
SUBSTITUTE HOUSE BILL 2064

State of Washington 63rd Legislature 2013 1st Special Session

By House Finance (originally sponsored by Representatives Ormsby, Reykdal, and Roberts)

READ FIRST TIME 05/29/13.

1 AN ACT Relating to preserving funding deposited into the education
2 legacy trust account used to support common schools and access to
3 higher education by restoring the application of the Washington estate
4 and transfer tax to certain property transfers; amending RCW
5 83.100.020, 83.100.047, 83.100.047, and 83.100.120; creating new
6 sections; providing an effective date; providing an expiration date;
7 and declaring an emergency.

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

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

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

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

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

18 (5) Therefore, the legislature finds that it is necessary to
19 reinstate the legislature's intended meaning when it enacted the estate
20 tax, restore parity between married couples and unmarried individuals,
21 restore parity between QTIP property and other property eligible for
22 the marital deduction, and prevent the adverse fiscal impacts of the
23 Bracken decision by reaffirming its intent that the term "transfer" as
24 used in the Washington estate and transfer tax is to be given its
25 broadest possible meaning consistent with established United States
26 supreme court precedents, subject only to the limits and exceptions
27 expressly provided by the legislature.

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

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

33 ~~((As used in this chapter:))~~ The following definitions in this
34 section apply throughout this chapter unless the context clearly
35 requires otherwise.

36 (1) "Decedent" means a deceased individual((+)).

1 (2) "Department" means the department of revenue, the director of
2 that department, or any employee of the department exercising authority
3 lawfully delegated to him or her by the director((+)).

4 (3) "Federal return" means any tax return required by chapter 11 of
5 the internal revenue code((+)).

6 (4) "Federal tax" means a tax under chapter 11 of the internal
7 revenue code((+)).

8 (5) "Gross estate" means "gross estate" as defined and used in
9 section 2031 of the internal revenue code((+)).

10 (6) "Person" means any individual, estate, trust, receiver,
11 cooperative association, club, corporation, company, firm, partnership,
12 joint venture, syndicate, or other entity and, to the extent permitted
13 by law, any federal, state, or other governmental unit or subdivision
14 or agency, department, or instrumentality thereof((+)).

15 (7) "Person required to file the federal return" means any person
16 required to file a return required by chapter 11 of the internal
17 revenue code, such as the personal representative of an estate((+)).

18 (8) "Property" means property included in the gross estate((+)).

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

21 (10) "Taxpayer" means a person upon whom tax is imposed under this
22 chapter, including an estate or a person liable for tax under RCW
23 83.100.120((+)).

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

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

34 (13) "Washington taxable estate" means the federal taxable estate
35 and includes, but is not limited to, the value of any property included
36 in the gross estate under section 2044 of the internal revenue code,
37 regardless of whether the decedent's interest in such property was
38 acquired before May 17, 2005, (a) plus amounts required to be added to

1 the Washington taxable estate under RCW 83.100.047, (b) less: ((+a+))
2 (i) One million five hundred thousand dollars for decedents dying
3 before January 1, 2006; and ((+b+)) (ii) two million dollars for
4 decedents dying on or after January 1, 2006; and ((+e+)) (iii) the
5 amount of any deduction allowed under RCW 83.100.046; and (iv) amounts
6 allowed to be deducted from the Washington taxable estate under RCW
7 83.100.047.

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

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

16 (1) If the federal taxable estate on the federal return is
17 determined by making an election under section 2056 or 2056A of the
18 internal revenue code, or if no federal return is required to be filed,
19 the department may provide by rule for a separate election on the
20 Washington return, consistent with section 2056 or 2056A of the
21 internal revenue code, for the purpose of determining the amount of tax
22 due under this chapter. The election (~~shall be~~) is binding on the
23 estate and the beneficiaries, consistent with the internal revenue
24 code. All other elections or valuations on the Washington return
25 (~~shall~~) must be made in a manner consistent with the federal return,
26 if a federal return is required, and such rules as the department may
27 provide.

28 (2) Amounts deducted for federal income tax purposes under section
29 642(g) of the internal revenue code of 1986(~~, shall~~) are not (~~be~~)
30 allowed as deductions in computing the amount of tax due under this
31 chapter.

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

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

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

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

12 (1)(a) If the federal taxable estate on the federal return is
13 determined by making an election under section 2056 or 2056A of the
14 internal revenue code, or if no federal return is required to be filed,
15 the department may provide by rule for a separate election on the
16 Washington return, consistent with section 2056 or 2056A of the
17 internal revenue code and (b) of this subsection, for the purpose of
18 determining the amount of tax due under this chapter. The election
19 (~~shall be~~) is binding on the estate and the beneficiaries, consistent
20 with the internal revenue code and (b) of this subsection. All other
21 elections or valuations on the Washington return (~~shall~~) must be made
22 in a manner consistent with the federal return, if a federal return is
23 required, and such rules as the department may provide.

24 (b) The department (~~shall~~) must provide by rule that a state
25 registered domestic partner is deemed to be a surviving spouse and
26 entitled to a deduction from the Washington taxable estate for any
27 interest passing from the decedent to his or her domestic partner,
28 consistent with section 2056 or 2056A of the internal revenue code but
29 regardless of whether such interest would be deductible from the
30 federal gross estate under section 2056 or 2056A of the internal
31 revenue code.

32 (2) Amounts deducted for federal income tax purposes under section
33 642(g) of the internal revenue code of 1986 (~~shall~~) are not (~~be~~)
34 allowed as deductions in computing the amount of tax due under this
35 chapter.

36 (3) Notwithstanding any department rule, if a taxpayer makes an
37 election consistent with section 2056 of the internal revenue code as

1 permitted under this section, the taxpayer's Washington taxable estate,
2 and the surviving spouse's Washington taxable estate, must be adjusted
3 as follows:

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

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

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

15 (1)(a) Except as otherwise provided in this subsection, any
16 personal representative who distributes any property without first
17 paying, securing another's payment of, or furnishing security for
18 payment of the taxes due under this chapter is personally liable for
19 the taxes due to the extent of the value of any property that may come
20 or may have come into the possession of the personal representative.
21 Security for payment of the taxes due under this chapter (~~shall~~) must
22 be in an amount equal to or greater than the value of all property that
23 is or has come into the possession of the personal representative, as
24 of the time the security is furnished.

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

32 (2) Any person who has the control, custody, or possession of any
33 property and who delivers any of the property to the personal
34 representative or legal representative of the decedent outside
35 Washington without first paying, securing another's payment of, or
36 furnishing security for payment of the taxes due under this chapter is
37 liable for the taxes due under this chapter to the extent of the value

1 of the property delivered. Security for payment of the taxes due under
2 this chapter (~~shall~~) must be in an amount equal to or greater than
3 the value of all property delivered to the personal representative or
4 legal representative of the decedent outside Washington by such a
5 person.

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

13 (4) For the purposes of this section, any person who has the
14 control, custody, or possession of any property and who delivers any of
15 the property to the personal representative or legal representative of
16 the decedent may rely upon the release certificate or the release of
17 nonliability certificate, furnished by the department to the personal
18 representative, as evidence of compliance with the requirements of this
19 chapter, and make such deliveries and transfers as the personal
20 representative may direct without being liable for any taxes due under
21 this chapter.

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

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

28 NEW SECTION. **Sec. 8.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 9.** Section 3 of this act expires January 1,
33 2014.

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

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