

HOUSE BILL REPORT

SSB 5052

As Reported by House Committee On:
Judiciary

Title: An act relating to uniform estate tax apportionment.

Brief Description: Creating the uniform estate tax apportionment act.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Johnson, Kline and Rockefeller).

Brief History:

Committee Activity:

Judiciary: 3/31/05 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House Committee)**

- Adopts the current version of the Uniform Estate Tax Apportionment Act.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Bill Perry (786-7123).

Background:

When a person dies, some or all of his or her estate may be subject to estate taxes. The decedent may or may not have directed in a will or other instrument how those taxes are to be apportioned among the various persons or entities interested in the estate. The decedent may also have given conflicting directions as to the apportionment of taxes in different instruments affecting the distribution of the estate.

Washington has adopted the Uniform Estate Tax Apportionment Act (UETAA). This Act provides a default system for apportioning estate taxes among those interested in an estate in the event that a decedent has not done so. The UETAA does not impose any tax itself. It provides for the apportioning of any tax that is imposed. In 2003 the National Conference on Uniform State Laws approved and recommended for adoption in all states a revised UETAA. Washington has had an estate tax that is the equivalent of the credit that was allowed under prior versions of the federal estate tax as contained in the federal Internal Revenue Code. In a

recent decision, Estate of Hemphill v. State of Washington Department of Revenue, 153 Wn.2d 544 (2005), the Washington State Supreme Court (Court) held that the state's estate tax no longer exists as of January 1, 2005, under the current version of the federal Internal Revenue Code. The Court held that despite the current state estate tax law's reference to the federal code as it existed in 2001, Washington has a "pick-up" tax that is tied to later amendments to the federal law. As a result, there currently is no state estate tax in Washington. Under the federal law, however, there will continue to be a declining federal estate tax on some Washington estates until the year 2010.

Summary of Amended Bill:

The Washington Uniform Estate Tax Apportionment Act of 2005 is adopted. The current apportionment act is repealed.

The revised UETAA continues to act as default system for apportioning estate taxes when a decedent has failed to make provision for apportionment. The revised UETAA also provides for reconciling conflicting directions for apportionment found in different instruments.

The revised UETAA apportions taxes over the "apportionable estate" which is the gross estate of the decedent minus various deductions, exemptions and credits. Calculations of apportionment amounts are made on the basis of the net value of property, that is, the market value of the property minus any debt secured by the property.

The revised UETAA also provides that the taxes apportioned to certain "insulated property" will initially be paid ratably out of the uninsulated portions of the estate. The holders of those uninsulated interests may eventually be able to recover those amounts from the insulated property. Insulated property is property that is subject to a time-limited interest and that is unavailable for payment of taxes at the time of probate because of impossibility or impracticability. Those who have paid the taxes apportioned to the insulated property participate in the appreciation or depreciation of the property over time. If the insulated property ceases to be insulated, those who advanced the estate tax payments can collect their percentage of the taxes from that property.

A definition of the Internal Revenue Code is provided so that for purposes of the UETAA, the Code is the 2005 version.

The repeal of the current UETAA does not affect any rights, liabilities, or obligations incurred or any proceedings begun under the repealed sections.

Amended Bill Compared to Substitute Bill:

The substitute bill contains a reference to the 2005 version of the Internal Revenue Code that applies to both the estate tax apportionment chapter and the estate tax chapter itself. The amendment makes that reference only with respect to the apportionment chapter. The substitute bill has an emergency clause that makes the reference to the 2005 version of the Internal Revenue Code take effect immediately. The amendment has no emergency clause.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect January 1, 2006.

Testimony For: This update to the Uniform Estate Tax Apportionment Act fixes a potential trap for the unwary. Under the current UETAA, many practitioners and most lay people are unaware that a property interest in an estate will be valued at its gross fair market value for purposes of apportioning the estate tax. The revised UETAA deducts secured interests in the property in valuing the property for apportionment purposes, thus producing a more reasonable and equitable sharing of the estate tax burden. The current law also has no provision for dealing with various instruments that may contain conflicting directions for apportioning estate taxes. The revised UETAA provides a hierarchy for resolving such conflicts. The revised UETAA also provides for other property holders to advance the payment of the apportioned estate taxes on property that is unavailable at the time the taxes are due, with recovery of those advance payments at a later date.

Testimony Against: None.

Persons Testifying: Marcia Fujimoto, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.