
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-2901.3/13 3rd draft

ATTY/TYPIST: JA:lel

BRIEF DESCRIPTION: Concerning state government.

1 AN ACT Relating to state government; amending RCW 83.100.020,
2 83.100.040, 83.100.047, 83.100.047, and 83.100.120; adding a new
3 section to chapter 83.100 RCW; adding new sections to 2013 1st sp.s.
4 c ... (ESSB 5034) (uncodified); creating new sections; making
5 appropriations; providing effective dates; providing an expiration
6 date; and declaring an emergency.

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

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

18 (2) In *In re Estate of Bracken*, Docket No. 84114-4, the Washington

1 supreme court narrowly construed the term "transfer" as defined in the
2 Washington estate tax code.

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

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

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

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

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

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

35 (1)(a) "Applicable exclusion amount" means:
36 (i) One million five hundred thousand dollars for decedents dying
37 before January 1, 2006;

1 (ii) Two million dollars for estates of decedents dying on or after
2 January 2006, and before January 1, 2014; and

3 (iii) For estates of decedents dying in calendar year 2014 and each
4 calendar year thereafter, the amount in (a)(ii) of this subsection must
5 be adjusted annually, except as otherwise provided in this subsection
6 (1)(a)(iii). The annual adjustment is determined by multiplying two
7 million dollars by the percentage by which the most recent October
8 consumer price index exceeds the consumer price index for October 2012,
9 and rounding the result to the nearest one thousand dollars. No
10 adjustment is made for a calendar year if the adjustment would result
11 in the same or a lesser applicable exclusion amount than the applicable
12 exclusion amount for the immediately preceding calendar year. The
13 applicable exclusion amount under this subsection (1)(a)(iii) for the
14 decedent's estate is the applicable exclusion amount in effect as of
15 the date of the decedent's death.

16 (b) For purposes of this subsection, "consumer price index" means
17 the consumer price index for all urban consumers, all items, for the
18 Seattle-Tacoma-Bremerton metropolitan area as calculated by the United
19 States bureau of labor statistics.

20 (2) "Decedent" means a deceased individual((+)).

21 ((+2)) (3) "Department" means the department of revenue, the
22 director of that department, or any employee of the department
23 exercising authority lawfully delegated to him or her by the
24 director((+)).

25 ((+3)) (4) "Federal return" means any tax return required by
26 chapter 11 of the internal revenue code((+)).

27 ((+4)) (5) "Federal tax" means a tax under chapter 11 of the
28 internal revenue code((+)).

29 ((+5)) (6) "Gross estate" means "gross estate" as defined and used
30 in section 2031 of the internal revenue code((+)).

31 ((+6)) (7) "Person" means any individual, estate, trust, receiver,
32 cooperative association, club, corporation, company, firm, partnership,
33 joint venture, syndicate, or other entity and, to the extent permitted
34 by law, any federal, state, or other governmental unit or subdivision
35 or agency, department, or instrumentality thereof((+)).

36 ((+7)) (8) "Person required to file the federal return" means any
37 person required to file a return required by chapter 11 of the internal
38 revenue code, such as the personal representative of an estate((+)).

1 **Sec. 3.** RCW 83.100.040 and 2010 c 106 s 234 are each amended to
2 read as follows:

3 (1) A tax in an amount computed as provided in this section is
4 imposed on every transfer of property located in Washington. For the
5 purposes of this section, any intangible property owned by a resident
6 is located in Washington.

7 (2)(a) Except as provided in (b) of this subsection, the amount of
8 tax is the amount provided in the following table:

If Washington Taxable		The amount of Tax Equals		Of Washington
Estate is at least	But Less Than	Initial Tax Amount	Plus Tax Rate %	Taxable Estate Value
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	17.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
\$9,000,000		\$1,440,000	((19.00%))	\$9,000,000
			<u>20.00%</u>	

22 (b) If any property in the decedent's estate is located outside of
23 Washington, the amount of tax is the amount determined in (a) of this
24 subsection multiplied by a fraction. The numerator of the fraction is
25 the value of the property located in Washington. The denominator of
26 the fraction is the value of the decedent's gross estate. Property
27 qualifying for a deduction under RCW 83.100.046 must be excluded from
28 the numerator and denominator of the fraction.

29 (3) The tax imposed under this section is a stand-alone estate tax
30 that incorporates only those provisions of the internal revenue code as
31 amended or renumbered as of January 1, 2005, that do not conflict with
32 the provisions of this chapter. The tax imposed under this chapter is
33 independent of any federal estate tax obligation and is not affected by
34 termination of the federal estate tax.

1 **Sec. 4.** RCW 83.100.047 and 2005 c 516 s 13 are each amended to
2 read as follows:

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

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

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

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

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

33 **Sec. 5.** RCW 83.100.047 and 2009 c 521 s 192 are each amended to
34 read as follows:

35 (1)(a) If the federal taxable estate on the federal return is
36 determined by making an election under section 2056 or 2056A of the
37 internal revenue code, or if no federal return is required to be filed,

1 the department may provide by rule for a separate election on the
2 Washington return, consistent with section 2056 or 2056A of the
3 internal revenue code and (b) of this subsection, for the purpose of
4 determining the amount of tax due under this chapter. The election
5 (~~shall be~~) is binding on the estate and the beneficiaries, consistent
6 with the internal revenue code and (b) of this subsection. All other
7 elections or valuations on the Washington return (~~shall~~) must be made
8 in a manner consistent with the federal return, if a federal return is
9 required, and such rules as the department may provide.

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

18 (2) Amounts deducted for federal income tax purposes under section
19 642(g) of the internal revenue code of 1986 (~~shall~~) are not (~~be~~)
20 allowed as deductions in computing the amount of tax due under this
21 chapter.

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

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

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

36 **Sec. 6.** RCW 83.100.120 and 1981 2nd ex.s. c 7 s 83.100.120 are
37 each amended to read as follows:

1 (1)(a) Except as otherwise provided in this subsection, any
2 personal representative who distributes any property without first
3 paying, securing another's payment of, or furnishing security for
4 payment of the taxes due under this chapter is personally liable for
5 the taxes due to the extent of the value of any property that may come
6 or may have come into the possession of the personal representative.
7 Security for payment of the taxes due under this chapter (~~shall~~) must
8 be in an amount equal to or greater than the value of all property that
9 is or has come into the possession of the personal representative, as
10 of the time the security is furnished.

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

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

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

36 (4) For the purposes of this section, any person who has the
37 control, custody, or possession of any property and who delivers any of
38 the property to the personal representative or legal representative of

1 the decedent may rely upon the release certificate or the release of
2 nonliability certificate, furnished by the department to the personal
3 representative, as evidence of compliance with the requirements of this
4 chapter, and make such deliveries and transfers as the personal
5 representative may direct without being liable for any taxes due under
6 this chapter.

7 NEW SECTION. **Sec. 7.** A new section is added to 2013 1st sp.s. c
8 ... (ESSB 5034) (uncodified) to read as follows:

9 **FOR THE DEPARTMENT OF COMMERCE**

10	General Fund--State Appropriation (FY 2014)	\$20,743,000
11	General Fund--State Appropriation (FY 2015)	\$20,745,000
12	Home Security Fund Account--State Appropriation	\$18,641,000
13	Affordable Housing for All Account--State Appropriation . .	\$7,219,000
14	TOTAL APPROPRIATION	\$67,348,000

15 The appropriations in this section are subject to the following
16 conditions and limitations: The appropriations in this section are
17 provided solely for the housing and essential needs program.

18 NEW SECTION. **Sec. 8.** A new section is added to 2013 1st sp.s. c
19 ... (ESSB 5034) (uncodified) to read as follows:

20 **FOR THE OFFICE OF FINANCIAL MANAGEMENT--RESTORATION OF AGENCY**
21 **ADMINISTRATIVE EFFICIENCY REDUCTIONS**

22	General Fund--State Appropriation (FY 2014)	\$32,983,000
23	General Fund--State Appropriation (FY 2015)	\$32,984,000
24	TOTAL APPROPRIATION	\$65,967,000

25 The appropriations in this section are subject to the following
26 conditions and limitations: The appropriations in this section are
27 provided solely for allocation to state agencies by the office of
28 financial management to restore a portion of the funding reductions
29 reflecting state agency administrative efficiencies.

30 NEW SECTION. **Sec. 9.** A new section is added to 2013 1st sp.s. c
31 ... (ESSB 5034) (uncodified) to read as follows:

32 **FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES--ECONOMIC SERVICES**
33 **PROGRAM**

34	General Fund--State Appropriation (FY 2014)	\$23,206,000
35	General Fund--State Appropriation (FY 2015)	\$28,201,000

1	General Fund--Federal Appropriation	\$10,935,000
2	TOTAL APPROPRIATION	\$62,342,000

3 The appropriations in this section are subject to the following
4 conditions and limitations:

5 (1) \$5,262,000 of the general fund--state appropriation for fiscal
6 year 2014, \$5,263,000 of the general fund--state appropriation for
7 fiscal year 2015, and \$10,935,000 of the general fund--federal
8 appropriation are provided solely to restore incapacity evaluations and
9 supplemental security income facilitation services.

10 (2) \$17,944,000 of the general fund--state appropriation for fiscal
11 year 2014 and \$22,938,000 of the general fund--state appropriation for
12 fiscal year 2015 are provided solely to restore and continue the aged,
13 blind, and disabled cash programs at anticipated levels.

14 NEW SECTION. **Sec. 10.** Sections 2 and 4 of this act apply both
15 prospectively and retroactively to all estates of decedents dying on or
16 after May 17, 2005.

17 NEW SECTION. **Sec. 11.** This act does not affect any final
18 judgment, no longer subject to appeal, entered by a court of competent
19 jurisdiction before the effective date of this section.

20 NEW SECTION. **Sec. 12.** A new section is added to chapter 83.100
21 RCW to read as follows:

22 (1) For the purposes of determining the Washington taxable estate,
23 a deduction is allowed from the federal taxable estate for the value of
24 qualified family-owned business interests of the decedent. This
25 deduction applies only if the qualified family-owned business interest
26 is acquired by any qualified heir from, or passed to any qualified heir
27 from, the decedent, within the meaning of RCW 83.100.046(2) and the
28 decedent was at the time of his or her death a citizen or resident of
29 the United States. Only property in the federal taxable estate and not
30 deductible under RCW 83.100.046 may be deducted under this subsection.
31 For the purposes of determining the deduction amount, the value of
32 property is its value as used to determine the value of the gross
33 estate. For purposes of this subsection, the following definitions
34 apply:

1 (a) "Qualified family-owned business interest" has the same meaning
2 as in 26 U.S.C. Sec. 2057(e) of the federal internal revenue code as it
3 exists on January 1, 2013.

4 (b) "Qualified heir" has the same meaning as in 26 U.S.C. Sec.
5 2057(i) of the federal internal revenue code as it exists on January 1,
6 2013.

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

11 NEW SECTION. **Sec. 14.** Section 4 of this act expires January 1,
12 2014.

13 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and takes effect
16 immediately, except for section 5 of this act which takes effect
17 January 1, 2014, and sections 7 through 9 of this act which take effect
18 July 1, 2013.

--- END ---