
Judiciary Committee

SSB 5052

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).

<p style="text-align: center;">Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Adopts the current version of the Uniform Estate Tax Apportionment Act.
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Hearing Date: 3/31/05

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 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 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 The current apportionment act is repealed.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.

The definition of the Internal Revenue Code is amended so that for purposes of both the estate tax itself and 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect January 1, 2006, except that section 15 relating to the definition of the federal Internal Revenue Code takes effect immediately.