

SSB 5939 - S AMD 339

By Senator Hasegawa

1       Strike everything after the enacting clause and insert the  
2 following:

3       "NEW SECTION.   **Sec. 1.**   (1) In 2005, to address an unexpected  
4 significant loss of tax revenue resulting from the *Estate of Hemphill*  
5 decision and to provide additional funding for public education, the  
6 legislature enacted a stand-alone estate and transfer tax, effective  
7 May 17, 2005. The stand-alone estate and transfer tax applies to the  
8 transfer of property at death. By defining the term "transfer" to mean  
9 a "transfer as used in section 2001 of the internal revenue code," the  
10 legislature clearly expressed its intent that a "transfer" for purposes  
11 of determining the federal taxable estate is also a "transfer" for  
12 purposes of determining the Washington taxable estate.

13       (2) In *In re Estate of Bracken*, Docket No. 84114-4, the Washington  
14 supreme court narrowly construed the term "transfer" as defined in the  
15 Washington estate tax code.

16       (3) The legislature finds that it is well established that the term  
17 "transfer" as used in the federal estate tax code is construed broadly  
18 and extends to the "shifting from one to another of any power or  
19 privilege incidental to the ownership or enjoyment of property" that  
20 occurs at death. *Fernandez v. Wiener*, 326 U.S. 340, 352 (1945).

21       (4) The legislature further finds that: The Bracken decision held  
22 certain qualified terminable interest property (QTIP) of married  
23 couples was transferred without incurring Washington state estate tax  
24 liability, which: (a) Creates an inequity never intended by the  
25 legislature because unmarried individuals did not enjoy any similar  
26 opportunities to avoid or greatly reduce their potential Washington  
27 estate tax liability; and (b) may create disparate treatment between  
28 QTIP property and other property transferred between spouses that is  
29 eligible for the marital deduction.

1 (5) Therefore, the legislature finds that it is necessary to  
2 reinstate the legislature's intended meaning when it enacted the estate  
3 tax, restore parity between married couples and unmarried individuals,  
4 restore parity between QTIP property and other property eligible for  
5 the marital deduction, and prevent the adverse fiscal impacts of the  
6 Bracken decision by reaffirming its intent that the term "transfer" as  
7 used in the Washington estate and transfer tax is to be given its  
8 broadest possible meaning consistent with established United States  
9 supreme court precedents, subject only to the limits and exceptions  
10 expressly provided by the legislature.

11 (6) As curative, clarifying, and remedial, the legislature intends  
12 for this act to apply both prospectively and retroactively to estates  
13 of decedents dying on or after May 17, 2005.

14 **Sec. 2.** RCW 83.100.020 and 2013 c 23 s 341 are each amended to  
15 read as follows:

16 ~~((As used in this chapter:))~~ The following definitions in this  
17 section apply throughout this chapter unless the context clearly  
18 requires otherwise.

- 19 (1) "Decedent" means a deceased individual((+)).
- 20 (2) "Department" means the department of revenue, the director of  
21 that department, or any employee of the department exercising authority  
22 lawfully delegated to him or her by the director((+)).
- 23 (3) "Federal return" means any tax return required by chapter 11 of  
24 the internal revenue code((+)).
- 25 (4) "Federal tax" means a tax under chapter 11 of the internal  
26 revenue code((+)).
- 27 (5) "Gross estate" means "gross estate" as defined and used in  
28 section 2031 of the internal revenue code((+)).
- 29 (6) "Person" means any individual, estate, trust, receiver,  
30 cooperative association, club, corporation, company, firm, partnership,  
31 joint venture, syndicate, or other entity and, to the extent permitted  
32 by law, any federal, state, or other governmental unit or subdivision  
33 or agency, department, or instrumentality thereof((+)).
- 34 (7) "Person required to file the federal return" means any person  
35 required to file a return required by chapter 11 of the internal  
36 revenue code, such as the personal representative of an estate((+)).
- 37 (8) "Property" means property included in the gross estate((+)).

1 (9) "Resident" means a decedent who was domiciled in Washington at  
2 time of death((+)).

3 (10) "Taxpayer" means a person upon whom tax is imposed under this  
4 chapter, including an estate or a person liable for tax under RCW  
5 83.100.120((+)).

6 (11) "Transfer" means "transfer" as used in section 2001 of the  
7 internal revenue code and includes any shifting upon death of the  
8 economic benefit in property or any power or legal privilege incidental  
9 to the ownership or enjoyment of property. However, "transfer" does  
10 not include a qualified heir disposing of an interest in property  
11 qualifying for a deduction under RCW 83.100.046 or ceasing to use the  
12 property for farming purposes((+)).

13 (12) "Internal revenue code" means(~~(, for the purposes of this~~  
14 ~~chapter and RCW 83.110.010,)~~) the United States internal revenue code  
15 of 1986, as amended or renumbered as of January 1, 2005((+)).

16 (13) "Washington taxable estate" means the federal taxable estate  
17 and includes, but is not limited to, the value of any property included  
18 in the gross estate under section 2044 of the internal revenue code,  
19 regardless of whether the decedent's interest in such property was  
20 acquired before May 17, 2005, (a) plus amounts required to be added to  
21 the Washington taxable estate under RCW 83.100.047, (b) less: ((+a))  
22 (i) One million five hundred thousand dollars for decedents dying  
23 before January 1, 2006; and ((+b)) (ii) two million dollars for  
24 decedents dying on or after January 1, 2006; and ((+c)) (iii) the  
25 amount of any deduction allowed under RCW 83.100.046; and (iv) amounts  
26 allowed to be deducted from the Washington taxable estate under RCW  
27 83.100.047.

28 (14) "Federal taxable estate" means the taxable estate as  
29 determined under chapter 11 of the internal revenue code without regard  
30 to: (a) The termination of the federal estate tax under section 2210  
31 of the internal revenue code or any other provision of law, and (b) the  
32 deduction for state estate, inheritance, legacy, or succession taxes  
33 allowable under section 2058 of the internal revenue code.

34 **Sec. 3.** RCW 83.100.047 and 2005 c 516 s 13 are each amended to  
35 read as follows:

36 (1) If the federal taxable estate on the federal return is  
37 determined by making an election under section 2056 or 2056A of the

1 internal revenue code, or if no federal return is required to be filed,  
2 the department may provide by rule for a separate election on the  
3 Washington return, consistent with section 2056 or 2056A of the  
4 internal revenue code, for the purpose of determining the amount of tax  
5 due under this chapter. The election (~~((shall be))~~) is binding on the  
6 estate and the beneficiaries, consistent with the internal revenue  
7 code. All other elections or valuations on the Washington return  
8 (~~((shall))~~) must be made in a manner consistent with the federal return,  
9 if a federal return is required, and such rules as the department may  
10 provide.

11 (2) Amounts deducted for federal income tax purposes under section  
12 642(g) of the internal revenue code of 1986(~~((, shall))~~) are not (~~((be))~~)  
13 allowed as deductions in computing the amount of tax due under this  
14 chapter.

15 (3) Notwithstanding any department rule, if a taxpayer makes an  
16 election consistent with section 2056 of the internal revenue code as  
17 permitted under this section, the taxpayer's Washington taxable estate,  
18 and the surviving spouse's Washington taxable estate, must be adjusted  
19 as follows:

20 (a) For the taxpayer that made the election, any amount deducted by  
21 reason of section 2056(b)(7) of the internal revenue code is added to,  
22 and the value of property for which a Washington election under this  
23 section was made is deducted from, the Washington taxable estate.

24 (b) For the estate of the surviving spouse, the amount included in  
25 the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of  
26 the internal revenue code is deducted from, and the value of any  
27 property for which an election under this section was previously made  
28 is added to, the Washington taxable estate.

29 **Sec. 4.** RCW 83.100.047 and 2009 c 521 s 192 are each amended to  
30 read as follows:

31 (1)(a) If the federal taxable estate on the federal return is  
32 determined by making an election under section 2056 or 2056A of the  
33 internal revenue code, or if no federal return is required to be filed,  
34 the department may provide by rule for a separate election on the  
35 Washington return, consistent with section 2056 or 2056A of the  
36 internal revenue code and (b) of this subsection, for the purpose of  
37 determining the amount of tax due under this chapter. The election

1 (~~shall be~~) is binding on the estate and the beneficiaries, consistent  
2 with the internal revenue code and (b) of this subsection. All other  
3 elections or valuations on the Washington return (~~shall~~) must be made  
4 in a manner consistent with the federal return, if a federal return is  
5 required, and such rules as the department may provide.

6 (b) The department (~~shall~~) must provide by rule that a state  
7 registered domestic partner is deemed to be a surviving spouse and  
8 entitled to a deduction from the Washington taxable estate for any  
9 interest passing from the decedent to his or her domestic partner,  
10 consistent with section 2056 or 2056A of the internal revenue code but  
11 regardless of whether such interest would be deductible from the  
12 federal gross estate under section 2056 or 2056A of the internal  
13 revenue code.

14 (2) Amounts deducted for federal income tax purposes under section  
15 642(g) of the internal revenue code of 1986 (~~shall~~) are not (~~be~~)  
16 allowed as deductions in computing the amount of tax due under this  
17 chapter.

18 (3) Notwithstanding any department rule, if a taxpayer makes an  
19 election consistent with section 2056 of the internal revenue code as  
20 permitted under this section, the taxpayer's Washington taxable estate,  
21 and the surviving spouse's Washington taxable estate, must be adjusted  
22 as follows:

23 (a) For the taxpayer that made the election, any amount deducted by  
24 reason of section 2056(b)(7) of the internal revenue code is added to,  
25 and the value of property for which a Washington election under this  
26 section was made is deducted from, the Washington taxable estate.

27 (b) For the estate of the surviving spouse, the amount included in  
28 the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of  
29 the internal revenue code is deducted from, and the value of any  
30 property for which an election under this section was previously made  
31 is added to, the Washington taxable estate.

32 **Sec. 5.** RCW 83.100.120 and 1981 2nd ex.s. c 7 s 83.100.120 are  
33 each amended to read as follows:

34 (1)(a) Except as otherwise provided in this subsection, any  
35 personal representative who distributes any property without first  
36 paying, securing another's payment of, or furnishing security for  
37 payment of the taxes due under this chapter is personally liable for

1 the taxes due to the extent of the value of any property that may come  
2 or may have come into the possession of the personal representative.  
3 Security for payment of the taxes due under this chapter (~~(shall)~~) must  
4 be in an amount equal to or greater than the value of all property that  
5 is or has come into the possession of the personal representative, as  
6 of the time the security is furnished.

7 (b) For the estates of decedents dying prior to April 9, 2006, a  
8 personal representative is not personally liable for taxes due on the  
9 value of any property included in the gross estate and the Washington  
10 taxable estate as a result of section 2044 of the internal revenue code  
11 unless the property is located in the state of Washington or the  
12 property has or will come into the possession or control of the  
13 personal representative.

14 (2) Any person who has the control, custody, or possession of any  
15 property and who delivers any of the property to the personal  
16 representative or legal representative of the decedent outside  
17 Washington without first paying, securing another's payment of, or  
18 furnishing security for payment of the taxes due under this chapter is  
19 liable for the taxes due under this chapter to the extent of the value  
20 of the property delivered. Security for payment of the taxes due under  
21 this chapter (~~(shall)~~) must be in an amount equal to or greater than  
22 the value of all property delivered to the personal representative or  
23 legal representative of the decedent outside Washington by such a  
24 person.

25 (3) For the purposes of this section, persons who do not have  
26 possession of a decedent's property include anyone not responsible  
27 primarily for paying the tax due under this section or their  
28 transferees, which includes but is not limited to mortgagees or  
29 pledgees, stockbrokers or stock transfer agents, banks and other  
30 depositories of checking and savings accounts, safe-deposit companies,  
31 and life insurance companies.

32 (4) For the purposes of this section, any person who has the  
33 control, custody, or possession of any property and who delivers any of  
34 the property to the personal representative or legal representative of  
35 the decedent may rely upon the release certificate or the release of  
36 nonliability certificate, furnished by the department to the personal  
37 representative, as evidence of compliance with the requirements of this

1 chapter, and make such deliveries and transfers as the personal  
2 representative may direct without being liable for any taxes due under  
3 this chapter.

4 NEW SECTION. **Sec. 6.** Sections 2 and 3 of this act apply both  
5 prospectively and retroactively to all estates of decedents dying on or  
6 after May 17, 2005.

7 NEW SECTION. **Sec. 7.** This act does not affect any final judgment,  
8 no longer subject to appeal, entered by a court of competent  
9 jurisdiction before the effective date of this section.

10 NEW SECTION. **Sec. 8.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 9.** Section 3 of this act expires January 1,  
15 2014.

16 NEW SECTION. **Sec. 10.** This act is necessary for the immediate  
17 preservation of the public peace, health, or safety, or support of the  
18 state government and its existing public institutions, and takes effect  
19 immediately, except for section 4 of this act which takes effect  
20 January 1, 2014."

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21 On page 1, line 1 of the title, after "tax;" strike the remainder  
22 of the title and insert "amending RCW 83.100.020, 83.100.047,  
23 83.100.047, and 83.100.120; creating new sections; providing an  
24 effective date; providing an expiration date; and declaring an  
25 emergency."

EFFECT: Includes language that provides that a personal representative (pre-2006) is not personally liable for taxes due for a QTIP election. Removes the sections that increase the filing threshold and reduce the applicable tax due.

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