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HOUSE BILL 1075

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State of Washington                      53rd Legislature                      1993 Regular Session

By Representatives Padden, Appelwick, Ludwig and Johanson

Read first time 01/13/93. Referred to Committee on Judiciary.

1            AN ACT Relating to references to the Internal Revenue Code;  
2 amending RCW 11.02.005, 11.108.010, 11.108.020, 11.108.025, 11.108.050,  
3 11.110.200, 11.110.210, 11.110.220, 83.100.020, 83.110.010, and  
4 83.110.050; and repealing RCW 11.110.240.

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

6            **Sec. 1.** RCW 11.02.005 and 1985 c 30 s 4 are each amended to read  
7 as follows:

8            When used in this title, unless otherwise required from the  
9 context:

10            (1) "Personal representative" includes executor, administrator,  
11 special administrator, and guardian or limited guardian and special  
12 representative.

13            (2) "Net estate" refers to the real and personal property of a  
14 decedent exclusive of homestead rights, exempt property, the family  
15 allowance and enforceable claims against, and debts of, the deceased or  
16 the estate.

17            (3) "Representation" refers to a method of determining distribution  
18 in which the takers are in unequal degrees of kinship with respect to  
19 the intestate, and is accomplished as follows: After first determining

1 who, of those entitled to share in the estate, are in the nearest  
2 degree of kinship, the estate is divided into equal shares, the number  
3 of shares being the sum of the number of persons who survive the  
4 intestate who are in the nearest degree of kinship and the number of  
5 persons in the same degree of kinship who died before the intestate but  
6 who left issue surviving the intestate; each share of a deceased person  
7 in the nearest degree shall be divided among those of the intestate's  
8 issue who survive the intestate and have no ancestor then living who is  
9 in the line of relationship between them and the intestate, those more  
10 remote in degree taking together the share which their ancestor would  
11 have taken had he or she survived the intestate. Posthumous children  
12 are considered as living at the death of their parent.

13 (4) "Issue" includes all the lawful lineal descendants of the  
14 ancestor and all lawfully adopted children.

15 (5) "Degree of kinship" means the degree of kinship as computed  
16 according to the rules of the civil law; that is, by counting upward  
17 from the intestate to the nearest common ancestor and then downward to  
18 the relative, the degree of kinship being the sum of these two counts.

19 (6) "Heirs" denotes those persons, including the surviving spouse,  
20 who are entitled under the statutes of intestate succession to the real  
21 and personal property of a decedent on the decedent's death intestate.

22 (7) "Real estate" includes, except as otherwise specifically  
23 provided herein, all lands, tenements, and hereditaments, and all  
24 rights thereto, and all interest therein possessed and claimed in fee  
25 simple, or for the life of a third person.

26 (8) "Will" means an instrument validly executed as required by RCW  
27 11.12.020 and includes all codicils.

28 (9) "Codicil" means an instrument that is validly executed in the  
29 manner provided by this title for a will and that refers to an existing  
30 will for the purpose of altering or changing the same, and which need  
31 not be attached thereto.

32 (10) "Guardian" or "limited guardian" means a personal  
33 representative of the person or estate of an incompetent or disabled  
34 person as defined in RCW 11.88.010 and the term may be used in lieu of  
35 "personal representative" wherever required by context.

36 (11) "Administrator" means a personal representative of the estate  
37 of a decedent and the term may be used in lieu of "personal  
38 representative" wherever required by context.

1 (12) "Executor" means a personal representative of the estate of a  
2 decedent appointed by will and the term may be used in lieu of  
3 "personal representative" wherever required by context.

4 (13) "Special administrator" means a personal representative of the  
5 estate of a decedent appointed for limited purposes and the term may be  
6 used in lieu of "personal representative" wherever required by context.

7 (14) "Trustee" means an original, added, or successor trustee and  
8 includes the state, or any agency thereof, when it is acting as the  
9 trustee of a trust to which chapter 11.98 RCW applies.

10 (15) "Internal Revenue Code" means the United States Internal  
11 Revenue Code of 1986, as amended or renumbered on the effective date of  
12 this act.

13 (16) Words that import the singular number may also be applied to  
14 the plural of persons and things.

15 (~~(16)~~) (17) Words importing the masculine gender only may be  
16 extended to females also.

17 **Sec. 2.** RCW 11.108.010 and 1990 c 224 s 2 are each amended to read  
18 as follows:

19 Unless the context clearly requires otherwise, the definitions in  
20 this section apply throughout this chapter.

21 (1) The term "pecuniary bequest" means a gift in a governing  
22 instrument which either is expressly stated as a fixed dollar amount or  
23 is a gift of a dollar amount determinable by the governing instrument,  
24 and a gift expressed in terms of a "sum" or an "amount," unless the  
25 context dictates otherwise, is a gift of a dollar amount.

26 (2) The term "marital deduction" means the federal estate tax  
27 deduction allowed for transfers to spouses under (~~section 2056 of~~)  
28 the Internal Revenue Code.

29 (3) The term "maximum marital deduction" means the maximum amount  
30 qualifying for the marital deduction.

31 (4) The term "marital deduction gift" means a gift intended to  
32 qualify for the marital deduction.

33 (5) The term "governing instrument" includes a will and codicils,  
34 irrevocable, and revocable trusts.

35 (6) "Fiduciary" means trustee or personal representative.  
36 Reference to a fiduciary in the singular includes the plural where the  
37 context requires.

1       (7) (~~References to the "internal revenue code" are to the United~~  
2 ~~States internal revenue code of 1986, as in effect on June 7, 1990.~~  
3       ~~(8)~~) The term "gift" refers to all legacies, devises, and bequests  
4 made in a governing instrument.

5       **Sec. 3.** RCW 11.108.020 and 1988 c 64 s 28 are each amended to read  
6 as follows:

7       If a governing instrument contains a marital deduction gift, the  
8 governing instrument, including any power, duty, or discretionary  
9 authority given to the fiduciary, shall be construed to comply with the  
10 marital deduction provisions of the Internal Revenue Code (~~and the~~  
11 ~~regulations thereunder~~) in order to conform to that intent. Whether  
12 the governing instrument contains a marital deduction gift depends upon  
13 the intent of the testator, grantor, or other transferor at the time  
14 the governing instrument is executed. If the testator, grantor, or  
15 other transferor has adequately evidenced an intention to make a  
16 marital deduction gift, the fiduciary shall not take any action or have  
17 any power that may impair that deduction, but this does not require the  
18 fiduciary to make the election under section 2056(b)(7) of the Internal  
19 Revenue Code that is referred to in RCW 11.108.025.

20       **Sec. 4.** RCW 11.108.025 and 1991 c 6 s 1 are each amended to read  
21 as follows:

22       Unless a governing instrument directs to the contrary:

23       (1) The fiduciary shall have the power to make elections, in whole  
24 or in part, to qualify property for the marital deduction as qualified  
25 terminable interest property under section 2056(b)(7) of the Internal  
26 Revenue Code or, if the surviving spouse is not a citizen of the United  
27 States, under section 2056A of the Internal Revenue Code.

28       (2) The fiduciary making an election under section 2056(b)(7) or  
29 2056A of the Internal Revenue Code or making an allocation under  
30 section 2632 of the Internal Revenue Code may benefit personally from  
31 the election or allocation, with no duty to reimburse any other person  
32 interested in the election or allocation. The fiduciary shall have no  
33 duty to make any equitable adjustment and shall have no duty to treat  
34 interested persons impartially in respect of the election or  
35 allocation.

36       (3) The fiduciary of a trust, if an election is made under section  
37 2056(b)(7) or 2056A of the Internal Revenue Code, if an allocation is

1 made under section 2632 of the Internal Revenue Code, or if division of  
2 a trust is of benefit to the persons interested in the trust, may  
3 divide the trust into two or more separate trusts, of equal or unequal  
4 value, provided that the terms of the separate trusts which result are  
5 substantially identical to the terms of the trust before division, and  
6 provided further, in the case of a trust otherwise qualifying for the  
7 marital deduction under the Internal Revenue Code (~~and its~~  
8 ~~regulations~~)), that the division shall not prevent a separate trust for  
9 which the election is made from qualifying for the marital deduction.

10 **Sec. 5.** RCW 11.108.050 and 1990 c 179 s 3 are each amended to read  
11 as follows:

12 (1) If a governing instrument indicates the testator's intention to  
13 make a marital deduction gift in trust, in addition to the other  
14 provisions of this section, each of the following also applies to the  
15 trust; provided, however, that such provisions shall not apply to any  
16 trust which provides for the entire then remaining trust estate to be  
17 paid on the termination of the income interest to the estate of the  
18 spouse of the trust's creator, or to a charitable beneficiary,  
19 contributions to which are tax deductible for federal income tax  
20 purposes:

21 (a) The only income beneficiary of a marital deduction trust is the  
22 testator's surviving spouse;

23 (b) The income beneficiary is entitled to all of the trust income  
24 until the trust terminates;

25 (c) The trust income is payable to the income beneficiary not less  
26 frequently than annually; and

27 (d) Except in the case of a marital deduction gift in trust,  
28 described in subsection (2) of this section, or property that has or  
29 would otherwise have qualified for the marital deduction only as the  
30 result of an election under section 2056(b)(7) of the Internal Revenue  
31 Code, upon termination of the trust, all of the remaining trust assets,  
32 including accrued or undistributed income, pass either to the income  
33 beneficiary or under the exercise of a general power of appointment  
34 granted to the income beneficiary in favor of the income beneficiary's  
35 estate or to any other person or entity in trust or outright. The  
36 general power of appointment is exercisable by the income beneficiary  
37 alone and in all events.

1 (2) If a governing instrument indicates the testator's intention to  
2 make a marital deduction gift in trust and the surviving spouse is not  
3 a citizen of the United States, subsection (1)(a), (b), and (c) of this  
4 section and each of the following shall apply to the trust:

5 (a) At least one trustee of the trust shall be an individual  
6 citizen of the United States or ~~((of))~~ a domestic corporation~~((-~~  
7 ~~However, any distribution from the trust must be approved by this~~  
8 ~~trustee)), and no distribution, other than a distribution of income,~~  
9 may be made from the trust unless a trustee who is an individual  
10 citizen of the United States or a domestic corporation has the right to  
11 withhold from the distribution the tax imposed under section 2056A of  
12 the Internal Revenue Code on the distribution;

13 (b) The trust shall meet such requirements as the secretary of the  
14 treasury of the United States may by regulations prescribe to ensure  
15 collection of estate tax, under section 2056A(b) of the Internal  
16 Revenue Code; and

17 (c) (a) and (b) of this subsection shall no longer apply to the  
18 trust if the surviving spouse becomes a citizen of the United States  
19 and (i) the surviving spouse is a resident of the United States at all  
20 times after the testator's death and before becoming a citizen, or (ii)  
21 no tax has been imposed on the trust under section 2056A(b)(1)(A) of  
22 the Internal Revenue Code before the surviving spouse becomes a  
23 citizen, or (iii) the surviving spouse makes an election under section  
24 2056A(b)(12)(C) of the Internal Revenue Code regarding tax imposed on  
25 distributions from the trust before becoming a citizen.

26 (3) The exercise of the general power of appointment provided in  
27 this section shall be done only by the income beneficiary in the manner  
28 provided by RCW 11.95.060 ~~((by specifically referring to this~~  
29 ~~section))~~.

30 **Sec. 6.** RCW 11.110.200 and 1985 c 30 s 129 are each amended to  
31 read as follows:

32 RCW 11.110.200 through 11.110.260 shall apply only to trusts which  
33 are "private foundations" as defined in section 509 of the Internal  
34 Revenue Code ~~((of 1954))~~, "charitable trusts" as described in section  
35 4947(a)(1) of the Internal Revenue Code ~~((of 1954))~~, or "split-interest  
36 trusts" as described in section 4947(a)(2) of the Internal Revenue Code  
37 ~~((of 1954))~~. With respect to any such trust created after December 31,  
38 1969, RCW 11.110.200 through 11.110.260 shall apply from such trust's

1 creation. With respect to any such trust created before January 1,  
2 1970, RCW 11.110.200 through 11.110.260 shall apply only to such  
3 trust's federal taxable years beginning after December 31, 1971.

4 **Sec. 7.** RCW 11.110.210 and 1985 c 30 s 130 are each amended to  
5 read as follows:

6 The trust instrument of each trust to which RCW 11.110.200 through  
7 11.110.260 applies shall be deemed to contain provisions prohibiting  
8 the trustee from:

9 (1) Engaging in any act of "self-dealing<sub>L</sub>" ((+))as defined in  
10 section 4941(d) of the Internal Revenue Code ((~~of 1954~~)), which would  
11 give rise to any liability for the tax imposed by section 4941(a) of  
12 the Internal Revenue Code ((~~of 1954~~));

13 (2) Retaining any "excess business holdings<sub>L</sub>" ((+))as defined in  
14 section 4943(c) of the Internal Revenue Code ((~~of 1954~~)), which would  
15 give rise to any liability for the tax imposed by section 4943(a) of  
16 the Internal Revenue Code ((~~of 1954~~));

17 (3) Making any investments which would jeopardize the carrying out  
18 of any of the exempt purposes of the trust, within the meaning of  
19 section 4944 of the Internal Revenue Code ((~~of 1954~~)), so as to give  
20 rise to any liability for the tax imposed by section 4944(a) of the  
21 Internal Revenue Code ((~~of 1954~~)); and

22 (4) Making any "taxable expenditures<sub>L</sub>" ((+))as defined in section  
23 4945(d) of the Internal Revenue Code ((~~of 1954~~)), which would give  
24 rise to any liability for the tax imposed by section 4945(a) of the  
25 Internal Revenue Code ((~~of 1954~~));

26 PROVIDED, That this section shall not apply either to those split-  
27 interest trusts or to amounts thereof which are not subject to the  
28 prohibitions applicable to private foundations by reason of the  
29 provisions of section 4947 of the Internal Revenue Code ((~~of 1954~~)).

30 **Sec. 8.** RCW 11.110.220 and 1985 c 30 s 131 are each amended to  
31 read as follows:

32 The trust instrument of each trust to which RCW 11.110.200 through  
33 11.110.260 applies, except "split-interest" trusts, shall be deemed to  
34 contain a provision requiring the trustee to distribute, for the  
35 purposes specified in the trust instrument, for each taxable year of  
36 the trust, amounts at least sufficient to avoid liability for the tax  
37 imposed by section 4942(a) of the Internal Revenue Code ((~~of 1954~~)).

1       **Sec. 9.** RCW 83.100.020 and 1990 c 224 s 1 are each amended to read  
2 as follows:

3       As used in this chapter:

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

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

8       (3) "Federal credit" means (a) for a transfer, the maximum amount  
9 of the credit for state taxes allowed by section 2011 of the ((United  
10 States)) Internal Revenue Code ((of 1986, as amended or renumbered));  
11 and (b) for a generation-skipping transfer, the maximum amount of the  
12 credit for state taxes allowed by section 2604 of the ((United States))  
13 Internal Revenue Code ((of 1986, as amended or renumbered));

14       (4) "Federal return" means any tax return required by chapter 11 or  
15 13 of the ((United States)) Internal Revenue Code ((of 1986, as amended  
16 or renumbered, and any regulations thereunder));

17       (5) "Federal tax" means (a) for a transfer, a tax under chapter 11  
18 of the ((United States)) Internal Revenue Code ((of 1986, as amended or  
19 renumbered)); and (b) for a generation-skipping transfer, the tax under  
20 chapter 13 of the ((United States)) Internal Revenue Code ((of 1986, as  
21 amended or renumbered));

22       (6) "Generation-skipping transfer" means a "generation-skipping  
23 transfer" as defined and used in section 2611 of the ((United States))  
24 Internal Revenue Code ((of 1986, as amended or renumbered));

25       (7) "Gross estate" means "gross estate" as defined and used in  
26 section 2031 of the ((United States)) Internal Revenue Code ((of 1986,  
27 as amended or renumbered));

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

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

35       (10) "Person required to file the federal return" means any person  
36 required to file a return required by chapter 11 or 13 of the Internal  
37 Revenue Code ((of 1986, as amended or renumbered)), such as the  
38 personal representative of an estate; or a transferor, trustee, or  
39 beneficiary of a generation-skipping transfer; or a qualified heir with



1 respect to qualified real property, as defined and used in section  
2 2032A(c) of the ~~((United States))~~ Internal Revenue Code ~~((of 1986, as~~  
3 ~~amended or renumbered))~~;

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

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

9 (13) "Transfer" means "transfer" as used in section 2001 of the  
10 ~~((United States))~~ Internal Revenue Code ~~((of 1986, as amended or~~  
11 ~~renumbered))~~, or a disposition or cessation of qualified use as defined  
12 and used in section 2032A(c) of the ~~((United States))~~ Internal Revenue  
13 Code ~~((of 1986, as amended or renumbered))~~; ~~((and))~~

14 (14) "Trust" means "trust" under Washington law and any arrangement  
15 described in section 2652 of the Internal Revenue Code ~~((of 1986, as~~  
16 ~~amended or renumbered.))~~; and

17 (15) ~~((References in this chapter to the United States internal~~  
18 ~~revenue code of 1986, to a chapter of the code, and to regulations~~  
19 ~~under the code are to the code, chapters, and regulations in effect on~~  
20 ~~June 7, 1990))~~ "Internal Revenue Code" means the United States Internal  
21 Revenue Code of 1986, as amended or renumbered on the effective date of  
22 this act.

23 **Sec. 10.** RCW 83.110.010 and 1989 c 40 s 1 are each amended to read  
24 as follows:

25 As used in this chapter, the following terms have the meanings  
26 indicated unless the context clearly requires otherwise.

27 (1) "Estate" means the gross estate of a decedent as determined for  
28 the purpose of federal estate tax and the estate tax payable to this  
29 state;

30 (2) "Excise tax" means the federal excise tax imposed by section  
31 4980A(d)~~((, or such section as renumbered,))~~ of the Internal Revenue  
32 Code, ~~((which was enacted by section 1133(a) of the tax reform act of~~  
33 ~~1986, P.L. 99-514 or as subsequently amended,))~~ and interest and  
34 penalties imposed in addition to the excise tax;

35 (3) "Fiduciary" means executor, administrator of any description,  
36 and trustee;

1 (4) "Internal Revenue Code" means the United States Internal  
2 Revenue Code of 1986, as amended or renumbered (~~(from time to time)~~) on  
3 the effective date of this act;

4 (5) "Person" means any individual, partnership, association, joint  
5 stock company, corporation, government, political subdivision,  
6 governmental agency, or local governmental agency;

7 (6) "Persons interested in retirement distributions" means any  
8 person determined as of the date the excise tax is due, including a  
9 personal representative, guardian, trustee, or beneficiary, entitled to  
10 receive, or who has received, by reason of or following the death of a  
11 decedent, any property or interest therein which constitutes a  
12 retirement distribution as defined in section 4980A(e)(~~(, or such~~  
13 ~~section as renumbered,~~)) of the Internal Revenue Code, but this  
14 definition excludes any alternate payee under a qualified domestic  
15 relations order as such terms are defined in section 414(p) of the  
16 Internal Revenue Code;

17 (7) "Person interested in the estate" means any person, including  
18 a personal representative, guardian, or trustee, entitled to receive,  
19 or who has received, from a decedent while alive or by reason of the  
20 death of a decedent any property or interest therein included in the  
21 decedent's taxable estate;

22 (8) "Qualified heir" means a person interested in the estate who is  
23 entitled to receive, or who has received, an interest in qualified real  
24 property;

25 (9) "Qualified real property" means real property for which the  
26 election described in section 2032A of the Internal Revenue Code has  
27 been made;

28 (10) "State" means any state, territory, or possession of the  
29 United States, the District of Columbia, or the Commonwealth of Puerto  
30 Rico; and

31 (11) "Tax" means the federal estate tax, the excise tax defined in  
32 subsection (2) of this section, and the estate tax payable to this  
33 state and interest and penalties imposed in addition to the tax.

34 **Sec. 11.** RCW 83.110.050 and 1989 c 40 s 4 are each amended to read  
35 as follows:

36 (1) In making an apportionment, allowances shall be made for any  
37 exemptions granted, any classification made of persons interested in

1 the estate, and any deductions and credits allowed by the law imposing  
2 the tax.

3 (2) Any exemption or deduction allowed by reason of the  
4 relationship of any person to the decedent or by reason of the purposes  
5 of the gift inures to the benefit of the person bearing that  
6 relationship or receiving the gift. When an interest is subject to a  
7 prior present interest which is not allowable as a deduction, the tax  
8 apportionable against the present interest shall be paid from  
9 principal.

10 (3) Any deduction for property previously taxed and any credit for  
11 gift taxes or death taxes of a foreign country paid by the decedent or  
12 the decedent's estate inures to the proportionate benefit of all  
13 persons liable to apportionment.

14 (4) Any credit for inheritance, succession, or estate taxes or  
15 taxes in the nature thereof in respect to property or interests  
16 includable in the estate inures to the benefit of the persons or  
17 interests chargeable with the payment thereof to the extent that or in  
18 proportion that the credit reduces the tax.

19 (5) To the extent that property passing to or in trust for a  
20 surviving spouse or any charitable, public, or similar gift or bequest  
21 does not constitute an allowable deduction for purposes of the tax  
22 solely by reason of an inheritance tax or other death tax imposed upon  
23 and deductible from the property, the property shall not be included in  
24 the computation provided for in this chapter, and to that extent no  
25 apportionment shall be made against the property. This does not apply  
26 in any instance where the result under section 2053(d) of the Internal  
27 Revenue Code (~~of 1954 of the United States~~) relates to deduction for  
28 state death taxes on transfers for public, charitable, or religious  
29 uses.

30 (6) In the case of qualified real property, the apportionment of  
31 the tax shall be based on the values that would have been used to  
32 determine the tax without regard to section 2032A of the Internal  
33 Revenue Code. The reduction in the tax attributable to the application  
34 of section 2032A shall inure as follows:

35 (a) First to the benefit of the qualified heirs in proportion to  
36 their relative interests in the qualified real property, until the tax  
37 attributable to the qualified real property is reduced to zero;

1 (b) Then to the qualified heirs in proportion to their relative  
2 interests in other property of the estate, until the tax attributable  
3 to the property is reduced to zero; and

4 (c) Then to other persons interested in the estate in proportion to  
5 their relative interests in other property of the estate.

6 (7) Any extension in the payment of a part of the tax under any  
7 provision of the Internal Revenue Code shall inure to the benefit of,  
8 and the tax subject to the extension shall be equitably apportioned  
9 among, the persons receiving the property relating to the extension.  
10 Any tax benefit derived from the interest paid with respect to the tax  
11 shall be equitably apportioned among the persons receiving the  
12 property.

13 NEW SECTION. **Sec. 12.** RCW 11.110.240 and 1985 c 30 s 133 are each  
14 repealed.

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