

SENATE BILL REPORT

SB 5849

As Passed Senate, March 4, 2011

Title: An act relating to estates and trusts.

Brief Description: Concerning estates and trusts.

Sponsors: Senators Prentice and Parlette.

Brief History:

Committee Activity: Ways & Means: 2/25/11 [DP].

Passed Senate: 3/04/11, 48-1.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Brown, Conway, Fraser, Hatfield, Hewitt, Honeyford, Kastama, Keiser, Kohl-Welles, Pflug, Pridemore, Regala, Rockefeller, Schoesler and Tom.

Staff: Dean Carlson (786-7305)

Background: SSB 6831 was enacted in 2010 in order to provide a rule of construction in interpreting formula clauses in wills and trusts that referred to the federal estate tax or generation-skipping transfer tax exemption amounts. The purpose of the bill was to deal with the issue in 2010 where there was no federal estate tax. Since there was no estate tax, there was no exemption amount, so the formula clauses did not work.

SSB 6831 created a rebuttable presumption that the decedent intended, when using a formula clause, the estate tax and generation-skipping transfer tax exemption amounts be equal to what they were when the applicable federal tax was last in effect, *i.e.*, \$3.5 million on December 31, 2009.

December 17, 2010, Congress retroactively reenacted the estate tax and generation-skipping transfer tax provisions to January 1, 2010. At the same time, Congress increased these exemptions to \$5 million also retroactive to January 1, 2010.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

As a result, for decedents dying after December 31, 2009, and before December 18, 2010, it is not clear if formula clauses used in wills and trusts would result in a presumed exemption amount of \$3.5 million or \$5 million.

Summary of Bill: For estates of decedents dying after December 31, 2009, and before December 18, 2010, the act:

1. Allows for the introduction of extrinsic evidence in order to determine what was the testator's or grantor's intent regarding a formula clause based on the federal estate tax or generation-skipping transfer tax exemptions, even if the will is not ambiguous.
2. Removes the presumption created by SSB 6831 that the formula amount mentioned in paragraph #1 above is \$3.5 million. It also allows for construction of the formula as meaning \$3.5 million or \$5 million based on the decedent's intent.
3. Changes the time limit for bringing a judicial construction action under RCW 11.108.080 to two years following the death of the decedent's death, as opposed to one year.
4. In order to conform to federal disclaimer law, it extends the time to make a qualified disclaimer of property passing from an estate of decedent dying after December 31, 2009, and prior to December 18, 2010, to the later of nine months following the date of death or September 17, 2010.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: There was an ambiguity created when the retroactive federal estate tax was past. The ambiguity leaves the interpretation of a will of a decedent who passes in 2010 open to question. This will allow a trial court to take extrinsic outside evidence to determine what the decedent intended when they signed their will. The second aspect that is important is that the timing for a proper disclaimer will align our law with federal law.

Persons Testifying: PRO: Claudia A. Gowan, Sub-committee, Adhoc Estate and Gift Tax Committee Taxation Section, Washington State Bar Association.