

WAC 458-57-175 Qualified family-owned business interests. (1)

Introduction. This rule applies to deaths occurring on or after January 1, 2014, and is intended to determine if the estate is eligible for the qualified family-owned business interest deduction and to correctly calculate the deduction.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Material participation" has the same meaning as provided in section 2032A (e) (6) of the Internal Revenue Code as amended or renumbered as of January 1, 2005. Under the federal tax provision, "material participation" generally means the individual is materially involved in making significant management decisions for the trade or business, but not necessarily the day-to-day operating decisions.

A decedent or a qualified heir will not be treated as materially participating in the family-owned business if:

(i) The income derived from carrying out the trade or business is from the management decisions of another individual or entity under an arrangement between the other individual or entity and the decedent or qualified heir.

(ii) The activities that constitute material participation of any agent of the decedent or qualified heir are not considered the activities of the decedent or qualified heir when determining their material participation in the family-owned business.

(iii) A trustee's activities managing a trust for the benefit of other individuals shall not be considered when determining whether any of the present interest beneficiaries of the trust materially participate in the family-owned business.

(b) "Member of the decedent's family" and "member of the family" have the same meaning as "member of the family" in RCW 83.100.046(10).

(c) "Qualified family-owned business interest" has the same meaning as provided in section 2057(e) of the Internal Revenue Code of 1986 as amended and renumbered as of December 31, 2003.

(d) "Qualified heir" has the same meaning as provided in section 2057(i) of the Internal Revenue Code of 1986 as amended and renumbered as of December 31, 2003.

(e) When a business interest is held in a trust, only the individuals with a present-beneficiary interest in the trust may qualify as a "qualified heir" or "member of decedent's family" under this rule.

(3) **Criteria for claiming the deduction.**

(a) For the purposes of determining the tax due under this chapter, a deduction is allowed for the value of the decedent's qualified family-owned business interests. The total deduction may not exceed two million five hundred thousand dollars.

(b) The deduction is available only if all the following criteria are met:

(i) The value of the decedent's qualified family-owned business interests must exceed fifty percent of the decedent's Washington taxable estate determined without regard to the deduction for the applicable exclusion amount provided in RCW 83.100.020 (1) (a);

(ii) During the eight-year period ending on the date of the decedent's death, there must have been periods aggregating five years or more during which:

(A) Such interests were owned by the decedent or a member of the decedent's family;

(B) There was material participation, within the meaning of section 2032A (e) (6) of the Internal Revenue Code, by the decedent or a

member of the decedent's family in the operation of the trade or business to which such interests relate;

(iii) The qualified family-owned business interests are acquired by any qualified heir from, or passed to any qualified heir from, the decedent, within the meaning of RCW 83.100.046(2), and the decedent was at the time of his or her death a citizen or resident of the United States; and

(iv) The value of the decedent's qualified family-owned business interests is not more than six million dollars.

(4) Amounts deductible under this section.

(a) Only amounts included in the decedent's federal taxable estate may be deducted under this subsection.

(b) Amounts deductible under RCW 83.100.046 regarding property used for farming may not be deducted under this section.

(5) Additional estate tax imposed - Circumstances - Amount.

(a) If the qualified heir, within three years of decedent's death and prior to the qualified heir's death, meets one of the four criteria listed below, that qualified heir will be assessed additional estate tax.

(i) The material participation requirements described in section 2032A (c) (6) (b) (ii) of the Internal Revenue Code are not met with respect to the qualified family-owned business interest which was acquired or passed from the decedent;

(ii) The qualified heir disposes of any portion of a qualified family-owned business interest, other than by a disposition to a member of the qualified heir's family or a person with an ownership interest in the qualified family-owned business or through a qualified conservation contribution under section 170(h) of the Internal Revenue Code;

(iii) The qualified heir loses United States citizenship within the meaning of section 877 of the Internal Revenue Code or with respect to whom section 877 (e) (1) applies, and such heir does not comply with the requirements of section 877(g) of the Internal Revenue Code; or

(iv) The principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

(b) The amount of the additional estate tax imposed under this subsection if one of the four criteria in (a) of this subsection is met is equal to the amount of tax savings with respect to the qualified family-owned business interest acquired or passed from the decedent.

(c) Interest applies to the tax due under this subsection for the period beginning on the date that the estate tax liability was due under this chapter and ending on the date the additional estate tax due under this subsection is paid. Interest under this subsection must be computed as provided in RCW 83.100.070(2).

(d) The additional estate tax imposed by this subsection is due the day that is six months after any taxable event described in (a) of this subsection occurred and must be reported on a return as provided by the department.

(e) The qualified heir is personally liable for the additional tax imposed by this subsection unless he or she has furnished a bond in favor of the department for such amount and for such time as the department determines necessary to secure the payment of amounts due under this subsection. The qualified heir, on furnishing a bond satisfactory to the department, is discharged from personal liability for

any additional estate tax and interest under this subsection and is entitled to a receipt or writing showing such discharge.

(f) Amounts due under this subsection attributable to any qualified family-owned business interest are secured by a lien in favor of the state on the property in respect to which such interest relates. The lien arises at the time the Washington return is filed on which a deduction under this section is taken and continues in effect until:

(i) The additional estate tax liability under this subsection has been satisfied or has become unenforceable by reason of lapse of time; or

(ii) The department is satisfied that no further tax liability will arise under this subsection.

(g) Security acceptable to the department may be substituted for the lien imposed by (f) of this subsection.

(h) For purposes of the assessment or correction of an assessment for additional estate taxes and interest imposed under this subsection, the limitations period in RCW 83.100.095 begins to run on the due date of the return required under (d) of this subsection.

(i) For purposes of this subsection, a qualified heir may not be treated as disposing of an interest described in section 2057 (e)(1)(A) of the Internal Revenue Code by reason of ceasing to be engaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of the qualified heir's family.

(6) Information to be furnished to the department:

(a) The personal representative of the estate claiming the deduction is required to provide the names and contact information of all qualified heirs on forms prescribed by the department.

(b) Any qualified heir upon the department's request, must submit to the department on an ongoing basis such information as the department determines necessary or useful in determining whether the qualified heir is subject to the additional tax imposed in subsection (5) of this section. The department may not require such information more frequently than twice per year. The department may impose a penalty on a qualified heir who fails to provide the information requested within thirty days of the date the department's written request for the information was sent to the qualified heir. The amount of the penalty under this subsection is five hundred dollars and may be collected in the same manner as the tax imposed under subsection (5) of this section.

[Statutory Authority: RCW 83.100.200, 82.32.300, 82.01.060(2), 83.100.020, 83.100.040, 83.100.047, 83.100.048, 83.100.120, and 83.100.210. WSR 14-14-075, § 458-57-175, filed 6/27/14, effective 7/28/14.]