
SENATE BILL 5008

State of Washington

59th Legislature

2005 Regular Session

By Senators Pflug, Rasmussen, Honeyford, Delvin, Mulliken, Schoesler, Oke, Brandland, Stevens, Benton, Benson, Carrell, Parlette, Deccio and Johnson

Read first time 01/10/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to updating state law to conform to changes in the
2 federal estate tax; amending RCW 11.02.005 and 83.100.020; and creating
3 a new section.

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

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

7 When used in this title, unless otherwise required from the
8 context:

9 (1) "Personal representative" includes executor, administrator,
10 special administrator, and guardian or limited guardian and special
11 representative.

12 (2) "Net estate" refers to the real and personal property of a
13 decedent exclusive of homestead rights, exempt property, the family
14 allowance and enforceable claims against, and debts of, the deceased or
15 the estate.

16 (3) "Representation" refers to a method of determining distribution
17 in which the takers are in unequal degrees of kinship with respect to
18 the intestate, and is accomplished as follows: After first determining
19 who, of those entitled to share in the estate, are in the nearest

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

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

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

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

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

26 (8) "Will" means an instrument validly executed as required by RCW
27 11.12.020.

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

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

35 (11) "Administrator" means a personal representative of the estate
36 of a decedent and the term may be used in lieu of "personal
37 representative" wherever required by context.

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

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

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

10 (15) "Nonprobate asset" means those rights and interests of a
11 person having beneficial ownership of an asset that pass on the
12 person's death under a written instrument or arrangement other than the
13 person's will. "Nonprobate asset" includes, but is not limited to, a
14 right or interest passing under a joint tenancy with right of
15 survivorship, joint bank account with right of survivorship, payable on
16 death or trust bank account, transfer on death security or security
17 account, deed or conveyance if possession has been postponed until the
18 death of the person, trust of which the person is grantor and that
19 becomes effective or irrevocable only upon the person's death,
20 community property agreement, individual retirement account or bond, or
21 note or other contract the payment or performance of which is affected
22 by the death of the person. "Nonprobate asset" does not include: A
23 payable-on-death provision of a life insurance policy, annuity, or
24 other similar contract, or of an employee benefit plan; a right or
25 interest passing by descent and distribution under chapter 11.04 RCW;
26 a right or interest if, before death, the person has irrevocably
27 transferred the right or interest, the person has waived the power to
28 transfer it or, in the case of contractual arrangement, the person has
29 waived the unilateral right to rescind or modify the arrangement; or a
30 right or interest held by the person solely in a fiduciary capacity.
31 For the definition of "nonprobate asset" relating to revocation of a
32 provision for a former spouse upon dissolution of marriage or
33 declaration of invalidity of marriage, RCW 11.07.010(5) applies. For
34 the definition of "nonprobate asset" relating to revocation of a
35 provision for a former spouse upon dissolution of marriage or
36 declaration of invalidity of marriage, see RCW 11.07.010(5). For the
37 definition of "nonprobate asset" relating to testamentary disposition
38 of nonprobate assets, see RCW 11.11.010(7).

1 (16) "Internal Revenue Code" (~~means the United States Internal~~
2 ~~Revenue Code of 1986, as amended or renumbered as of January 1, 2001~~)
3 is given the same meaning as provided in RCW 83.100.020.

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

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

14 Words importing the masculine gender only may be extended to
15 females also.

16 **Sec. 2.** RCW 83.100.020 and 2001 c 320 s 15 are each amended to
17 read as follows:

18 As used in this chapter:

19 (1) "Decedent" means a deceased individual;

20 (2) "Department" means the department of revenue, the director of
21 that department, or any employee of the department exercising authority
22 lawfully delegated to him by the director;

23 (3) "Federal credit" means (a) for a transfer, the maximum amount
24 of the credit for state taxes allowed by section 2011 of the Internal
25 Revenue Code; and (b) for a generation-skipping transfer, the maximum
26 amount of the credit for state taxes allowed by section 2604 of the
27 Internal Revenue Code;

28 (4) "Federal return" means any tax return required by chapter 11 or
29 13 of the Internal Revenue Code;

30 (5) "Federal tax" means (a) for a transfer, a tax under chapter 11
31 of the Internal Revenue Code; and (b) for a generation-skipping
32 transfer, the tax under chapter 13 of the Internal Revenue Code;

33 (6) "Generation-skipping transfer" means a "generation-skipping
34 transfer" as defined and used in section 2611 of the Internal Revenue
35 Code;

36 (7) "Gross estate" means "gross estate" as defined and used in
37 section 2031 of the Internal Revenue Code;

1 (8) "Nonresident" means a decedent who was domiciled outside
2 Washington at his death;

3 (9) "Person" means any individual, estate, trust, receiver,
4 cooperative association, club, corporation, company, firm, partnership,
5 joint venture, syndicate, or other entity and, to the extent permitted
6 by law, any federal, state, or other governmental unit or subdivision
7 or agency, department, or instrumentality thereof;

8 (10) "Person required to file the federal return" means any person
9 required to file a return required by chapter 11 or 13 of the Internal
10 Revenue Code, such as the personal representative of an estate; or a
11 transferor, trustee, or beneficiary of a generation-skipping transfer;
12 or a qualified heir with respect to qualified real property, as defined
13 and used in section 2032A(c) of the Internal Revenue Code;

14 (11) "Property" means (a) for a transfer, property included in the
15 gross estate; and (b) for a generation-skipping transfer, all real and
16 personal property subject to the federal tax;

17 (12) "Resident" means a decedent who was domiciled in Washington at
18 time of death;

19 (13) "Transfer" means "transfer" as used in section 2001 of the
20 Internal Revenue Code, or a disposition or cessation of qualified use
21 as defined and used in section 2032A(c) of the Internal Revenue Code;

22 (14) "Trust" means "trust" under Washington law and any arrangement
23 described in section 2652 of the Internal Revenue Code; and

24 (15) "Internal Revenue Code" means, for the purposes of this
25 chapter and RCW 83.110.010, the United States Internal Revenue Code of
26 1986, as amended or renumbered as of January 1, (~~(2001)~~) 2004.

27 NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act apply
28 retroactively to decedents dying on or after January 1, 2004.

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