\$ 0	\$ 40,000	\$ 0	0.0
\$ 40,000	\$ 90,000	\$ 0	0.8
\$ 90,000	\$ 140,000	\$ 400	1.6
\$ 140,000	\$ 240,000	\$ 1,200	2.4
\$ 240,000	\$ 440,000	\$ 3,600	3.2
\$ 440,000	\$ 640,000	\$ 10,000	4.0
\$ 640,000	\$ 840,000	\$ 18,000	4.8
\$ 840,000	\$ 1,040,000	\$ 27,600	5.6
\$ 1,040,000	\$ 1,540,000	\$ 38,800	6.4
\$ 1,540,000	\$ 2,040,000	\$ 70,800	7.2
\$ 2,040,000	\$ 2,540,000	\$ 106,800	8.0
\$ 2,540,000	\$ 3,040,000	\$ 146,800	8.8
\$ 3,040,000	\$ 3,540,000	\$ 190,800	9.6
\$ 3,540,000	\$ 4,040,000	\$ 238,800	10.4
\$ 4,040,000	\$ 5,040,000	\$ 290,800	11.2
\$ 5,040,000	\$ 6,040,000	\$ 402,800	12.0
\$ 6,040,000	\$ 7,040,000	\$ 522,800	12.8
\$ 7,040,000	\$ 8,040,000	\$ 650,800	13.6
\$ 8,040,000	\$ 9,040,000	\$ 786,800	14.4
\$ 9,040,000	\$ 10,040,000	\$ 930,800	15.2
\$ 10,040,000	.....	\$ 1,082,800	16.0

(iii) Step three - multiply the credit for state death taxes by the percentage for the year of the decedent's death:

Year	Percentage
2002	75%
2003	50%
2004	25%
2005	0%

(b) **Examples.** The following are examples of how the estate tax is applied. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) A married woman dies in the year 2002, leaving her husband and children surviving. Her taxable estate, computed after allowance of the marital deduction, is \$1,100,000. The adjusted taxable estate is \$1,040,000 (\$1,100,000 - \$60,000). The Washington state estate tax due is \$29,100 (\$38,800 multiplied by .75).

(ii) A married man dies with all of his property passing to his wife, outright under a community property agreement. His marital deduction under section 2056 of the IRC reduces his federal taxable estate below the applicable exclusion

amount. Because his taxable estate is below the applicable exclusion amount, while no Washington estate tax is due a return must be filed.

(iii) The federal taxable estate of a decedent is \$100,000 (before gifts are added, which place the estate into a taxable category). The adjusted taxable estate is \$40,000 for state estate tax purposes (\$100,000 - \$60,000). No Washington estate tax is due because section 2011 of the IRC provides for no credit unless the adjusted taxable estate exceeds \$40,000. \*Gifts can push an estate into a taxable category.

(iv) A widow dies in 2003, leaving a taxable estate of \$1,030,000. The amount of tax payable to the state of Washington is computed as follows: Taxable estate of \$1,030,000 less \$60,000 equals an adjusted taxable estate of \$970,000. The state death tax credit (IRC section 2011) on the first \$840,000 is \$27,600. The state death tax credit for the \$130,000 increment (\$970,000 - \$840,000) is \$7,280 (5.6% of \$130,000). The total Washington estate tax liability is \$17,440 (\$27,600 + \$7,280) x .50 however, the state estate tax cannot exceed the adjusted gross estate tax (line 14) which in this case would be \$12,300. Therefore, the state estate tax would be \$12,300 because it is the lower of the two. This occurs in a small window over the applicable exemption threshold amount.

[Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-015, filed 3/9/06, effective 4/9/06. Statutory Authority: RCW 83.100.200. 02-18-078, § 458-57-015, filed 8/30/02, effective 9/30/02; 99-15-095, § 458-57-015, filed 7/21/99, effective 8/21/99.]

**WAC 458-57-017 Property subject to generation-skipping transfer tax, how to calculate the tax, allocation of generation-skipping transfer exemption. (1) Introduction.** The generation-skipping transfer tax was repealed effective May 17, 2005. If the taxable termination or distribution is the result of a death that occurred on or after May 17, 2005, there is no Washington generation-skipping transfer tax. This repeal does not affect generation-skipping transfer taxable terminations or distributions that result from a death that occurred on or before May 16, 2005. This rule applies only to taxable terminations or distributions that occur as the result of a death that occurred on or before May 16, 2005.

(2) This rule is intended to help taxpayers determine and pay the correct amount of generation-skipping transfer (GST) tax with their state return. It explains what property is subject to the tax, the calculation of the tax, and the allocation of the generation-skipping transfer exemption.

(3) **Property subject to generation-skipping transfer tax.** If real or tangible personal property subject to federal GST tax, as defined and used in section 2611 of the IRC, is located in this state or if the trust has its principal place of administration in this state at the time of the generation-skipping transfer, a tax in an amount equal to the federal credit provided by section 2604 of the IRC is imposed on every generation-skipping transfer.

(4) **Calculation of the tax.** The allowable Washington credit equals the federal GST tax on the transfer multiplied by 5% (.05). If state GST tax credit was paid to another state(s), the taxpayer must attach evidence of the credit paid to the Washington return. The Washington State Estate and Transfer Tax Return and the instructions for calculating the GST tax can be found on the department's web site at <http://www>.

dor.wa.gov/ under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at 360-570-3265, option 2.

(5) **Allocation of generation-skipping transfer exemption.** The allocation(s) of the GST exemption for Washington purposes will be the same as the allocation(s) made for federal GST exemption purposes up to the amount allowed by section 2631 of the IRC.

[Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-017, filed 3/9/06, effective 4/9/06. Statutory Authority: RCW 83.100.200. 02-18-078, § 458-57-017, filed 8/30/02, effective 9/30/02.]

**WAC 458-57-025 Determining the tax liability of nonresidents.** (1) **Introduction.** This rule applies to deaths occurring on or before May 16, 2005, and discusses how property of nonresident decedents is taxed if that property is located within Washington at the time of death. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 458-57-165.

(2) **Nonresident decedents and Washington's estate tax.** If any decedent has tangible personal property and/or real property located in Washington state at the time of death, that property is subject to Washington's estate tax.

(a) **The reciprocity exemption.** A nonresident decedent's estate is exempt from Washington's estate tax if the nonresident's state of domicile exempts the property of Washington residents from estate, inheritance, or other death taxes normally imposed by the domicile state. The nonresident decedent must have been a citizen and resident of the United States at the time of death. Also, at the time of death the laws of the domicile state must have made specific reference to this state, or must have contained a reciprocal provision under which nonresidents of the domicile state were exempted from applicable death taxes with respect to property or transfers otherwise subject to the jurisdiction of that state.

In those instances where application of this provision results in loss of available federal credit which would otherwise be allowed for federal tax purposes, Washington will absorb that proportional share which is applicable to property within the jurisdiction of this state. Application of this provision will not act to increase the total tax obligation of the estate.

(b) **Property of a nonresident's estate which is located in Washington.** A nonresident decedent's estate may have either real property or tangible personal property located in Washington at the time of death.

(i) All real property physically situated in this state, with the exception of federal trust lands, and all interests in such property, are deemed "located in" Washington. Such interests include, but are not limited to:

(A) Leasehold interests;

(B) Mineral interests;

(C) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property;

(D) Trusts (beneficial interest in trusts of realty); and

(E) Decedent's interest in jointly owned property (e.g., tenants in common, joint with right of survivorship).

(ii) Tangible personal property of a nonresident decedent shall be deemed located in Washington only if:

(A) At the time of death the property is situated in Washington; and

(B) It is present for a purpose other than transiting the state.

(iii) For example, consider a nonresident decedent who was a construction contractor doing business as a sole proprietor. The decedent was constructing a large building in Washington. At the time of death, any of the decedent's equipment that was located at the job site in Washington, such as tools, earthmovers, bulldozers, trucks, etc., would be deemed located in Washington for estate tax purposes. Also, the decedent had negotiated and signed a purchase contract for speculative property in another part of Washington. For estate tax purposes, that real property should also be considered a part of the decedents' estate located in Washington.

(c) **Formula to calculate Washington's estate tax for nonresident decedents.** The amount of tax payable to Washington for a nonresident decedent equals the amount of federal credit multiplied by a fraction, the numerator of which is the value of the property located in Washington, and the denominator of which is the value of the decedent's gross estate. Restated:  $\text{Federal Credit} \times (\text{Gross Value of Property in Washington} / \text{Decedent's Gross Estate}) = \text{Amount of Washington Estate Tax Due}$ . This formula uses the gross value determined for estate tax purposes of any property located in Washington. No reduction will be allowed for any mortgages, liens, or other encumbrances or debts associated with such property except to the extent allowable in computing the gross estate for estate tax purposes.

[Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-025, filed 3/9/06, effective 4/9/06. Statutory Authority: RCW 83.100.200. 02-18-078, § 458-57-025, filed 8/30/02, effective 9/30/02; 99-15-095, § 458-57-025, filed 7/21/99, effective 8/21/99.]

**WAC 458-57-035 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment.** (1) **Introduction.** This rule applies to deaths occurring on or before May 16, 2005, and discusses the due date for filing of Washington's estate tax return and payment of the tax due. It explains that a penalty is imposed on the taxes due with the state return when the return is not filed on or before the due date, and that interest is imposed when the tax due is not paid by the due date. The rule also discusses the limited circumstances under which the law allows the department of revenue to cancel or waive the penalty, and the procedure for requesting that cancellation or waiver. The Washington State Estate and Transfer Tax Return and the instructions for completing return can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at 360-570-3265, option 2. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 458-57-165.

(2) **Filing the state return—Payment of the tax due.** The Washington estate tax return (state return) referred to in RCW 83.100.050 and a copy of the federal estate tax return (federal return) and all supporting documentation is due nine months from the date of the decedent's death. The tax due with the state return must be paid on or before the due date.

(a) Section 6075 of the Internal Revenue Code (IRC) requires that the federal return be filed within nine months after the date of the decedent's death. In the case of any estate for which a federal return must be filed under the current IRC, a state return must be filed with the Washington state department of revenue (department) on or before the date on which the federal return is required to be filed. (This may include a federally granted extension of time for filing. See (b) of this subsection.)

(b) Section 6081 of the IRC permits the granting of a reasonable extension of time for filing the federal return, generally not to exceed six months from the original due date. If a federal extension of the time to file is granted, the personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.050(2). If the personal representative fails to do so, the department may require the personal representative to file the state return on the date that the federal return would have been due had the federal extension not been granted.

(c) When the personal representative obtains an extension of time for payment of the federal tax, or elects to pay that tax in installments, the personal representative may choose to pay the state estate tax over the same time period and in the same manner as the federal tax. The personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.060(2). If the personal representative fails to do so, the department may require the personal representative to pay the state tax on the date that the federal tax would have been due had the federal extension not been granted.

(d) The department shall issue a release when Washington's estate tax has been paid. Upon issuance of a release, all property subject to the tax shall be free of any claim for the tax by the state. RCW 83.100.080.

(3) **The late filing penalty.** If the state return is not filed by the due date, or any extension of the state return's due date, the person required to file the return may be subject to a late filing penalty.

(a) **When does the penalty apply?** This penalty applies if the person required to file the return has not timely filed the state return with the department prior to being notified by the department, in writing, of the necessity to file the state return. The late payment penalty is equal to five percent of the tax due for each month during which the state return has not been filed, not to exceed the lesser of twenty-five percent of the tax or one thousand five hundred dollars. RCW 83.100.070.

(b) **How is the penalty computed?** The penalty is the equivalent of five percent for each month, but is accrued on a daily basis for those periods less than a month. For any portion of a month, it is calculated by taking the five percent monthly rate and dividing it by the number of days from the beginning of the month through the date the return is filed, including the filing date.

For example, assume a state return is due on February 3rd but is not filed until April 20th of the same year. The state return is delinquent starting with February 4th. The amount of tax due with the state return is \$10,000.

(i) The penalty should be computed as follows:

Feb 4-Feb 28	\$10,000 tax at 5% per month	\$446.43
Mar 1-Mar 31	\$10,000 tax at 5% per month	\$500.00
Apr 1-Apr 20	\$10,000 tax at .1667% x 17 days	\$333.34
Total delinquent penalty due on April 20th filing date		\$1,297.77

(ii) In this example, the first month (February) is a partial month. February has twenty-eight days, the five percent monthly rate is divided by twenty-eight days to arrive at a daily rate of .0017857 (or .17857 percent). The daily rate is then multiplied by the twenty-five days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.0017857 x 25 days = .044643 or 4.4643 percent). The second calendar month (March) is complete and incurs the full five percent penalty. The last portion of a month is a total of seventeen days, including both April 4th and April 20th. Since April has thirty days total, the five percent monthly rate is divided by the thirty days in April to arrive at a daily rate of .001667 (or .1667 percent). The daily rate is then multiplied by the twenty days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.001667 x 20 days = .03334 or 3.334 percent).

(4) **Interest is imposed on late payment.** The department is required by law to impose interest on the tax due with the state return if payment of the tax is not made on or before the due date. RCW 83.100.070. Interest applies to the delinquent tax only, and is calculated from the due date until the date of payment. Interest imposed for periods after December 31, 1996, will be computed at the annual variable interest rate described in RCW 82.32.050(2). Interest imposed for periods prior to January 1, 1997, will be computed at the rate of twelve percent per annum.

(5) **Waiver or cancellation of penalties.** RCW 83.100.-070(3) authorizes the department to waive or cancel the penalty for late filing of the state return under limited circumstances.

(a) **Claiming the waiver.** A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The request must be made in the form of a letter and submitted to the department's special programs division. The person responsible bears the burden of establishing that the circumstances were beyond the responsible person's control and directly caused the late filing. The department will cancel or waive the late filing penalty imposed on the state return when the delinquent filing is the result of circumstances beyond the control of the person responsible for filing of the state return. The person responsible for filing the state return is the same person who is responsible for filing the federal return.

(b) **Circumstances eligible for waiver.** In order to qualify for a waiver of penalty the circumstances beyond the control of the person responsible for filing the state return must directly cause the late filing of the return. These circumstances are generally immediate, unexpected, or in the nature of an emergency. Such circumstances result in the person responsible not having reasonable time or opportunity to obtain an extension of their due date (see subsection (2)(b) of this section) or to otherwise timely file the state return. Circumstances beyond the control of the responsible person include, but are not necessarily limited to, the following:

(i) The delinquency was caused by the death or serious illness of the person responsible for filing the state return or a member of the responsible person's immediate family. In order to qualify for penalty waiver, the death or serious illness must directly prevent the person responsible from having reasonable time or opportunity to arrange for timely filing of the state return. Generally, the death or serious illness must have occurred within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date.

(ii) The delinquency was caused by an unexpected and unavoidable absence of the person responsible. Generally, this absence must be within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date. "Unavoidable absence of the person responsible" does not include absences because of business trips, vacations, personnel turnover, or personnel terminations.

(iii) The delinquency was caused by the destruction by fire or other casualty of estate records necessary for completion of the state return.

(iv) An estate tax return was timely filed, but was filed incorrectly with another state due to an issue of the decedent's domicile.

(v) A Washington estate tax return was properly prepared and timely filed, but was sent to the location for filing of the federal estate tax return.

(6) **Waiver or cancellation of interest.** Title 83 RCW (Estate Taxation) does not provide any circumstances that allow for waiver of the interest, even though penalty may be waived under limited circumstances (see subsection (5) of this section).

(7) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer.

[Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-035, filed 3/9/06, effective 4/9/06. Statutory Authority: RCW 83.100.200. 02-18-078, § 458-57-035, filed 8/30/02, effective 9/30/02; 00-19-012, § 458-57-035, filed 9/7/00, effective 10/8/00; 99-15-095, § 458-57-035, filed 7/21/99, effective 8/21/99.]

**WAC 458-57-045 Administration of the tax—Releases, amended returns, and refunds.** (1) **Introduction.** This rule applies to deaths occurring on or before May 16, 2005. This rule contains information on releases issued by the department for state estate taxes paid. It explains how and when an amended state return should be filed. Information on escheat estates and absentee distributees (missing heirs) can be found at RCW 458-57-165. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 458-57-165.

(2) **Releases.** When the state estate taxes have been paid in full, the department will issue a release to the personal representative upon request. The request will include a completed state return and a copy of the completed federal return, if one was filed. The final determination of the amount of taxes due from the estates that have filed federal returns is contingent on receipt of a copy of the final closing letter issued by the Internal Revenue Service (IRS). The department may require additional information to substantiate information provided by those estates that are not required to

file federal returns. The release issued by the department will not bind or estop the department in the event of a misrepresentation of facts.

(3) **Amended returns.** An amended state return must be filed with the department within five days after any amended federal return is filed with the IRS and must be accompanied by a copy of the amended federal return.

(a) Any time that the amount of federal tax due is adjusted or when there is a final determination of the federal tax due the person responsible must give written notification to the department. This notification must include copies of any final examination report, any compromise agreement, the state tax closing letter, and any other available evidence of the final determination.

(b) If any amendment, adjustment or final determination results in additional state estate tax due, interest will be calculated on the additional tax due at the annual variable interest rate described in RCW 82.32.050(2).

(4) **Refunds.** Only the personal representative or the personal representative's retained counsel may make a claim for a refund of overpaid tax. If the application for refund, with supporting documents, is filed within four months after an adjustment or final determination of tax liability, the department shall pay interest until the date the refund is mailed. If the application for refund, with supporting documents, is filed after four months after the adjustment or final determination, the department shall pay interest only until the end of the four-month period. Any refund issued by the department will include interest at the existing statutory rate defined in RCW 82.32.050(2), computed from the date the overpayment was received by the department until the date it is mailed to the estate's representative. RCW 83.100.130(2).

[Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-045, filed 3/9/06, effective 4/9/06. Statutory Authority: RCW 83.100.200. 02-18-078, § 458-57-045, filed 8/30/02, effective 9/30/02; 00-19-012, § 458-57-045, filed 9/7/00, effective 10/8/00; 99-15-095, § 458-57-045, filed 7/21/99, effective 8/21/99.]

**WAC 458-57-105 Nature of estate tax, definitions.** (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and describes the nature of Washington state's estate tax as it is imposed by chapter 83.100 RCW (Estate and Transfer Tax Act). It also defines terms that will be used throughout chapter 458-57 WAC (Washington Estate and Transfer Tax Reform Act rules). The estate tax rule on the nature of estate tax and definitions for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-005.

(2) **Nature of Washington's estate tax.** The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share.

(a) **Relationship of Washington's estate tax to the federal estate tax.** The department administers the estate tax under the legislative enactment of chapter 83.100 RCW, which references the Internal Revenue Code (IRC) as it existed January 1, 2005. Federal estate tax law changes enacted after January 1, 2005, do not apply to the reporting requirements of Washington's estate tax. The department will follow federal Treasury Regulations section 20 (Estate tax regulations), in existence on January 1, 2005, to the extent they do not conflict with the provisions of chapter 83.100



RCW or 458-57 WAC. For deaths occurring January 1, 2009, and after, Washington has different estate tax reporting and filing requirements than the federal government. There will be estates that must file an estate tax return with the state of Washington, even though they are not required to file with the federal government. The Washington state estate and transfer tax return and the instructions for completing the return can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be requested by calling the department's estate tax section at 360-570-3265, option 2.

(b) **Lifetime transfers.** Washington estate tax taxes lifetime transfers only to the extent included in the federal gross estate. The state of Washington does not have a gift tax.

(3) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Absentee distributee" means any person who is the beneficiary of a will or trust who has not been located;

(b) "Decedent" means a deceased individual;

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

(d) "Escheat" of an estate means that whenever any person dies, whether a resident of this state or not, leaving property in an estate subject to the jurisdiction of this state and without being survived by any person entitled to that same property under the laws of this state, such estate property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.300;

(e) "Federal return" means any tax return required by chapter 11 (Estate tax) of the Internal Revenue Code;

(f) "Federal tax" means tax under chapter 11 (Estate tax) of the Internal Revenue Code;

(g) "Federal taxable estate" means the taxable estate as determined under chapter 11 of the Internal Revenue Code without regard to:

(i) The termination of the federal estate tax under section 2210 of the IRC or any other provision of law; and

(ii) The deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the IRC.

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

(i) "Internal Revenue Code" or "IRC" means, for purposes of this chapter, the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, 2005;

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

(k) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the Internal Revenue Code, such as the personal representative (executor) of an estate;

(l) "Property," when used in reference to an estate tax transfer, means property included in the gross estate;

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

(n) "State return" means the Washington estate tax return required by RCW 83.100.050;

(o) "Taxpayer" means a person upon whom tax is imposed under this chapter, including an estate or a person liable for tax under RCW 83.100.120;

(p) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046;

(q) "Washington taxable estate" means the "federal taxable estate":

(i) Less one million five hundred thousand dollars for decedents dying before January 1, 2006, or two million dollars for decedents dying on or after January 1, 2006;

(ii) Less the amount of any deduction allowed under RCW 83.100.046 as a farm deduction;

(iii) Less the amount of the Washington qualified terminable interest property (QTIP) election made under RCW 83.100.047;

(iv) Plus any amount deducted from the federal estate pursuant to IRC § 2056 (b)(7) (the federal QTIP election);

(v) Plus the value of any trust (or portion of a trust) of which the decedent was income beneficiary and for which a Washington QTIP election was previously made pursuant to RCW 83.100.047; and

(vi) Less any amount included in the federal taxable estate pursuant to IRC § 2044 (inclusion of amounts for which a federal QTIP election was previously made) from a predeceased spouse that died on or after May 17, 2005.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 09-04-008, § 458-57-105, filed 1/22/09, effective 2/22/09. Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-105, filed 3/9/06, effective 4/9/06.]

### **WAC 458-57-115 Valuation of property, property subject to estate tax, and how to calculate the tax. (1)**

**Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and is intended to help taxpayers prepare their return and pay the correct amount of Washington state estate tax. It explains the necessary steps for determining the tax and provides examples of how the tax is calculated. The estate tax rule on valuation of property etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-015.

### **(2) Determining the property subject to Washington's estate tax.**

(a) **General valuation information.** The value of every item of property in a decedent's gross estate is its date of death fair market value. However, the personal representative may elect to use the alternate valuation method under section 2032 of the Internal Revenue Code (IRC), and in that case the value is the fair market value at that date, including the adjustments prescribed in that section of the IRC. The valuation of certain farm property and closely held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the 2005 IRC, is binding on the estate for state estate tax purposes.

(b) **How is the gross estate determined?** The first step in determining the value of a decedent's Washington taxable estate is to determine the total value of the gross estate. The value of the gross estate includes the value of all the dece-

dent's tangible and intangible property at the time of death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of death. A decedent's gross estate for estate tax purposes may therefore be different from the same decedent's estate for local probate purposes. Sections 2031 through 2046 of the IRC provide a detailed explanation of how to determine the value of the gross estate.

(c) **Deductions from the gross estate.** The value of the taxable estate is determined by subtracting the authorized exemption and deductions from the value of the gross estate. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. While sec-

tions 2051 through 2056A of the IRC provide a detailed explanation of how to determine the value of the taxable estate the following areas are of special note:

(i) **Funeral expenses.**

(A) Washington is a community property state and under *Estate of Julius C. Lang v. Commissioner*, 97 Fed. 2d 867 (9th Cir. 1938) affirming the reasoning of *Wittwer v. Pember-ton*, 188 Wash. 72, 76, 61 P.2d 993 (1936) funeral expenses reported for a married decedent must be halved. Administration expenses are not a community debt and are reported at 100%.

(B) **Example.** John, a married man, died in 2005 with an estate valued at \$2.5 million. On Schedule J of the federal estate tax return listed following as expenses:

SCHEDULE J - Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims			
Item Number	Description	Expense Amount	Total Amount
1	<b>A. Funeral expenses:</b> Burial and services	\$4,000	
	(1/2 community debt)	(\$2,000)	
	Total funeral expenses. . . . .		
	<b>B. Administration expenses:</b>		
	1. Executors' commissions - amount estimated/agreed upon paid. (Strike out the words that do not apply). . . . .		\$10,000
	2. Attorney fees - amount estimated/agreed upon/paid. (Strike out the words that do not apply). . . . .		\$5,000

The funeral expenses, as a community debt, were properly reported at 50% and the other administration expenses were properly reported at 100%.

(ii) **Mortgages and liens on real property.** Real property listed on Schedule A should be reported at its fair market value without deduction of mortgages or liens on the property. Mortgages and liens are reported and deducted using Schedule K.

(iii) **Washington qualified terminable interest property (QTIP) election.**

(A) A personal representative may choose to make a larger or smaller percentage or fractional QTIP election on the Washington return than taken on the federal return in order to reduce Washington estate liability while making full use of the federal unified credit.

(B) Section 2056 (b)(7) of the IRC states that a QTIP election is irrevocable once made. Section 2044 states that the value of any property for which a deduction was allowed under section 2056 (b)(7) must be included in the gross estate of the recipient. Similarly, a QTIP election made on the Washington return is irrevocable, and a surviving spouse who is the lifetime beneficiary of property for which a Washington QTIP election was made must include the value of the remaining property in his or her gross estate for Washington estate tax purposes. If the value of property for which a federal QTIP election was made is different, this value is not includible in the surviving spouse's gross estate for Washington estate tax purposes; instead, the value of property for which a Washington QTIP election was made is includible.

(C) The Washington QTIP election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return or, if those assets have not been determined when the estate tax return is filed, on a statement to that effect, prepared when the assets are defini-

tively identified. Identification of the assets is necessary when reviewing the surviving spouse's return, if a return is required to be filed. This statement may be filed with the department at that time or when the surviving spouse's estate tax return is filed.

(D) **Example.** A decedent dies in 2009 with a gross estate of \$5 million. The decedent established a QTIP trust for the benefit of her surviving spouse in an amount to result in no federal estate tax. The federal unified credit is \$3.5 million for the year 2009. In 2009 the Washington statutory deduction is \$2 million. To pay no Washington estate tax the personal representative of the estate has the option of electing a larger percentage or fractional QTIP election resulting in the maximization of the individual federal unified credit and paying no tax for Washington purposes.

The federal estate tax return reflected the QTIP election with a percentage value to pay no federal estate tax. On the Washington return the personal representative elected QTIP treatment on a percentage basis in an amount so no Washington estate tax is due. Upon the surviving spouse's death the assets remaining in the Washington QTIP trust must be included in the surviving spouse's gross estate.

(iv) **Washington qualified domestic trust (QDOT) election.**

(A) A deduction is allowed for property passing to a surviving spouse who is not a U.S. citizen in a qualified domestic trust (a "QDOT"). An executor may elect to treat a trust as a QDOT on the Washington estate tax return even though no QDOT election is made with respect to the trust on the federal return; and also may forgo making an election on the Washington estate tax return to treat a trust as a QDOT even though a QDOT election is made with respect to the trust on the federal return. An election to treat a trust as a QDOT may not be made with respect to a specific portion of an entire

trust that otherwise would qualify for the marital deduction, but if the trust is actually severed pursuant to authority granted in the governing instrument or under local law prior to the due date for the election, a QDOT election may be made for any one or more of the severed trusts.

(B) A QDOT election may be made on the Washington estate tax return with respect to property passing to the surviving spouse in a QDOT, and also with respect to property passing to the surviving spouse if the requirements of IRC section 2056 (d)(2)(B) are satisfied. Unless specifically stated otherwise herein, all provisions of sections 2056(d) and 2056A of the IRC, and the federal regulations promulgated thereunder, are applicable to a Washington QDOT election. Section 2056A(d) of the IRC states that a QDOT election is irrevocable once made. Similarly, a QDOT election made on the Washington estate tax return is irrevocable. For purposes of this subsection, a QDOT means, with respect to any decedent, a trust described in IRC section 2056A(a), provided, however, that if an election is made to treat a trust as a QDOT on the Washington estate tax return but no QDOT election is made with respect to the trust on the federal return:

(I) The trust must have at least one trustee that is an individual citizen of the United States resident in Washington state, or a corporation formed under the laws of the state of Washington, or a bank as defined in IRC section 581 that is authorized to transact business in, and is transacting business in, the state of Washington (the trustee required under this subsection is referred to herein as the "Washington Trustee");

(II) The Washington Trustee must have the right to withhold from any distribution from the trust (other than a distribution of income) the Washington QDOT tax imposed on such distribution;

(III) The trust must be maintained and administered under the laws of the state of Washington; and

(IV) The trust must meet the additional requirements intended to ensure the collection of the Washington QDOT tax set forth in (c)(iv)(D) of this subsection.

(C) The QDOT election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return, or, if those assets have not been determined when the estate tax return is filed, or a statement to that effect, prepared when the assets are definitively identified. This statement may be filed with the department at that time or when the first taxable event with respect to the trust is reported to the department.

(D) In order to qualify as a QDOT, the following requirements regarding collection of the Washington QDOT tax must be satisfied.

(I) If a QDOT election is made to treat a trust as a QDOT on both the federal and Washington estate tax returns, the Washington QDOT election will be valid so long as the trust satisfies the statutory requirements of Treas. Reg. Section 20.2056A-2(d).

(II) If an election is made to treat a trust as a QDOT only on the Washington estate tax return, the following rules apply:

If the fair market value of the trust assets exceeds \$2 million as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(i), except that: If the bank trustee alternative is used, the bank must be a bank that is

authorized to transact business in, and is transacting business in, the state of Washington, or a bond or an irrevocable letter of credit meeting the requirements of Treas. Reg. Section 20.2056A-2 (d)(1)(i)(B) or (C) must be furnished to the department.

If the fair market value of the trust assets is \$2 million or less as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(ii), except that not more than 35 percent of the fair market value of the trust may be comprised of real estate located outside of the state of Washington.

A taxpayer may request approval of an alternate plan or arrangement to assure the collection of the Washington QDOT tax. If such plan or arrangement is approved by the department, such plan or arrangement will be deemed to meet the requirements of this (c)(iv)(D).

(E) The Washington estate tax will be imposed on:

(I) Any distribution before the date of the death of the surviving spouse from a QDOT (except those distributions excepted by IRC section 2056A (b)(3)); and

(II) The value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC section 2056A (b)(4)). The tax is computed using Table W. The tax is due on the date specified in IRC section 2056A (b)(5). The tax shall be reported to the department in a form containing the information that would be required to be included on federal Form 706-QDT with respect to the taxable event, and any other information requested by the department, and the computation of the Washington tax shall be made on a supplemental statement. If Form 706-QDT is required to be filed with the Internal Revenue Service with respect to a taxable event, a copy of such form shall be provided to the department. Neither the residence of the surviving spouse or other QDOT beneficiary nor the situs of the QDOT assets are relevant to the application of the Washington tax. In other words, if Washington state estate tax would have been imposed on property passing to a QDOT at the decedent's date of death but for the deduction allowed by this subsection (c)(iv) (E)(II), the Washington tax will apply to the QDOT at the time of a taxable event as set forth in this subsection (c)(iv)(E)(II) regardless of, for example, whether the distribution is made to a beneficiary who is not a resident of Washington, or whether the surviving spouse was a nonresident of Washington at the date of the surviving spouse's death.

(F) If the surviving spouse of the decedent becomes a citizen of the United States and complies with the requirements of section 2056A (b)(12) of the IRC, then the Washington tax will not apply to: Any distribution before the date of the death of the surviving spouse from a QDOT; or the value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC section 2056A (b)(4)).

(d) **Washington taxable estate.** The estate tax is imposed on the "Washington taxable estate." The "Washington taxable estate" means the "federal taxable estate":

(i) Less one million five hundred thousand dollars for decedents dying before January 1, 2006, or two million dollars for decedents dying on or after January 1, 2006;

- (ii) Less the amount of any deduction allowed under RCW 83.100.046 as a farm deduction;
- (iii) Less the amount of the Washington qualified terminable interest property (QTIP) election made under RCW 83.100.047;
- (iv) Plus any amount deducted from the federal estate pursuant to IRC § 2056 (b)(7) (the federal QTIP election);
- (v) Plus the value of any trust (or portion of a trust) of which the decedent was income beneficiary and for which a Washington QTIP election was previously made pursuant to RCW 83.100.047; and
- (vi) Less any amount included in the federal taxable estate pursuant to IRC § 2044 (inclusion of amounts for

which a federal QTIP election was previously made) from a predeceased spouse that died on or after May 17, 2005.

(e) **Federal taxable estate.** The "federal taxable estate" means the taxable estate as determined under chapter 11 of the IRC without regard to:

- (i) The termination of the federal estate tax under section 2210 of the IRC or any other provision of law; and
- (ii) The deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the IRC.

(3) **Calculation of Washington's estate tax.**

(a) The tax is calculated by applying Table W to the Washington taxable estate. See (d) of this subsection for the definition of "Washington taxable estate."

**Table W**

Washington Taxable Estate is at Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	17.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
\$9,000,000		\$1,440,000	19.00%	\$9,000,000

(b) **Examples.**

(i) A widow dies on September 25, 2005, leaving a gross estate of \$2.1 million. The estate had \$100,000 in expenses deductible for federal estate tax purposes. Examples of allowable expenses include funeral expenses, indebtedness, property taxes, and charitable transfers. The Washington taxable estate equals \$500,000.

Gross estate	\$2,100,000
Less allowable expenses deduction	- \$100,000
Less \$1,500,000 statutory deduction	- \$1,500,000
Washington taxable estate	\$500,000

Based on Table W, the estate tax equals \$50,000 (\$500,000 x 10% Washington estate tax rate).

(ii) John dies on October 13, 2005, with an estate valued at \$3 million. John left \$1.5 million to his spouse, Jane, using the unlimited marital deduction. There is no Washington estate tax due on John's estate.

Gross estate	\$3,000,000
Less unlimited marital deduction	- \$1,500,000
Less \$1,500,000 statutory deduction	- \$1,500,000
Washington taxable estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 09-04-008, § 458-57-115, filed 1/22/09, effective 2/22/09. Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-115, filed 3/9/06, effective 4/9/06.]

**WAC 458-57-125 Apportionment of tax when there are out-of-state assets. (1) Introduction.** This rule applies

to deaths occurring on or after May 17, 2005, and discusses how to apportion the estate tax when there is out-of-state property included in the gross estate. The estate tax rule on apportionment of estate tax for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-025.

(2) **Calculation of apportioned tax.** Apportionment is allowed for estate property located outside of Washington. The amount of tax is determined using Table W (see WAC 458-57-115) multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Property qualifying for the farm deduction is excluded from the numerator and denominator of the fraction. See WAC 458-57-155 (Farm deduction) for additional information on the farm deduction.

(3) **Example.** A widow dies in 2006 leaving a gross estate of \$3.1 million. The estate had \$100,000 in expenses deductible for federal estate tax purposes. The decedent also owned a home in Arizona valued at \$300,000.

Gross estate	\$3,100,000
Less allowable expenses deduction	- \$100,000
Less \$2,000,000 statutory deduction	- \$2,000,000
Washington taxable estate	\$1,000,000

Based on the tax table, the estate tax equals \$100,000 (\$1,000,000 x 10% Washington estate tax rate). Because the decedent owned an out-of-state asset, the tax due to Washington is prorated by multiplying the amount of tax owed by a fraction. The numerator of the fraction is the value of the property located in Washington divided by the denominator that equals the value of the decedent's gross estate. The fraction is then multiplied by the amount of tax.

$$(\$2,800,000 (\$3,100,000 - \$300,000) / \$3,100,000) \times \$100,000 = \$90,323$$

The estate does not have to pay estate tax to the state of Arizona in order to reduce the tax owed to Washington. The estate tax due to Washington is \$90,323.

(4) **When is property located in Washington?** A decedent's estate may have either real property or tangible personal property located in Washington at the time of death.

(a) All real property physically situated in this state, with the exception of federal trust lands, and all interests in such property, are deemed "located in" Washington. Such interests include, but are not limited to:

- (i) Leasehold interests;
- (ii) Mineral interests;
- (iii) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property;
- (iv) Trusts (beneficial interest in trusts of realty); and
- (v) Decedent's interest in jointly owned property (e.g., tenants in common, joint with right of survivorship).

(b) Tangible personal property of a nonresident decedent shall be deemed located in Washington only if:

- (i) At the time of death the property is situated in Washington; and
- (ii) It is present for a purpose other than transiting the state.

(c) **Example.** A nonresident decedent was a construction contractor doing business as a sole proprietor. The decedent was constructing a large building in Washington. At the time of death, any of the decedent's equipment that was located at the job site in Washington, such as tools, earthmovers, bulldozers, trucks, etc., would be deemed located in Washington for estate tax purposes. Also, the decedent had negotiated and signed a purchase contract for speculative property in another part of Washington. For estate tax purposes, that real property should also be considered a part of the decedent's estate located in Washington.

[Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-125, filed 3/9/06, effective 4/9/06.]

**WAC 458-57-135 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment.** (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and discusses the due date for filing of Washington's estate tax return and payment of the tax due. It explains that a penalty is imposed on the taxes due with the state return when the return is not filed on or before the due date, and that interest is imposed when the tax due is not paid by the due date. The rule also discusses the limited circumstances under which the law allows the department of revenue to cancel or waive the penalty, and the procedure for requesting that cancellation or waiver. The estate tax rule on the estate tax return etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-035.

(2) **Estate tax return.** The Washington state estate and transfer tax return and the instructions for completing return can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at 360-570-3265, option 2.

(3) **Filing the state return—Payment of the tax due.**

(a) The Washington estate tax return (state return) referred to in RCW 83.100.050 is due nine months after the date of the decedent's death. The following is the list of documents that must accompany the state return:

- (i) A copy of the filed Federal Form 706 United States Estate (and Generation-skipping Transfer), 706NA, or 706QDT Tax Return(s), signed by the person required to file;
- (ii) All supporting documentation for completed federal return schedules;
- (iii) If applicable, a copy of an approved Form 4768 Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-skipping Transfer) Taxes;
- (iv) Copy(ies) of any Washington schedules that differ from the federal form schedules, along with supporting documentation;
- (v) Photocopy of death certificate;
- (vi) Photocopy of letters of administration, if any;
- (vii) Copy of the will and trust(s), if any;
- (viii) Copy of other state estate or inheritance return(s) and proof of payment(s), if any; and
- (ix) Payment, if tax is due.

The tax due with the state return must be paid on or before the due date.

(b) In any case where a federal return must be filed under the current Internal Revenue Code (IRC) or in the year 2009 and thereafter, if the gross estate of a decedent exceeds two million dollars, a state return must be filed with the Washington state department of revenue (department) on or before the date that the federal return is required or would have been required to be filed. (This may include a federally granted extension of time for filing. See subsection (2)(b).) Section 6075 of the IRC requires that the federal return be filed within nine months after the date of the decedent's death.

(c) **Extensions to file or extensions for payment of tax.**

(i) Section 6081 of the IRC permits the granting of a reasonable extension of time for filing the federal return, generally not to exceed six months from the original due date. If a federal extension of the time to file is granted, the personal representative is required to file a true copy of that extension or installment approval with the department on or before the original due date, or within thirty days of the issuance of the federal extension or installment approval, whichever is later. RCW 83.100.050(2). If the personal representative fails to do so, the department may require the personal representative to file the state return on the date that the federal return would have been due had the federal extension not been granted.

(ii) When the personal representative obtains an extension of time for payment of the federal tax, or elects to pay that tax in installments, the personal representative may choose to pay the state estate tax over the same time period and in the same manner as the federal tax. The personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.060(2). If the personal representative fails to do so, the department may require the personal representative to pay the state tax on the date that the

federal tax would have been due had the federal extension not been granted.

(iii) **Extensions to file for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request a one-time automatic six-month extension to file. The request must be in writing and acknowledge that interest will begin to accrue from the original due date of the state return. The written request for the extension must be made prior to the date the state return is due.

(iv) **Extension to pay tax owed for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request an extension of time for paying the tax owed when payment of the tax would cause an undue hardship upon the estate or for a payment plan for closely held businesses. The granting of an extension of time to pay the tax owed or for a payment plan for closely held business will not operate to prevent the running of interest. RCW 83.100.070.

#### **Hardship extensions to pay.**

In any case in which the department finds that payment, on the due date prescribed, or any part of a deficiency would impose undue hardship upon the estate, the department may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the original due date of payment.

The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that a substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax owed at the date payment is due. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted if the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade the tax.

An application for such an extension must be in writing and must contain, or be supported by, information in a written statement declaring that it is made under penalties of perjury showing the undue hardship that would result to the estate if the extension were refused. The application, with the supporting information, must be filed with the department. When received, it will be examined, and, if possible, within thirty days will be denied, granted, or tentatively granted subject to certain conditions of which the personal representative will be notified. The department will not consider an application for such an extension unless it is applied for on or before the due date for payment. If the personal representative desires to obtain an additional extension, it must be applied for on or before the date of the expiration of the previous extension.

The amount of tax owed for which an extension is granted, along with interest as determined by RCW 83.100.070, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the department.

(v) **Payment plans for closely held businesses.** The department will abide by the provisions of section 6166 of the

2005 IRC for the granting of payment plans for closely held businesses.

(4) **The late filing penalty.** If the state return is not filed by the due date, or any extension of the state return's due date, the person required to file the return may be subject to a late filing penalty.

(a) **When does the penalty apply?** Penalty applies if the person required to file the return has not timely filed the state return with the department prior to being notified by the department, in writing, of the necessity to file the state return. The late payment penalty is equal to five percent of the tax due for each month during which the state return has not been filed, not to exceed the lesser of twenty-five percent of the tax or one thousand five hundred dollars. RCW 83.100.070.

(b) **How is the penalty computed?** The penalty is the equivalent of five percent for each month, but is accrued on a daily basis for those periods less than a month. For any portion of a month, it is calculated by taking the five percent monthly rate and dividing it by the number of days from the beginning of the month through the date the return is filed, including the filing date.

For example, a state return is due on February 3rd but is not filed until April 20th of the same year. The state return is delinquent starting with February 4th. The amount of tax due with the state return is \$10,000.

(i) The penalty is computed as follows:

Feb 4-Feb 28	\$10,000 tax at 5% per month	\$446.43
Mar 1-Mar 31	\$10,000 tax at 5% per month	\$500.00
Apr 1-Apr 20	\$10,000 tax at .1667% x 20 days	\$333.34
	Total delinquent penalty due on April 20th filing date	\$1,297.77

(ii) In this example, the first month (February) is a partial month. February has twenty-eight days, the five percent monthly rate is divided by twenty-eight days to arrive at a daily rate of .0017857 (or .17857 percent). The daily rate is then multiplied by the twenty-five days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.0017857 x 25 days = .044643 or 4.4643 percent). The second calendar month (March) is complete and incurs the full five percent penalty. The last portion of a month is a total of seventeen days, including both April 4th and April 20th. Since April has thirty days total, the five percent monthly rate is divided by the thirty days in April to arrive at a daily rate of .001667 (or .1667 percent). The daily rate is then multiplied by the twenty days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.001667 x 20 days = .03334 or 3.334 percent).

(5) **Interest is imposed on late payment.** The department is required by law to impose interest on the tax due with the state return if payment of the tax is not made on or before the due date. RCW 83.100.070. Interest applies to the delinquent tax only, and is calculated from the due date until the date of payment. Interest imposed for periods after December 31, 1996, will be computed at the annual variable interest rate described in RCW 82.32.050(2). Interest imposed for periods prior to January 1, 1997, will be computed at the rate of twelve percent per annum.

(6) **Waiver or cancellation of penalties.** RCW 83.100.-070(3) authorizes the department to waive or cancel the pen-

alty for late filing of the state return under limited circumstances.

(a) **Claiming the waiver.** A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The request must be made in the form of a letter and submitted to the department's special programs division. The person responsible bears the burden of establishing that the circumstances were beyond their control and directly caused the late filing. The department will cancel or waive the late filing penalty imposed on the state return when the delinquent filing is the result of circumstances beyond the control of the person responsible for filing of the state return. The person responsible for filing the state return is the same person who is responsible for filing the federal return.

(b) **Circumstances eligible for waiver.** In order to qualify for a waiver of penalty the circumstances beyond the control of the person responsible for filing the state return must directly cause the late filing of the return. These circumstances are generally immediate, unexpected, or in the nature of an emergency. Such circumstances result in the person not having reasonable time or opportunity to obtain an extension of their due date (see subsection (2)(b)) or to otherwise timely file the state return. Circumstances beyond the control include, but are not necessarily limited to, the following:

(i) The delinquency was caused by the death or serious illness of the person responsible for filing the state return or a member of the immediate family. In order to qualify for penalty waiver, the death or serious illness must directly prevent them from having reasonable time or opportunity to arrange for timely filing of the state return. Generally, the death or serious illness must have occurred within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date.

(ii) The delinquency was caused by an unexpected and unavoidable absence of the person responsible. Generally, this absence must be within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date. "Unavoidable absence of the person responsible" does not include absences because of business trips, vacations, personnel turnover, or personnel terminations.

(iii) The delinquency was caused by the destruction by fire or other casualty of estate records necessary for completion of the state return.

(iv) An estate tax return was timely filed, but was filed incorrectly with another state due to an issue of the decedent's domicile.

(v) A Washington estate tax return was properly prepared and timely filed, but was sent to the location for filing of the federal estate tax return.

(7) **Waiver or cancellation of interest.** Title 83 RCW (Estate taxation) does not provide any circumstances that allow for waiver of the interest, even though penalty may be waived under limited circumstances (see subsection (6) of this section).

(8) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer.

[Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-135, filed 3/9/06, effective 4/9/06.]

(1/22/09)

**WAC 458-57-145 Administration of the tax—Releases, amended returns, refunds, and statute of limitations. (1) Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and contains information on releases issued by the department for state estate taxes paid. It explains how and when an amended state return should be filed and information on refunds and statute of limitations. The estate tax rule on releases, amended returns etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-045.

(2) **Releases.** When the state estate taxes have been paid in full, the department will issue a release to the personal representative. The final determination of the amount of taxes due from the estates that have filed federal returns is contingent upon receipt of a copy of the final closing letter issued by the Internal Revenue Service (IRS). The department may require additional information to substantiate information provided by those estates that are not required to file federal returns. The release issued by the department will not bind or estop the department in the event of a misrepresentation of facts.

(3) **Amended returns.** An amended state return must be filed with the department within five days of amending a federal return with the IRS and must be accompanied by a copy of the amended federal return. For those estates that are not required to file a federal return, an amended estate tax return must be received within three years from the date the original estate tax return was filed or within two years of paying the tax, whichever is later.

(a) Any time that the amount of federal tax due is adjusted or when there is a final determination of the federal tax due, the person responsible for filing must give written notification to the department. This notification must include copies of any final examination report, any compromise agreement, the state tax closing letter, and any other available evidence of the final determination.

(b) If any amendment, adjustment or final determination results in additional state estate tax due, interest will be calculated on the additional tax due at the annual variable interest rate described in RCW 82.32.050.

(4) **Refunds.** Only the personal representative or the personal representative's retained counsel may make a claim for a refund of overpaid tax. If the application for refund, with supporting documents, is filed within four months after an adjustment or final determination of tax liability, the department shall pay interest until the date the refund is mailed. If the application for refund, with supporting documents, is filed after four months after the adjustment or final determination, the department shall pay interest only until the end of the four-month period. Any refund issued by the department will include interest at the existing statutory rate defined in RCW 82.32.050, computed from the date the overpayment was received by the department until the date it is mailed to the estate's representative. RCW 83.100.130.

(5) **Statute of limitations.**

(a) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the calendar year in which a Washington return is due under this chapter, including any extension of time for filing, except

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upon a showing of fraud or of misrepresentation of a material fact by the taxpayer.

(b) For persons liable for tax under RCW 83.100.120, the period for assessment or correction of an assessment extend an additional three years beyond the period described in (a) of this subsection.

(c) A taxpayer may extend the periods of limitation under (a) or (b) of this subsection by executing a written waiver. The execution of the waiver shall also extend the period for making a refund as provided in RCW 83.100.130.

[Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-145, filed 3/9/06, effective 4/9/06.]

**WAC 458-57-155 Farm deduction. (1) Introduction.**

This rule applies to deaths occurring on or after May 17, 2005, and is intended to help taxpayers determine if the estate is eligible for the farm deduction and to correctly calculate the deduction.

(2) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

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

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

(c) "Farming purposes" means:

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

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

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

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

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

(i) An ancestor of the individual;

(ii) Spouse of the individual;

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

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

A legally adopted child of an individual shall be treated as the child of such individual by blood.

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

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

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

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

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

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

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

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

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

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

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

(B) In the case of any real or personal property, the value of the property for purposes of chapter 11 of the IRC, determined without regard to any special valuation under section 2032A of the IRC, reduced by an amount allowable as a deduction in respect of such property under section 2053 (a)(4) of the IRC.

(g) "Qualified use" means the property is used as a farm for farming purposes. In the case of real property which meets the requirements of (f)(i)(C) of this subsection, residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use. For tangible personal property eligible for a deduction under subsection (1)(b) of this section, "qualified use" means the property is used primarily for farming purposes on a farm.

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

(i) Is used in timber operations; and

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

(i) "Timber operations" means:

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

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



**(3) Farm deduction—Qualification criteria.**

(a) A deduction from the Washington taxable estate is available for the value of qualified real property and the value of any tangible personal property used by the decedent or a member of the decedent's family for a qualified use. In certain circumstances an estate of a tenant farmer may deduct the value of agricultural personal property. See subsection (7) of this section. If the estate is eligible for the federal special valuation of farmland it would also be eligible for the state deduction. The estate does not have to elect special valuation treatment for federal purposes in order to take the state deduction. Unlike the federal special valuation for farmland there is no requirement that the heir to the land and equipment continue farming.

(b) There are several criteria that must be met before the deduction can be taken:

(i) Decedent at the time of his or her death was a citizen or resident of the United States;

(ii) Fifty percent or more of the estate's adjusted value must be in agricultural real and personal property;

(iii) On the date of the decedent's death the real and personal property must have been used for a qualified use (farming) by the decedent or a member of the decedent's family;

(iv) The real and personal property must pass from the decedent to a qualified heir; and

(v) Twenty-five percent or more of the estate consists of agricultural real property (land) that was actively managed by the decedent or the decedent's family.

**(4) What does "acquired from the decedent" mean?** Property shall be considered to have been acquired from or to have passed from the decedent if:

(a) The property is so considered under section 1014(b) of the IRC;

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

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

**(5) Treatment of qualified real property held as a community property.** If the decedent and the decedent's surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in the property shall be taken into account under this section.

**(6) Value of trees growing on woodlands.** In the case of qualified woodland, the value of trees growing on the woodland may be deducted if otherwise qualified under this section.

**(7) Tenant farmers.** If the following criteria are met, the estate of a tenant farmer may deduct from the Washington taxable estate the value of the agricultural personal property:

(a) Decedent at the time of his or her death was a citizen or resident of the United States;

(b) Fifty percent or more of the estate adjusted value must be in agricultural personal property;

(c) On the date of the decedent's death the personal property must have been used for a qualified use (farming) by the decedent or a member of the decedent's family; and

(d) The personal property must pass from the decedent to a qualified heir.

**(8) Examples.**

(a) The decedent died May 18, 2005, with an adjusted gross estate valued at \$4 million. The decedent was a dry land wheat farmer and owned 2000 acres of land valued at \$2 million (\$1,000 per acre) and \$500,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last twenty years, and left the farm to his son, a qualified heir. The value of the farm acreage and equipment exceeds the required 50% or more of the adjusted gross estate ( $\$2,000,000 + \$500,000 > \$4,000,000 \times 50\%$ ). The value of the 2000 acres and the farm equipment can be deducted from the decedent's federal taxable estate. In this example estate tax is not due. The calculations are shown below:

Federal taxable estate	\$4,000,000
Less \$2,500,000 farm deduction	- \$2,500,000
Less \$1,500,000 statutory exemption	- \$1,500,000
Washington taxable estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

(b) The decedent died August 28, 2005, with an adjusted gross estate valued at \$5 million. The decedent was a hay farmer and owned 600 acres of land valued at \$1.8 million (\$3,000 per acre) and \$500,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last twenty years, and left the farm to his son, a qualified heir. The value of the farm acreage and equipment did not meet the required 50% or more of the adjusted gross estate, therefore, the estate cannot deduct the value of the farm and farm equipment ( $\$1,800,000 + \$500,000 < \$5,000,000 \times 50\%$ ). Here are the calculations:

Federal taxable estate	\$4,000,000
Less \$1,500,000 statutory exemption	- \$1,500,000
Washington taxable estate	\$3,500,000

Based on the tax table, the estate owes \$470,000 in Washington estate tax.

(c) The decedent died May 23, 2005, with an adjusted gross estate valued at \$1.6 million. The decedent was a tenant hay farmer that owned \$400,000 of hay in storage that had been harvested but not sold and \$800,000 in farm equipment. The decedent was a U.S. citizen, used the farm equipment in a qualified use for the last six years, and left the equipment to his son-in-law, a qualified heir. The value of the farm equipment met the required 50% or more of the adjusted gross estate so it can be deducted from the decedent's federal taxable estate ( $\$800,000 = \$1,600,000 \times 50\%$ ). In this example no estate tax is due. The calculations are shown below:

Federal taxable estate	\$1,600,000
Less \$800,000 farm deduction	- \$800,000
Less \$1,500,000 statutory exemption	- \$1,500,000
Washington taxable estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

(d) The decedent died April 7, 2006, with an adjusted gross estate valued at \$2.5 million. The decedent owned 100 acres of timberland valued at \$100,000 (\$1,000 per acre), timber valued at \$800,000 (\$80,000 per acre), 200 acres of pasture land valued at \$500,000 (\$2,500 per acre) and \$50,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last ten years, and left the timber and farm land to his daughter, a qualified heir. The value of the timberland and farm acreage and equipment exceeded the required 50% or more of the adjusted gross estate therefore the estate can deduct the value of the timber and farm land and farm equipment (\$100,000 + \$800,000 + \$500,000 + \$50,000 > \$2,500,000 x 50%). The calculations are shown below:

Federal taxable estate	\$2,500,000
Less \$1,450,000 farm deduction	- \$1,450,000
Less \$2,000,000 statutory exemption	- \$2,000,000
Washington taxable estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

[Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-155, filed 3/9/06, effective 4/9/06.]

**WAC 458-57-165 Escheat estates and absentee distributee (missing heir) property.** (1) **Introduction.** This rule explains the notification requirements to the department and other procedural information for potential escheat estates and the procedures for reporting absentee distributee property.

(2) **Escheat estates.**

(a) Escheat of an estate means that a person dies, whether a resident of this state or not, leaving property subject to the jurisdiction of this state without being survived by any person entitled to the property under RCW 11.04.015 (descent and distribution) and the property reverts to the state.

(b) **Notification to the department of a potential escheat estate.** The department must be promptly notified in writing of the potential escheat on revenue form 85 0030-1 Notice of Escheat Property when a decedent dies without a will and has no known intestate heirs. This form can be found on the department's web site at <http://dor.wa.gov/> under the tab titled forms. The form can also be obtained by calling the estate tax section at 360-570-3265, option 2.

(c) **Department may elect to serve as personal representative.**

(i) The department may elect to serve as the personal representative of an escheat estate under RCW 11.28.120. The department will review the submitted notice of escheat property and then elect or decline to serve as personal representative. A copy of this election is mailed to the person reporting the escheat property.

(ii) **Written notice to the department of proceedings.** If the department declines to serve as personal representative, the appointed personal representative must serve the department with written notice at least twenty days prior to any hearing on proceedings involving the valuation or sale of property, on any petition for the allowance of fees, and on all

interim reports, final accounts or petitions for the determination of heirship. Failure to comply with the notice provisions of RCW 11.08.170 could result in any orders being voided.

(d) **Oversight of estate when department declines to serve as personal representative—Opposition to nonintervention powers—Review of pleadings and petitions.** The department supervises escheat property during probate. The department has the duty to protect and conserve escheat property for the benefit of the permanent common school fund until the property is forwarded to the state treasurer or the real property is deeded over to the department of natural resources. Because of the duty to protect and conserve escheat property, the department will oppose the granting of nonintervention powers to the personal representative. The department will review all pleadings and petitions to determine the progression of probate and to determine if fees and expenses charged to the estate are appropriate.

(e) **Heirs of escheat estates.** Heirs to an estate may be located after the estate escheats to the state. The personal representative of an escheat estate or a claimed heir must provide the department with all information and documentary evidence available that supports the heir's claim. All supporting documents must be in the English language when submitted to the department. The English translation of any foreign document shall be authenticated as reasonably required by the department.

(i) Under RCW 11.08.240 all claims for escheated property must be made within seven years from the date of issuance of letters testamentary or of administration. The claim is made to the court having original jurisdiction of the estate and a copy served upon the department.

(ii) In all cases where there is a court hearing or the taking of a deposition on the question of a claimed heir, the personal representative shall give the department twenty days written notice of such hearing or matter.

(iii) The personal representative must give the department at least twenty days written notice of the hearing on the final account and petition for distribution.

(iv) The department has no statutory authority to pay interest on escheat refunds.

(3) **Absentee distributee (missing heir).**

(a) Absentee distributee means any person who is a beneficiary of a will or trust who has not been located. If a personal representative cannot locate a beneficiary of a will or trust the personal representative is required to follow the procedures outlined in RCW 11.76.200 through 11.76.230.

(b) **Appointment of agent—Bond.**

(i) When an estate has been or is about to be distributed by decree of the court to any person who has not been located, the personal representative must petition the court to appoint an agent for the purposes of representing the interests of the absentee distributee and to take possession and charge of the property for the benefit of the absentee person.

(ii) The agent shall make, subscribe, and file an oath for the faithful performance of his or her duties, and shall give a bond to the state, to be approved by the court before the agent receives the property.

(iii) The agent shall hold the property for three years. If the absentee distributee is not found or does not come forward to make a claim, the property must be turned over to the county treasurer. Any property not in the form of cash shall

be sold under order of the court and all funds after deducting a reasonable sum for expenses and services of the agent. The expenses and the fees of the agent are fixed by the court.

(c) **County treasurer.** The county treasurer is required to issue a triplicate receipt for the funds, one to be filed with the county auditor, one with the probate court, and one with the department. If the funds remain in the county treasury unclaimed for a period of four years and ninety days, the treasurer is required to remit them to the department for deposit in the permanent common school fund.

(d) **Claims made after the time limitation.** After any time limitation prescribed in RCW 11.76.220, 11.76.240 or 11.76.243 the absentee claimant may notify the department of his or her claim and file in the court which had jurisdiction of the original probate a petition claiming the assets of the estate. Upon proof being made to the court and the determination that the claimant is entitled to the property the assets shall be paid to the claimant without interest.

[Statutory Authority: RCW 83.100.047 and 83.100.200. 06-07-051, § 458-57-165, filed 3/9/06, effective 4/9/06.]