
SENATE BILL 6347

State of Washington 58th Legislature 2004 Regular Session

By Senators Johnson, Brown, Winsley and Roach

Read first time 01/19/2004. Referred to Committee on Ways & Means.

1 AN ACT Relating to the Washington estate tax marital deduction;
2 amending RCW 11.108.010, 83.110.090, and 11.02.005; adding a new
3 section to chapter 11.108 RCW; creating new sections; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that significant
7 changes have been made in the federal estate tax laws and that an
8 unintended consequence of these federal estate tax law changes has been
9 to create difficulties and confusion in the administration and
10 enforcement of the Washington estate tax. The legislature further
11 finds that since 1981 one goal of the Washington estate tax has been,
12 for married taxpayers, to allow postponement of the Washington estate
13 tax until the surviving spouse dies, to avoid economic hardship in
14 families and communities throughout the state. The legislature further
15 finds that many Washington taxpayers are still unaware of these federal
16 estate tax law changes, have not updated their estate planning
17 documents to permit postponement of the Washington estate tax, and,
18 despite the efforts of the department of revenue, in good faith, have
19 failed to comply with Washington estate tax reporting and payment

1 requirements. The legislature therefore declares that this act is
2 needed to ensure a fair and balanced estate tax system, a reasonable
3 opportunity for a surviving spouse to postpone the Washington estate
4 tax until the surviving spouse dies, and the level of taxpayer
5 compliance which Washingtonians expect. This act shall be construed
6 and applied liberally as required to realize the decedents' reasonable
7 expectations.

8 NEW SECTION. **Sec. 2.** (1) The legislature specifically approves
9 excise tax advisory no. 2013-57-015 issued May 19, 2003, by the
10 department of revenue, conferring on an executor the authority to make
11 a marital deduction election for purposes of the Washington estate tax
12 similar to the qualified terminable interest property election under
13 Internal Revenue Code section 2056(b)(7) of the Internal Revenue Code.

14 (2) The legislature intends that chapter 11.108 RCW apply to a
15 trust for which a Washington election similar to the qualified
16 terminable interest property election under Internal Revenue Code
17 section 2056(b)(7) of the Internal Revenue Code is made.

18 **Sec. 3.** RCW 11.108.010 and 1997 c 252 s 81 are each amended to
19 read as follows:

20 Unless the context clearly requires otherwise, the definitions in
21 this section apply throughout this chapter.

22 (1) The term "pecuniary bequest" means a gift in a governing
23 instrument which either is expressly stated as a fixed dollar amount or
24 is a gift of a dollar amount determinable by the governing instrument,
25 and a gift expressed in terms of a "sum" or an "amount," unless the
26 context dictates otherwise, is a gift of a dollar amount.

27 (2) As the context might require, the term "marital deduction"
28 means either the federal estate tax deduction or the federal gift tax
29 deduction allowed for transfers to spouses under the Internal Revenue
30 Code.

31 (3) The term "maximum marital deduction" means the maximum amount
32 qualifying for the marital deduction.

33 (4) The term "marital deduction gift" means a gift intended to
34 qualify for the marital deduction as indicated by a preponderance of
35 the evidence including the governing instrument and extrinsic evidence
36 whether or not the governing instrument is found to be ambiguous.

1 However, an intent to qualify for the marital deduction will be
2 presumed for any gift for which a Washington QTIP election could be
3 made. For purposes of this subsection, a "Washington QTIP election" is
4 an election by a personal representative (or if no personal
5 representative is acting, any person in actual or constructive
6 possession of the gift property) similar to the qualified terminable
7 interest property (QTIP) election under section 2056(b)(7) of the
8 Internal Revenue Code which qualifies the gift property for the marital
9 deduction under the Washington estate tax, chapter 83.100 RCW, but for
10 which a federal QTIP election is not made.

11 (5) The term "governing instrument" includes, but is not limited
12 to: Will and codicils; revocable trusts and amendments or addenda to
13 revocable trusts; irrevocable trusts; beneficiary designations under
14 life insurance policies, annuities, employee benefit plans, and
15 individual retirement accounts; payable-on-death, trust, or joint with
16 right of survivorship bank or brokerage accounts; transfer on death
17 designations or transfer on death or pay on death securities; and
18 documents exercising powers of appointment.

19 (6) The term "fiduciary" means trustee or personal representative.
20 Reference to a fiduciary in the singular includes the plural where the
21 context requires.

22 (7) The term "gift" refers to all legacies, devises, and bequests
23 made in a governing instrument.

24 (8) The term "transferor" means the testator, grantor, or other
25 person making a gift.

26 (9) The term "spouse" includes the transferor's surviving spouse in
27 the case of a deceased transferor.

28 NEW SECTION. Sec. 4. A new section is added to chapter 11.108 RCW
29 to read as follows:

30 (1) This section applies to any trust that is established as a
31 result of the transferor's death and that receives an amount or
32 fractional share of the transferor's gross estate determined by direct
33 or indirect reference to the federal applicable exclusion amount
34 available to the transferor at the time of the transferor's death or by
35 a formula gift intended to result in no federal estate tax being paid
36 on property passing to the trust. If:

37 (a) A transferor dies after December 31, 2001;

1 (b) The transferor is survived by a spouse;

2 (c) Under the terms of a governing instrument the transferor makes
3 a transfer of property in trust for the benefit of the spouse which is
4 includible in the transferor's gross estate for purposes of the
5 Washington estate tax, chapter 83.100 RCW, and which bears Washington
6 estate tax because it exceeds the Washington applicable exclusion
7 amount but bears no federal estate tax because it is less than or equal
8 to the federal applicable exclusion amount; and

9 (d) The transferor makes the transfer in a manner that does not
10 qualify for the Washington estate tax marital deduction because the
11 spouse is not entitled to all income from the trust property or another
12 person has the power to appoint any part of the property to a person
13 other than the spouse,

14 then the transfer shall, unless subsection (2) or (3) of this section
15 applies, be presumed to establish a trust which pays all net income to
16 the spouse for life and authorizes distribution of principal of the
17 trust in accordance with the terms of the trust, but to no person other
18 than the spouse, and which qualifies for the Washington estate tax
19 marital deduction and Washington qualified terminable interest property
20 election, and the governing instrument shall be so construed. For
21 purposes of this subsection, the "Washington applicable exclusion
22 amount" means the applicable exclusion amount under section 2010 of the
23 United States Internal Revenue Code of 1986 as of January 1, 2001, and
24 the "federal applicable exclusion amount" means the applicable
25 exclusion amount under section 2010 of the United States Internal
26 Revenue Code of 1986 as of the date of the transferor's death.

27 (2) Subsection (1) of this section does not apply if:

28 (a) A beneficiary of the trust rebuts the presumption by a
29 preponderance of the evidence including the governing instrument and
30 extrinsic evidence whether or not the governing instrument is found to
31 be ambiguous; or

32 (b) The transferor amended the governing instrument making the
33 transfer in trust after December 31, 2001, and expressed an intent not
34 to qualify the transfer for the Washington estate tax marital
35 deduction.

36 If the beneficiary of the trust executes an agreement under RCW
37 11.96A.220 acknowledging the presumption of such construction, the
38 beneficiary is deemed not to have rebutted the presumption.

1 (3) Subsection (1) of this section does not apply if the governing
2 instrument contains language expressly stating that federal or
3 Washington law as of a particular time prior to January 1, 2002, is to
4 govern the construction or interpretation of the transfer, the transfer
5 shall be construed, and qualification for the Washington estate tax
6 marital deduction shall be determined, under federal or Washington law
7 in force and effect as of that time.

8 **Sec. 5.** RCW 83.110.090 and 2000 c 129 s 6 are each amended to read
9 as follows:

10 If the liabilities of persons interested in the estate as
11 prescribed by this chapter differ from those which result under the
12 federal estate tax law, for example, section 2206, 2207, 2207A, or
13 2207B of the Internal Revenue Code, the liabilities imposed by the
14 federal law will control and the balance of this chapter shall apply as
15 if the resulting liabilities had been prescribed in this chapter. If
16 on the death of a surviving spouse the estate tax under chapter 83.100
17 RCW is payable on account of a trust for which the Washington qualified
18 terminable interest property election was made, the tax shall be
19 apportioned in the same manner as the federal estate tax is apportioned
20 under section 2207A of the Internal Revenue Code. Nothing in this
21 chapter affects the right of a personal representative to recover
22 payments due an estate pursuant to the provisions of the Internal
23 Revenue Code.

24 **Sec. 6.** RCW 11.02.005 and 2001 c 320 s 1 are each amended to read
25 as follows:

26 When used in this title, unless otherwise required from the
27 context:

28 (1) "Personal representative" includes executor, administrator,
29 special administrator, and guardian or limited guardian and special
30 representative.

31 (2) "Net estate" refers to the real and personal property of a
32 decedent exclusive of homestead rights, exempt property, the family
33 allowance and enforceable claims against, and debts of, the deceased or
34 the estate.

35 (3) "Representation" refers to a method of determining distribution
36 in which the takers are in unequal degrees of kinship with respect to

1 the intestate, and is accomplished as follows: After first determining
2 who, of those entitled to share in the estate, are in the nearest
3 degree of kinship, the estate is divided into equal shares, the number
4 of shares being the sum of the number of persons who survive the
5 intestate who are in the nearest degree of kinship and the number of
6 persons in the same degree of kinship who died before the intestate but
7 who left issue surviving the intestate; each share of a deceased person
8 in the nearest degree shall be divided among those of the deceased
9 person's issue who survive the intestate and have no ancestor then
10 living who is in the line of relationship between them and the
11 intestate, those more remote in degree taking together the share which
12 their ancestor would have taken had he or she survived the intestate.
13 Posthumous children are considered as living at the death of their
14 parent.

15 (4) "Issue" includes all the lawful lineal descendants of the
16 ancestor and all lawfully adopted children.

17 (5) "Degree of kinship" means the degree of kinship as computed
18 according to the rules of the civil law; that is, by counting upward
19 from the intestate to the nearest common ancestor and then downward to
20 the relative, the degree of kinship being the sum of these two counts.

21 (6) "Heirs" denotes those persons, including the surviving spouse,
22 who are entitled under the statutes of intestate succession to the real
23 and personal property of a decedent on the decedent's death intestate.

24 (7) "Real estate" includes, except as otherwise specifically
25 provided herein, all lands, tenements, and hereditaments, and all
26 rights thereto, and all interest therein possessed and claimed in fee
27 simple, or for the life of a third person.

28 (8) "Will" means an instrument validly executed as required by RCW
29 11.12.020.

30 (9) "Codicil" means a will that modifies or partially revokes an
31 existing earlier will. A codicil need not refer to or be attached to
32 the earlier will.

33 (10) "Guardian" or "limited guardian" means a personal
34 representative of the person or estate of an incompetent or disabled
35 person as defined in RCW 11.88.010 and the term may be used in lieu of
36 "personal representative" wherever required by context.

37 (11) "Administrator" means a personal representative of the estate

1 of a decedent and the term may be used in lieu of "personal
2 representative" wherever required by context.

3 (12) "Executor" means a personal representative of the estate of a
4 decedent appointed by will and the term may be used in lieu of
5 "personal representative" wherever required by context.

6 (13) "Special administrator" means a personal representative of the
7 estate of a decedent appointed for limited purposes and the term may be
8 used in lieu of "personal representative" wherever required by context.

9 (14) "Trustee" means an original, added, or successor trustee and
10 includes the state, or any agency thereof, when it is acting as the
11 trustee of a trust to which chapter 11.98 RCW applies.

12 (15) "Nonprobate asset" means those rights and interests of a
13 person having beneficial ownership of an asset that pass on the
14 person's death under a written instrument or arrangement other than the
15 person's will. "Nonprobate asset" includes, but is not limited to, a
16 right or interest passing under a joint tenancy with right of
17 survivorship, joint bank account with right of survivorship, payable on
18 death or trust bank account, transfer on death security or security
19 account, deed or conveyance if possession has been postponed until the
20 death of the person, trust of which the person is grantor and that
21 becomes effective or irrevocable only upon the person's death,
22 community property agreement, individual retirement account or bond, or
23 note or other contract the payment or performance of which is affected
24 by the death of the person. "Nonprobate asset" does not include: A
25 payable-on-death provision of a life insurance policy, annuity, or
26 other similar contract, or of an employee benefit plan; a right or
27 interest passing by descent and distribution under chapter 11.04 RCW;
28 a right or interest if, before death, the person has irrevocably
29 transferred the right or interest, the person has waived the power to
30 transfer it or, in the case of contractual arrangement, the person has
31 waived the unilateral right to rescind or modify the arrangement; or a
32 right or interest held by the person solely in a fiduciary capacity.
33 For the definition of "nonprobate asset" relating to revocation of a
34 provision for a former spouse upon dissolution of marriage or
35 declaration of invalidity of marriage, RCW 11.07.010(5) applies. For
36 the definition of "nonprobate asset" relating to revocation of a
37 provision for a former spouse upon dissolution of marriage or

1 declaration of invalidity of marriage, see RCW 11.07.010(5). For the
2 definition of "nonprobate asset" relating to testamentary disposition
3 of nonprobate assets, see RCW 11.11.010(7).

4 (16) "Internal Revenue Code" means the United States Internal
5 Revenue Code of 1986, as amended or renumbered as of January 1,
6 (~~2001~~) 2004.

7 (17) References to "section 2033A" of the Internal Revenue Code in
8 wills, trust agreements, powers of appointment, beneficiary
9 designations, and other instruments governed by or subject to this
10 title shall be deemed to refer to the comparable or corresponding
11 provisions of section 2057 of the Internal Revenue Code, as added by
12 section 6006(b) of the Internal Revenue Service Restructuring Act of
13 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A
14 "exclusion" shall be deemed to mean the section 2057 deduction.

15 Words that import the singular number may also be applied to the
16 plural of persons and things.

17 Words importing the masculine gender only may be extended to
18 females also.

19 NEW SECTION. **Sec. 7.** This act applies to (1) all Washington
20 estate tax returns not filed before the effective date of this act, and
21 (2) regarding section 4 of this act, tax payable on account of
22 decedents dying on or after the effective date of this act.

23 NEW SECTION. **Sec. 8.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
28 preservation of the public peace, health, or safety, or support of the
29 state government and its existing public institutions, and takes effect
30 immediately.

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