

CERTIFICATION OF ENROLLMENT

SENATE BILL 6139

Chapter 129, Laws of 2000

56th Legislature
2000 Regular Session

ESTATE TAX APPORTIONMENT

EFFECTIVE DATE: 6/8/00

Passed by the Senate February 9, 2000
YEAS 47 NAYS 0

BRAD OWEN
President of the Senate

Passed by the House February 29, 2000
YEAS 97 NAYS 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

FRANK CHOPP
**Speaker of the
House of Representatives**

Approved March 24, 2000

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6139** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

March 24, 2000 - 3:47 p.m.

**Secretary of State
State of Washington**

SENATE BILL 6139

Passed Legislature - 2000 Regular Session

State of Washington 56th Legislature 2000 Regular Session

By Senators Johnson, Heavey and Gardner

Read first time 01/10/2000. Referred to Committee on Judiciary.

1 AN ACT Relating to estate tax apportionment; and amending RCW
2 83.110.010, 83.110.020, 83.110.030, 83.110.050, 83.110.060, and
3 83.110.090.

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

5 **Sec. 1.** RCW 83.110.010 and 1998 c 292 s 402 are each amended to
6 read as follows:

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

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

12 (2) (~~("Excise tax" means the federal excise tax imposed by section~~
13 ~~4980A(d) of the Internal Revenue Code, and interest and penalties~~
14 ~~imposed in addition to the excise tax;~~

15 ~~(3))~~ "Fiduciary" means executor, administrator of any description,
16 and trustee;

17 (~~(4))~~ (3) "Internal Revenue Code" means the United States
18 Internal Revenue Code of 1986, as defined in and as of the date
19 specified in RCW 83.100.020;

1 ~~((5))~~ (4) "Person" means any individual, partnership,
2 association, joint stock company, corporation, government, political
3 subdivision, governmental agency, or local governmental agency;

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

13 ~~(7))~~ (5) "Person interested in the estate" means any person,
14 including a personal representative, guardian, or trustee, entitled to
15 receive, or who has received, from a decedent while alive or by reason
16 of the death of a decedent any property or interest therein included in
17 the decedent's ~~((taxable))~~ estate;

18 ~~((8))~~ (6) "Qualified heir" means a person interested in the
19 estate who is entitled to receive, or who has received, an interest in
20 qualified real property or a qualified family-owned business interest;

21 ~~((9))~~ (7) "Qualified real property" means real property for which
22 the election described in section 2032A of the Internal Revenue Code
23 has been ~~((made))~~ allowed;

24 ~~((10))~~ (8) "Qualified family-owned business interest" means a
25 family-owned business interest for which the election in section 2057
26 of the Internal Revenue Code has been allowed;

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

30 ~~((11))~~ (10) "Tax" means the federal estate tax~~(, the excise tax~~
31 ~~defined in subsection (2) of this section,)~~ and the estate tax payable
32 to this state and interest and penalties imposed in addition to the
33 tax, but not the additional estate tax under section 2032A(c) or
34 2057(f) of the Internal Revenue Code. Unless the will, trust, or other
35 dispositive instrument otherwise provides, apportionment of estate,
36 inheritance, legacy, or succession tax payable to any other state, or
37 to any foreign country, and interest and penalties imposed in addition
38 to the tax, shall be governed by the law of that state or foreign
39 country.

1 **Sec. 2.** RCW 83.110.020 and 1989 c 40 s 2 are each amended to read
2 as follows:

3 (~~((1) Tax other than excise tax.))~~ Except as provided in RCW
4 83.110.090 (~~((or subsection (2) of this section))~~), and unless the will,
5 trust, or other dispositive instrument otherwise provides, the tax(~~(7~~
6 ~~but not the excise tax,~~) shall be apportioned among all persons
7 interested in the estate. Except as provided in RCW 83.110.050, the
8 apportionment shall be made in the proportion that the value of the
9 interest of each person interested in the estate bears to the total
10 value of the interests of all persons interested in the estate. Except
11 as provided in RCW 83.110.050, the values used in determining the tax
12 shall be used for that purpose.

13 (~~((2) Excise tax. Except as provided in RCW 83.110.030(6) and~~
14 ~~unless the will, beneficiary designation, trust, or other instrument~~
15 ~~governing the disposition of property subject to the excise tax~~
16 ~~otherwise provides, the excise tax shall be apportioned among and~~
17 ~~charged to the persons interested in retirement distributions on which~~
18 ~~the excise tax is actually imposed. Each person shall be severally~~
19 ~~liable for the timely payment of the portion of the excise tax so~~
20 ~~apportioned to the person. The apportionment shall be made in the~~
21 ~~proportion that the value of the interest of each person interested in~~
22 ~~the retirement distributions bears to the total value of the interests~~
23 ~~of all persons interested in the retirement distributions. The values~~
24 ~~used in determining the excise tax shall be used for that purpose. In~~
25 ~~order to facilitate timely payment of the excise tax, the fiduciary~~
26 ~~shall have the right, but not the obligation, in addition to any other~~
27 ~~power and consistent with the power granted by RCW 11.98.070(13), to~~
28 ~~make loans, either secured or unsecured at such interest as the~~
29 ~~fiduciary may determine, not exceeding the amount of the excise tax so~~
30 ~~apportioned to the persons liable for payment of the excise tax. If~~
31 ~~the fiduciary or other person is required to pay the excise tax, the~~
32 ~~fiduciary or other person shall have the rights of recovery provided in~~
33 ~~RCW 83.110.040 or otherwise.))~~)

34 **Sec. 3.** RCW 83.110.030 and 1990 c 180 s 6 are each amended to read
35 as follows:

36 (1) The court having jurisdiction over the administration of the
37 estate of a decedent shall determine the apportionment of the tax. If
38 there are no probate proceedings, the court of the county wherein the

1 decedent was domiciled at death shall determine the apportionment of
2 the tax upon the application of the person required to pay the tax.

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

7 (3) The expenses reasonably incurred by any fiduciary and by other
8 persons interested in the estate in connection with the determination
9 of the amount and apportionment of the tax shall be apportioned as
10 provided in RCW 83.110.020 and charged and collected as a part of the
11 tax apportioned. If the court finds it is inequitable to apportion the
12 expenses as provided in RCW 83.110.020, it may direct apportionment
13 thereof equitably.

14 (4) If the court finds that the assessment of penalties and
15 interest is due to delay caused by the negligence of the fiduciary, the
16 court may charge the fiduciary with the amount of the assessed
17 penalties and interest.

18 (5) In any suit or judicial proceeding to recover from any person
19 interested in the estate the amount of the tax apportioned to the
20 person in accordance with this chapter, the determination of the court
21 in respect thereto is prima facie correct.

22 ~~((6) In the case where there are successive interests with respect
23 to retirement distributions, the excise tax shall be equitably
24 apportioned by the court having jurisdiction over the administration of
25 the estate among the persons interested in the retirement distributions
26 as defined in RCW 83.110.010(6).))~~

27 **Sec. 4.** RCW 83.110.050 and 1993 c 73 s 11 are each amended to read
28 as follows:

29 (1) In making an apportionment, allowances shall be made for any
30 exemptions granted, any classification made of persons interested in
31 the estate, and any deductions and credits allowed by the law imposing
32 the tax.

33 (2) Any exemption or deduction allowed (a) by section 2057 of the
34 Internal Revenue Code, (b) by reason of the relationship of any person
35 to the decedent, or (c) by reason of the purposes of the gift inures to
36 the benefit of the person bearing that relationship or receiving the
37 gift. When an interest is subject to a prior present interest which is

1 not allowable as a deduction, the tax apportionable against the present
2 interest shall be paid from principal.

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

7 (4) Any credit for inheritance, succession, or estate taxes or
8 taxes in the nature thereof in respect to property or interests
9 includable in the estate inures to the benefit of the persons or
10 interests chargeable with the payment thereof to the extent that or in
11 proportion that the credit reduces the tax.

12 (5) To the extent that property passing to or in trust for a
13 surviving spouse or any charitable, public, or similar gift or bequest
14 does not constitute an allowable deduction for purposes of the tax
15 solely by reason of an inheritance tax or other death tax imposed upon
16 and deductible from the property, the property shall not be included in
17 the computation provided for in this chapter, and to that extent no
18 apportionment shall be made against the property. This does not apply
19 in any instance where the result under section 2053(d) of the Internal
20 Revenue Code relates to deduction for state death taxes on transfers
21 for public, charitable, or religious uses. To the extent the amount
22 otherwise allowed as a deduction under section 2057 of the Internal
23 Revenue Code does not constitute an allowable deduction for purposes of
24 the tax solely by reason of an inheritance tax or other death tax
25 imposed upon and deductible from the amount, the amount shall not be
26 included in the computation provided for in this chapter, and to that
27 extent no apportionment shall be made against the amount.

28 (6) In the case of qualified real property or a qualified family-
29 owned business interest, the apportionment of the tax shall be based on
30 the values that would have been used to determine the tax without
31 regard to section 2032A or 2057 of the Internal Revenue Code. The
32 reduction in the tax attributable to the application of section 2032A
33 or 2057 shall inure as follows:

34 (a) First to the benefit of the qualified heirs in proportion to
35 their relative interests in the qualified real property or qualified
36 family-owned business interest, until the tax attributable to the
37 qualified real property or qualified family-owned business interest is
38 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 **Sec. 5.** RCW 83.110.060 and 1989 c 40 s 5 are each amended to read
14 as follows:

15 (~~Except as otherwise provided in RCW 83.110.030(6),~~) No interest
16 in income and no estate for years or for life or other temporary
17 interest in any property or fund is subject to apportionment as between
18 the temporary interest and the remainder. The tax on the temporary
19 interest and the tax, if any, on the remainder is chargeable against
20 the corpus of the property or funds subject to the temporary interest
21 and remainder. No tax shall be paid from a charitable remainder
22 annuity trust or a charitable remainder unitrust described in section
23 664 of the Internal Revenue Code.

24 **Sec. 6.** RCW 83.110.090 and 1989 c 40 s 6 are each amended to read
25 as follows:

26 If the liabilities of persons interested in the estate as
27 prescribed by this chapter differ from those which result under the
28 federal estate tax law, for example, section 2206, 2207, 2207A, or
29 2207B of the Internal Revenue Code, the liabilities imposed by the
30 federal law will control and the balance of this chapter shall apply as
31 if the resulting liabilities had been prescribed in this chapter.
32 Nothing in this chapter affects the right of a personal representative
33 to recover payments due an estate pursuant to the provisions of
34 (~~section 2207A of~~) the Internal Revenue Code.

Passed the Senate February 9, 2000.

Passed the House February 29, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.