

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5052**

Chapter 332, Laws of 2005

59th Legislature  
2005 Regular Session

UNIFORM ESTATE TAX APPORTIONMENT

EFFECTIVE DATE: 1/1/06

Passed by the Senate April 18, 2005  
YEAS 46 NAYS 0

BRAD OWEN

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**President of the Senate**

Passed by the House April 12, 2005  
YEAS 98 NAYS 0

FRANK CHOPP

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**Speaker of the House of Representatives**

Approved May 9, 2005.

CHRISTINE GREGOIRE  
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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5052** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

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**Secretary**

FILED

May 9, 2005 - 3:25 p.m.

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5052**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2005 Regular Session

**State of Washington                      59th Legislature                      2005 Regular Session**

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

READ FIRST TIME 03/02/05.

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

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

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

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

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

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

17            (b) The value of any interest in property that, for purposes of the

1 tax, qualifies for a marital or charitable deduction or otherwise is  
2 deductible or is exempt; and

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

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

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

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

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

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

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

32 (8) "Internal Revenue Code" means the United States Internal  
33 Revenue Code of 1986, as amended or renumbered as of January 1, 2005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 NEW SECTION. **Sec. 15.** The following acts or parts of acts are  
29 each repealed:

30 (1) RCW 83.110.010 (Definitions) and 2000 c 129 s 1, 1998 c 292 s  
31 402, 1994 c 221 s 71, 1993 c 73 s 10, 1989 c 40 s 1, & 1986 c 63 s 1;

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

- 1 (3) RCW 83.110.030 (Apportionment procedure) and 2000 c 129 s 3,  
2 1990 c 180 s 6, 1989 c 40 s 3, & 1986 c 63 s 3;  
3 (4) RCW 83.110.040 (Collection of tax from persons interested in  
4 the estate--Security) and 1986 c 63 s 4;  
5 (5) RCW 83.110.050 (Allowance for exemptions, deductions, and  
6 credits) and 2000 c 129 s 4, 1993 c 73 s 11, 1989 c 40 s 4, & 1986 c 63  
7 s 5;  
8 (6) RCW 83.110.060 (Apportionment between temporary and remainder  
9 interests) and 2000 c 129 s 5, 1989 c 40 s 5, & 1986 c 63 s 6;  
10 (7) RCW 83.110.070 (Time for recovery of tax from persons  
11 interested in the estate--Exoneration of fiduciary--Recovery of  
12 uncollectible taxes) and 1986 c 63 s 7;  
13 (8) RCW 83.110.080 (Action by nonresident--Reciprocity) and 1986 c  
14 63 s 8;  
15 (9) RCW 83.110.090 (Coordination with federal law) and 2000 c 129  
16 s 6, 1989 c 40 s 6, & 1986 c 63 s 9;  
17 (10) RCW 83.110.900 (Construction) and 1986 c 63 s 10;  
18 (11) RCW 83.110.901 (Short title) and 1986 c 63 s 11;  
19 (12) RCW 83.110.902 (Captions) and 1986 c 63 s 13;  
20 (13) RCW 83.110.903 (Application) and 1988 c 64 s 26 & 1986 c 63 s  
21 14; and  
22 (14) RCW 83.110.904 (Severability--1986 c 63) and 1986 c 63 s 12.

23 NEW SECTION. **Sec. 16.** CAPTIONS NOT LAW. Captions used in this  
24 chapter are not part of the law.

25 NEW SECTION. **Sec. 17.** This act takes effect January 1, 2006.

26 NEW SECTION. **Sec. 18.** The repealed sections of law in section 15  
27 of this act shall not be construed as affecting any existing right,  
28 liability, or obligation incurred, under the repealed sections or under  
29 any rule or order adopted under those sections, nor as affecting any  
30 proceeding instituted under those sections.

31 NEW SECTION. **Sec. 19.** Sections 1 through 14 and 16 of this act  
32 constitute a new chapter in Title 83 RCW.

Passed by the Senate April 18, 2005.

Passed by the House April 12, 2005.

Approved by the Governor May 9, 2005.

Filed in Office of Secretary of State May 9, 2005.