

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6096

59th Legislature
2005 Regular Session

Passed by the Senate April 19, 2005
YEAS 25 NAYS 21

President of the Senate

Passed by the House April 22, 2005
YEAS 50 NAYS 48

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6096** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6096

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senators Poulsen, Fraser and Prentice; by request of Governor Gregoire

Read first time 03/24/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to generating new tax revenues to provide education
2 funding; amending RCW 83.100.020, 83.100.040, 83.100.050, 83.100.060,
3 83.100.070, 83.100.090, 83.100.110, 83.100.130, 83.100.140, 83.100.150,
4 83.100.210, and 83.100.010; adding new sections to chapter 83.100 RCW;
5 creating new sections; repealing RCW 83.100.030 and 83.100.045; and
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature recognizes that on February
9 3, 2005, the Washington state supreme court decided in *Estate of*
10 *Hemphill v. Dep't of Rev.*, Docket No. 74974-4, that Washington's estate
11 tax is tied to the current federal Internal Revenue Code. The
12 legislature finds that the revenue loss resulting from the *Hemphill*
13 decision will severely affect the legislature's ability to fund
14 programs vital to the peace, health, safety, and support of the
15 citizens of this state. The legislature intends to address the adverse
16 fiscal impact of the *Hemphill* decision and provide funding for
17 education by creating a stand-alone state estate tax.

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

3 As used in this chapter:

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

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

8 (3) (~~("Federal credit" means (a) for a transfer, the maximum amount~~
9 ~~of the credit for state taxes allowed by section 2011 of the Internal~~
10 ~~Revenue Code; and (b) for a generation skipping transfer, the maximum~~
11 ~~amount of the credit for state taxes allowed by section 2604 of the~~
12 ~~Internal Revenue Code;~~

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

15 ~~((5))~~ (4) "Federal tax" means (~~(a) for a transfer,~~) a tax under
16 chapter 11 of the Internal Revenue Code; (~~and (b) for a generation-~~
17 ~~skipping transfer, the tax under chapter 13 of the Internal Revenue~~
18 ~~Code;~~

19 ~~(6) "Generation skipping transfer" means a "generation skipping~~
20 ~~transfer" as defined and used in section 2611 of the Internal Revenue~~
21 ~~Code;~~

22 ~~(7))~~ (5) "Gross estate" means "gross estate" as defined and used
23 in section 2031 of the Internal Revenue Code;

24 ~~((8) "Nonresident" means a decedent who was domiciled outside~~
25 ~~Washington at his death;~~

26 ~~(9))~~ (6) "Person" means any individual, estate, trust, receiver,
27 cooperative association, club, corporation, company, firm, partnership,
28 joint venture, syndicate, or other entity and, to the extent permitted
29 by law, any federal, state, or other governmental unit or subdivision
30 or agency, department, or instrumentality thereof;

31 ~~((10))~~ (7) "Person required to file the federal return" means any
32 person required to file a return required by chapter 11 (~~or 13~~) of
33 the Internal Revenue Code, such as the personal representative of an
34 estate (~~or a transferor, trustee, or beneficiary of a generation-~~
35 ~~skipping transfer; or a qualified heir with respect to qualified real~~
36 ~~property, as defined and used in section 2032A(c) of the Internal~~
37 ~~Revenue Code));~~

1 ~~((11))~~ (8) "Property" means ~~((a) for a transfer,~~) property
2 included in the gross estate~~((; and (b) for a generation skipping~~
3 ~~transfer, all real and personal property subject to the federal tax));~~

4 ~~((12))~~ (9) "Resident" means a decedent who was domiciled in
5 Washington at time of death;

6 ~~((13))~~ (10) "Taxpayer" means a person upon whom tax is imposed
7 under this chapter, including an estate or a person liable for tax
8 under RCW 83.100.120;

9 (11) "Transfer" means "transfer" as used in section 2001 of the
10 Internal Revenue Code~~(, or a disposition or cessation of qualified use~~
11 ~~as defined and used in section 2032A(c) of the Internal Revenue Code)).~~
12 However, "transfer" does not include a qualified heir disposing of an
13 interest in property qualifying for a deduction under section 4 of this
14 act or ceasing to use the property for farming purposes;

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

17 ~~(15))~~ (12) "Internal Revenue Code" means, for the purposes of this
18 chapter and RCW 83.110.010, the United States Internal Revenue Code of
19 1986, as amended or renumbered as of January 1, ~~((2001))~~ 2005;

20 (13) "Washington taxable estate" means the federal taxable estate,
21 less: (a) One million five hundred thousand dollars for decedents
22 dying before January 1, 2006; and (b) two million dollars for decedents
23 dying on or after January 1, 2006; and (c) the amount of any deduction
24 allowed under section 4 of this act; and

25 (14) "Federal taxable estate" means the taxable estate as
26 determined under chapter 11 of the Internal Revenue Code without regard
27 to: (a) The termination of the federal estate tax under section 2210
28 of the Internal Revenue Code or any other provision of law, and (b) the
29 deduction for state estate, inheritance, legacy, or succession taxes
30 allowable under section 2058 of the Internal Revenue Code.

31 **Sec. 3.** RCW 83.100.040 and 1988 c 64 s 4 are each amended to read
32 as follows:

33 (1) A tax in an amount computed as provided in this section is
34 imposed on every transfer of property located in Washington ~~((of every~~
35 ~~nonresident)).~~ For the purposes of this section, any intangible
36 property owned by a resident is located in Washington.

1 ~~(2) ((The tax shall be computed by multiplying the federal credit~~
2 ~~by a fraction, the numerator of which is the value of the property~~
3 ~~located in Washington, and the denominator of which is the value of the~~
4 ~~decedent's gross estate.~~

5 ~~(3) The transfer of the property of a nonresident is exempt from~~
6 ~~the tax imposed by this section to the extent that the property of~~
7 ~~residents is exempt from taxation under the laws of the state in which~~
8 ~~the nonresident is domiciled.))~~ (a) Except as provided in (b) of this
9 subsection, the amount of tax is the amount provided in the following
10 table:

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

23 (b) If any property in the decedent's estate is located outside of
24 Washington, the amount of tax is the amount determined in (a) of this
25 subsection multiplied by a fraction. The numerator of the fraction is
26 the value of the property located in Washington. The denominator of
27 the fraction is the value of the decedent's gross estate. Property
28 qualifying for a deduction under section 4 of this act shall be
29 excluded from the numerator and denominator of the fraction.

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

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 83.100 RCW
2 to read as follows:

3 (1) For the purposes of determining the Washington taxable estate,
4 a deduction is allowed from the federal taxable estate for the value of
5 qualified real property and the value of any tangible personal property
6 used primarily for farming purposes conducted on the qualified real
7 property, reduced by any amounts allowable as a deduction in respect of
8 the qualified real property and tangible personal property under
9 section 2053(a)(4) of the Internal Revenue Code, if the decedent was at
10 the time of his or her death a citizen or resident of the United
11 States. For the purposes of determining the deduction amount, the
12 value of property is its value as used to determine the value of the
13 gross estate.

14 (2) Property shall be considered to have been acquired from or to
15 have passed from the decedent if:

16 (a) The property is so considered under section 1014(b) of the
17 Internal Revenue Code;

18 (b) The property is acquired by any person from the estate; or

19 (c) The property is acquired by any person from a trust, to the
20 extent the property is includible in the gross estate of the decedent.

21 (3) If the decedent and the decedent's surviving spouse at any time
22 held qualified real property as community property, the interest of the
23 surviving spouse in the property shall be taken into account under this
24 section to the extent necessary to provide a result under this section
25 with respect to the property which is consistent with the result which
26 would have obtained under this section if the property had not been
27 community property.

28 (4) In the case of any qualified woodland, the value of trees
29 growing on the woodland may be deducted if otherwise qualified under
30 this section.

31 (5) If property is qualified real property with respect to a
32 decedent, hereinafter in this subsection referred to as the "first
33 decedent," and the property was acquired from or passed from the first
34 decedent to the surviving spouse of the first decedent, active
35 management of the farm by the surviving spouse shall be treated as
36 material participation by the surviving spouse in the operation of the
37 farm.

1 (6) Property owned indirectly by the decedent may qualify for a
2 deduction under this section if owned through an interest in a
3 corporation, partnership, or trust as the terms corporation,
4 partnership, or trust are used in section 2032A(g) of the Internal
5 Revenue Code. In order to qualify for a deduction under this
6 subsection, the interest, in addition to meeting the other tests for
7 qualification under this section, must qualify under section 6166(b)(1)
8 of the Internal Revenue Code as an interest in a closely held business
9 on the date of the decedent's death and for sufficient other time,
10 combined with periods of direct ownership, to equal at least five years
11 of the eight-year period preceding the death.

12 (7)(a) If, on the date of the decedent's death, the requirements of
13 subsection (10)(f)(i)(C)(II) of this section with respect to the
14 decedent for any property are not met, and the decedent (i) was
15 receiving old age benefits under Title II of the social security act
16 for a continuous period ending on such date, or (ii) was disabled for
17 a continuous period ending on this date, then subsection
18 (10)(f)(i)(C)(II) of this section shall be applied with respect to the
19 property by substituting "the date on which the longer of such
20 continuous periods began" for "the date of the decedent's death" in
21 subsection (10)(f)(i)(C) of this section.

22 (b) For the purposes of (a) of this subsection, an individual shall
23 be disabled if the individual has a mental or physical impairment which
24 renders that individual unable to materially participate in the
25 operation of the farm.

26 (8) Property may be deducted under this section whether or not
27 special valuation is elected under section 2032A of the Internal
28 Revenue Code on the federal return.

29 (9)(a) In the case of any qualified replacement property, any
30 period during which there was ownership, qualified use, or material
31 participation with respect to the replaced property by the decedent or
32 any member of the decedent's family shall be treated as a period during
33 which there was ownership, use, or material participation, as the case
34 may be, with respect to the qualified replacement property.

35 (b) Subsection (9)(a) of this section shall not apply to the extent
36 that the fair market value of the qualified replacement property, as of
37 the date of its acquisition, exceeds the fair market value of the
38 replaced property, as of the date of its disposition.

1 (c) For the purposes of this subsection (9), the following
2 definitions apply:

3 (i) "Qualified replacement property" means any real property:

4 (A) Which is acquired in an exchange which qualifies under section
5 1031 of the Internal Revenue Code; or

6 (B) The acquisition of which results in the nonrecognition of gain
7 under section 1033 of the Internal Revenue Code.

8 The term "qualified replacement property" only includes property
9 which is used for the same qualified use as the replaced property was
10 being used before the exchange.

11 (ii) "Replaced property" means the property was:

12 (A) Transferred in the exchange which qualifies under section 1031
13 of the Internal Revenue Code; or

14 (B) Compulsorily or involuntarily converted within the meaning of
15 section 1033 of the Internal Revenue Code.

16 (10) For the purposes of this section, the following definitions
17 apply:

18 (a) "Active management" means the making of the management
19 decisions of a farm, other than the daily operating decisions.

20 (b) "Farm" includes stock, dairy, poultry, fruit, furbearing
21 animal, and truck farms; plantations; ranches; nurseries; ranges;
22 greenhouses or other similar structures used primarily for the raising
23 of agricultural or horticultural commodities; and orchards and
24 woodlands.

25 (c) "Farming purposes" means:

26 (i) Cultivating the soil or raising or harvesting any agricultural
27 or horticultural commodity, including the raising, shearing, feeding,
28 caring for, training, and management of animals on a farm;

29 (ii) Handling, drying, packing, grading, or storing on a farm any
30 agricultural or horticultural commodity in its unmanufactured state,
31 but only if the owner, tenant, or operator of the farm regularly
32 produces more than one-half of the commodity so treated; and

33 (iii)(A) The planting, cultivating, caring for, or cutting of
34 trees; or

35 (B) The preparation, other than milling, of trees for market.

36 (d) "Member of the family" means, with respect to any individual,
37 only:

38 (i) An ancestor of the individual;

- 1 (ii) The spouse of the individual;
- 2 (iii) A lineal descendant of the individual, of the individual's
3 spouse, or of a parent of the individual; or
- 4 (iv) The spouse of any lineal descendant described in (d)(iii) of
5 this subsection.

6 For the purposes of this subsection (10)(d), a legally adopted
7 child of an individual shall be treated as the child of such individual
8 by blood.

9 (e) "Qualified heir" means, with respect to any property, a member
10 of the decedent's family who acquired property, or to whom property
11 passed, from the decedent.

12 (f)(i) "Qualified real property" means real property which was
13 acquired from or passed from the decedent to a qualified heir of the
14 decedent and which, on the date of the decedent's death, was being used
15 for a qualified use by the decedent or a member of the decedent's
16 family, but only if:

17 (A) Fifty percent or more of the adjusted value of the gross estate
18 consists of the adjusted value of real or personal property which:

19 (I) On the date of the decedent's death, was being used for a
20 qualified use by the decedent or a member of the decedent's family; and

21 (II) Was acquired from or passed from the decedent to a qualified
22 heir of the decedent;

23 (B) Twenty-five percent or more of the adjusted value of the gross
24 estate consists of the adjusted value of real property which meets the
25 requirements of (f)(i)(A)(II) and (f)(i)(C) of this subsection; and

26 (C) During the eight-year period ending on the date of the
27 decedent's death there have been periods aggregating five years or more
28 during which:

29 (I) The real property was owned by the decedent or a member of the
30 decedent's family and used for a qualified use by the decedent or a
31 member of the decedent's family; and

32 (II) There was material participation by the decedent or a member
33 of the decedent's family in the operation of the farm. For the
34 purposes of this subsection (f)(i)(C)(II), material participation shall
35 be determined in a manner similar to the manner used for purposes of
36 section 1402(a)(1) of the Internal Revenue Code.

37 (ii) For the purposes of this subsection, the term "adjusted value"
38 means:

1 (A) In the case of the gross estate, the value of the gross estate,
2 determined without regard to any special valuation under section 2032A
3 of the Internal Revenue Code, reduced by any amounts allowable as a
4 deduction under section 2053(a)(4) of the Internal Revenue Code; or

5 (B) In the case of any real or personal property, the value of the
6 property for purposes of chapter 11 of the Internal Revenue Code,
7 determined without regard to any special valuation under section 2032A
8 of the Internal Revenue Code, reduced by any amounts allowable as a
9 deduction in respect of such property under section 2053(a)(4) of the
10 Internal Revenue Code.

11 (g) "Qualified use" means the property is used as a farm for
12 farming purposes. In the case of real property which meets the
13 requirements of (f)(i)(C) of this subsection, residential buildings and
14 related improvements on the real property occupied on a regular basis
15 by the owner or lessee of the real property or by persons employed by
16 the owner or lessee for the purpose of operating or maintaining the
17 real property, and roads, buildings, and other structures and
18 improvements functionally related to the qualified use shall be treated
19 as real property devoted to the qualified use.

20 (h) "Qualified woodland" means any real property which:

21 (i) Is used in timber operations; and

22 (ii) Is an identifiable area of land such as an acre or other area
23 for which records are normally maintained in conducting timber
24 operations.

25 (i) "Timber operations" means:

26 (i) The planting, cultivating, caring for, or cutting of trees; or

27 (ii) The preparation, other than milling, of trees for market.

28 **Sec. 5.** RCW 83.100.050 and 1988 c 64 s 6 are each amended to read
29 as follows:

30 (1) ((The)) A Washington return must be filed if: (a) A federal
31 return is required to be filed; or (b) for decedents dying prior to
32 January 1, 2006, the gross estate exceeds one million five hundred
33 thousand dollars; or (c) for decedents dying on or after January 1,
34 2006, the gross estate exceeds two million dollars.

35 (2)(a) A person required to file ((the)) a federal return shall
36 file with the department on or before the date the federal return is

1 required to be filed, including any extension of time for filing (~~the~~
2 ~~federal return~~;

3 ~~(a)~~) under subsection (4) of this section, a Washington return for
4 the tax due under this chapter(~~;~~ and

5 ~~(b) A copy of the federal return.~~

6 ~~No Washington return need be filed if no federal return is~~
7 ~~required~~)).

8 (b) If no federal return is required to be filed, a taxpayer shall
9 file with the department on or before the date a federal return would
10 have been required to be filed, including any extension of time for
11 filing under subsection (5) of this section, a Washington return for
12 the tax due under this chapter.

13 (3) A Washington return delivered to the department by United
14 States mail shall be considered to have been received by the department
15 on the date of the United States postmark stamped on the cover in which
16 the return is mailed, if the postmark date is within the time allowed
17 for filing the Washington return, including extensions.

18 ~~((2))~~ (4) In addition to the Washington return required to be
19 filed in subsection (2) of this section, a person, if required to file
20 a federal return, shall file with the department on or before the date
21 the federal return, is required to be filed a copy of the federal
22 return along with all supporting documentation. If the person required
23 to file the federal return has obtained an extension of time for filing
24 the federal return, the person shall file the Washington return within
25 the same time period and in the same manner as provided for the federal
26 return. A copy of the federal extension shall be filed with the
27 department on or before the date the Washington return is due, not
28 including any extension of time for filing, or within thirty days of
29 issuance, whichever is later.

30 (5) A person who is required to file a Washington return under
31 subsection (2) of this section, but is not required to file a federal
32 return, may obtain an extension of time for filing the Washington
33 return as provided by rule of the department.

34 **Sec. 6.** RCW 83.100.060 and 1988 c 64 s 7 are each amended to read
35 as follows:

36 (1) The taxes imposed by this chapter shall be paid by the person
37 required to file (~~the federal~~) a Washington return on or before the

1 date the Washington return is required to be filed under RCW
2 83.100.050, not including any extension of time for filing. Payment
3 delivered to the department by United States mail shall be considered
4 to have been received by the department on the date of the United
5 States postmark stamped on the cover in which payment is mailed, if the
6 postmark date is within the time allowed for making the payment,
7 including any extensions.

8 (2) If the person (~~required to file the federal return~~) has
9 obtained an extension of time for payment of the federal tax or has
10 elected to pay such tax in installments, the person may elect to pay
11 the tax imposed by this chapter within the same time period and in the
12 same manner as provided for payment of the federal tax. A copy of the
13 federal extension shall be filed on or before the date the tax imposed
14 by this chapter is due, not including any extension of time for
15 payment, or within thirty days of issuance, whichever is later.

16 (3) A person who is required to file a Washington return under RCW
17 83.100.050, but is not required to file a federal return, may obtain an
18 extension of time for payment of the Washington tax or elect to pay
19 such tax in installments as provided by rule of the department.

20 (4) The periods of limitation in RCW 83.100.130 and section 14 of
21 this act shall extend an additional three years beyond the due date of
22 the last scheduled installment payment authorized under this section.

23 **Sec. 7.** RCW 83.100.070 and 2000 c 105 s 1 are each amended to read
24 as follows:

25 (1) For periods before January 2, 1997, any tax due under this
26 chapter which is not paid by the due date under RCW 83.100.060(1) shall
27 bear interest at the rate of twelve percent per annum from the date the
28 tax is due until the date of payment.

29 (2) Interest imposed under this section for periods after January
30 1, 1997, shall be computed at the rate as computed under RCW
31 82.32.050(2). The rate so computed shall be adjusted on the first day
32 of January of each year.

33 (3)(a) If the Washington return is not filed when due under RCW
34 83.100.050 and the person required to file the (~~federal~~) Washington
35 return under RCW 83.100.050 voluntarily (~~reports the filing and~~)
36 files (~~both~~) the (~~state and federal estate tax returns~~) Washington
37 return with the department before the department notifies the person in

1 writing that the department has determined that the person has not
2 filed a Washington return, no penalty is imposed on the person required
3 to file the (~~federal~~) Washington return.

4 (b) If the Washington return is not filed when due under RCW
5 83.100.050 and the person required to file the (~~federal~~) Washington
6 return under RCW 83.100.050 does not file a return with the department
7 before the department notifies the person in writing that the
8 department has determined that the person has not filed a (~~state~~
9 ~~estate tax~~) Washington return, the person required to file the
10 (~~federal~~) Washington return shall pay, in addition to interest, a
11 penalty equal to five percent of the tax due for each month after the
12 date the return is due until filed. However, in no instance may the
13 penalty exceed the lesser of twenty-five percent of the tax due or one
14 thousand five hundred dollars.

15 (c) If the department finds that a return due under this chapter
16 has not been filed by the due date, and the delinquency was the result
17 of circumstances beyond the control of the responsible person, the
18 department shall waive or cancel any penalties imposed under this
19 chapter with respect to the filing of such a tax return. The
20 department shall adopt rules for the waiver or cancellation of the
21 penalties imposed by this section.

22 **Sec. 8.** RCW 83.100.090 and 1988 c 64 s 10 are each amended to read
23 as follows:

24 Notwithstanding the periods of limitation in section 14 of this act
25 and RCW 83.100.130:

26 (1) If the person required to file the (~~federal~~) Washington
27 return under RCW 83.100.050 files an amended federal return, that
28 person shall immediately file with the department an amended Washington
29 return with a copy of the amended federal return. If the amended
30 Washington return requires payment of an additional tax under this
31 chapter, the tax shall be paid in accordance with RCW 83.100.060 and
32 interest shall be paid in accordance with RCW 83.100.070.

33 (2) Upon any adjustment in, or final determination of, the amount
34 of federal tax due, the person required to file the (~~federal~~)
35 Washington return under RCW 83.100.050 shall notify the department in
36 writing within (~~sixty~~) one hundred twenty days after the adjustment
37 or final determination. If the adjustment or final determination

1 requires payment of an additional tax under this chapter, the tax shall
2 be paid in accordance with RCW 83.100.060 and interest shall be paid in
3 accordance with RCW 83.100.070.

4 (3) If the department determines the amended Washington return,
5 adjustment, or final determination requires payment of an additional
6 tax under this chapter, the department may assess against the taxpayer
7 an additional amount found to be due within one year of receipt of the
8 amended Washington return or written notice as required by this
9 section, or at any time if no amended Washington return is filed or
10 notice is provided as required by this section. The execution of a
11 written waiver at the request of the department by the person required
12 to file the Washington return under RCW 83.100.050 may extend this
13 limitation. Interest shall be added to the amount of tax assessed by
14 the department in accordance with RCW 83.100.070. The department shall
15 notify the taxpayer by mail of the additional amount, and the
16 additional amount shall become due and shall be paid within thirty days
17 from the date of the notice, or within such further time as the
18 department may provide.

19 (4) If the department determines the amended Washington return,
20 adjustment, or final determination requires the refund of overpaid tax,
21 penalties, or interest under this chapter, the department shall refund
22 the amount of the overpayment with interest in accordance with RCW
23 83.100.130. The person required to file the Washington return under
24 RCW 83.100.050 shall provide the department with any additional
25 information or supporting documents necessary to determine if a refund
26 is due. The execution of a written waiver to extend the period for
27 assessment under subsection (3) of this section shall extend the time
28 for making a refund, if prior to the expiration of the waiver period an
29 application for refund of the taxes is made by the person required to
30 file the Washington return under RCW 83.100.050, or the department
31 discovers a refund is due.

32 **Sec. 9.** RCW 83.100.110 and 1988 c 64 s 11 are each amended to read
33 as follows:

34 (1) Unless any tax due under this chapter is sooner paid in full,
35 it shall be a lien upon the property subject to the tax for a period of
36 ten years from the date of the transfer (~~or the generation skipping~~
37 ~~transfer)), except that any part of the property which is used for the~~

1 payment of claims against the property or expenses of its
2 administration, allowed by any court having jurisdiction thereof, shall
3 be divested of the lien. Liens created under this subsection shall be
4 qualified as follows:

5 (a) Any part of the property subject to the tax which is sold to a
6 bona fide purchaser shall be divested of the lien and the lien shall be
7 transferred to the proceeds of the sale; and

8 (b) The lien shall be subordinate to any mortgage or deed of trust
9 on the property pursuant to an order of court for payment of claims
10 against the property or expenses of administration. The lien shall
11 attach to any proceeds from the sale of the property in excess of the
12 obligations secured by the mortgage or deed of trust and the expenses
13 of sale, including a reasonable charge by the trustee and by his or her
14 attorney where the property has been sold by a nonjudicial trustee's
15 sale pursuant to chapter 61.24 RCW, and including court costs and any
16 attorneys' fees awarded by the superior court of the county in which
17 the property is sold at sheriff's sale pursuant to a judicial
18 foreclosure of the mortgage or deed of trust.

19 (2) If the person required to file the (~~federal~~) Washington
20 return under RCW 83.100.050 has obtained an extension of time for
21 payment of the (~~federal~~) tax or has elected to pay such tax in
22 installments, the tax lien under this section shall be extended as
23 necessary to prevent its expiration prior to twelve months following
24 the expiration of any such extension or the installment.

25 (3) The tax lien shall be extended as necessary to prevent its
26 expiration prior to twelve months following the conclusion of
27 litigation of any question affecting the determination of the amount of
28 tax due if a lis pendens has been filed with the auditor of the county
29 in which the property is located.

30 **Sec. 10.** RCW 83.100.130 and 1997 c 157 s 6 are each amended to
31 read as follows:

32 (1) (~~Whenever~~) If, upon receipt of an application by a taxpayer
33 for a refund, or upon examination of the returns or records of any
34 taxpayer, the department determines that within the statutory period
35 for assessment of taxes, penalties, or interest prescribed by section
36 14 of this act a person required to file the (~~federal~~) Washington
37 return under RCW 83.100.050 has overpaid the tax due under this

1 chapter, the department shall refund the amount of the overpayment,
2 together with interest ~~((at the then existing rate under RCW~~
3 ~~83.100.070(1))~~) as provided in subsection (2) of this section. If the
4 application for refund, with supporting documents, is filed within
5 ~~((four months))~~ one hundred twenty days after an adjustment or final
6 determination of federal tax liability, the department shall pay
7 interest until the date the refund is mailed. If the application for
8 refund, with supporting documents, is filed after ~~((four months))~~ one
9 hundred twenty days after the adjustment or final determination, the
10 department shall pay interest only until the end of the ~~((four month))~~
11 one hundred twenty-day period.

12 (2) Interest refunded under this section for periods before January
13 2, 1997, shall be computed at the rate provided in RCW 83.100.070(1).
14 Interest refunded under this section for periods after January 1, 1997,
15 through December 31, 1998, shall be computed on a daily basis at the
16 rate as computed under RCW 82.32.050(2) less one percentage point.
17 Interest allowed for periods after December 31, 1998, shall be computed
18 at the rate as computed under RCW 82.32.050(2). Except as provided in
19 subsection (1) of this section, interest shall be refunded from the
20 date of overpayment until the date the refund is mailed. The rate so
21 computed shall be adjusted on the first day of January of each year.

22 (3) Except as otherwise provided in subsection (4) of this section
23 and RCW 83.100.090, no refund shall be made for taxes, penalties, or
24 interest paid more than four years prior to the beginning of the
25 calendar year in which the refund application is made or an examination
26 of records is complete.

27 (4) The execution of a written waiver under section 14 of this act
28 shall extend the time for making a refund if, prior to the expiration
29 of the waiver period, an application for refund is made by the taxpayer
30 or the department discovers a refund is due.

31 (5) An application for refund shall be on a form prescribed by the
32 department and shall contain any information and supporting documents
33 the department requires.

34 **Sec. 11.** RCW 83.100.140 and 1988 c 64 s 13 are each amended to
35 read as follows:

36 Any person required to file the ~~((federal))~~ Washington return who
37 ~~((wilfully))~~ willfully fails to file a Washington return when required

1 by this chapter or who (~~wilfully~~) willfully files a false return
2 commits a gross misdemeanor as defined in Title 9A RCW and shall be
3 punished as provided in Title 9A RCW for the perpetration of a gross
4 misdemeanor.

5 **Sec. 12.** RCW 83.100.150 and 1988 c 64 s 14 are each amended to
6 read as follows:

7 (~~(1)~~) The department may collect the estate tax imposed under RCW
8 (~~83.100.030 and~~) 83.100.040, including interest and penalties, and
9 shall represent this state in all matters pertaining to the same,
10 either before courts or in any other manner. At any time after the
11 Washington return is due, the department may file its findings
12 regarding the amount of the tax(~~, the federal credit~~) computed as
13 provided in RCW 83.100.040, the person required to file the (~~federal~~)
14 Washington return under RCW 83.100.050, and all persons having an
15 interest in property subject to the tax with the clerk of the superior
16 court in the matter of the estate of the decedent or, if no probate or
17 administration proceedings have been commenced in any court of this
18 state, of the superior court for the county in which the decedent was
19 a resident, if the resident was a domiciliary, or, if the decedent was
20 a nondomiciliary, of any superior court which has jurisdiction over the
21 property. Such a court first acquiring jurisdiction shall retain
22 jurisdiction to the exclusion of every other court.

23 (~~(2) The department may collect the generation skipping transfer~~
24 ~~tax under RCW 83.100.045, including interest and penalties, and shall~~
25 ~~represent this state in all matters pertaining to the same, either~~
26 ~~before courts or in any other manner. At any time after the Washington~~
27 ~~return is due, the department may file its findings regarding the~~
28 ~~amount of the tax, the federal credit, the person required to file the~~
29 ~~federal return, and all persons having an interest in property subject~~
30 ~~to the tax with the clerk of the superior court in the matter of the~~
31 ~~trust or the estate of the decedent, if any, or, if no trust, probate~~
32 ~~or administration proceedings have been commenced in any court of this~~
33 ~~state, of any superior court which has jurisdiction over the property.~~
34 ~~Such a court first acquiring jurisdiction shall retain jurisdiction to~~
35 ~~the exclusion of every other court.))~~

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 83.100
2 RCW to 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 binding on the estate
10 and the beneficiaries, consistent with the Internal Revenue Code. All
11 other elections or valuations on the Washington return shall be made in
12 a manner consistent with the federal return, if a federal return is
13 required, and such rules as the department may provide.

14 (2) Amounts deducted for federal income tax purposes under section
15 642(g) of the Internal Revenue Code of 1986, shall not be allowed as
16 deductions in computing the amount of tax due under this chapter.

17 NEW SECTION. **Sec. 14.** A new section is added to chapter 83.100
18 RCW to read as follows:

19 (1) If upon examination of any returns or from other information
20 obtained by the department it appears that a tax or penalty has been
21 paid less than that properly due, the department shall assess against
22 the taxpayer an additional amount found to be due and shall add
23 interest as provided in RCW 83.100.070 on the tax only. The department
24 shall notify the taxpayer by mail of the additional amount, and the
25 additional amount shall become due and shall be paid within thirty days
26 from the date of the notice, or within such further time as the
27 department may provide.

28 (2) Interest shall be computed from the original due date of the
29 Washington return until the due date of the notice. If payment in full
30 is not made by the due date of the notice, additional interest shall be
31 computed until the date of payment.

32 (3) No assessment or correction of an assessment for additional
33 taxes, penalties, or interest due may be made by the department more
34 than four years after the close of the calendar year in which a
35 Washington return is due under this chapter, including any extension of
36 time for filing, except upon a showing of fraud or of misrepresentation

1 of a material fact by the taxpayer or as provided under subsection (4)
2 or (5) of this section or as otherwise provided in this chapter.

3 (4) For persons liable for tax under RCW 83.100.120, the period for
4 assessment or correction of an assessment shall extend an additional
5 three years beyond the period described in subsection (3) of this
6 section.

7 (5) A taxpayer may extend the periods of limitation under
8 subsection (3) or (4) of this section by executing a written waiver.
9 The execution of the waiver shall also extend the period for making a
10 refund as provided in RCW 83.100.130.

11 **Sec. 15.** RCW 83.100.210 and 1996 c 149 s 18 are each amended to
12 read as follows:

13 (1) The following provisions of chapter 82.32 RCW have full force
14 and application with respect to the taxes imposed under this chapter
15 unless the context clearly requires otherwise: RCW 82.32.110,
16 82.32.120, 82.32.130, 82.32.320, and 82.32.340. The definitions in
17 this chapter have full force and application with respect to the
18 application of chapter 82.32 RCW to this chapter unless the context
19 clearly requires otherwise.

20 (2) The department may enter into closing agreements as provided in
21 RCW 82.32.350 and 82.32.360.

22 NEW SECTION. **Sec. 16.** A new section is added to chapter 83.100
23 RCW to read as follows:

24 All receipts from taxes, penalties, interest, and fees collected
25 under this chapter must be deposited into the education legacy trust
26 account.

27 NEW SECTION. **Sec. 17.** The following acts or parts of acts are
28 each repealed:

29 (1) RCW 83.100.030 (Residents--Estate tax imposed--Credit for tax
30 paid other state) and 1988 c 64 s 3 & 1981 2nd ex.s. c 7 s 83.100.030;
31 and

32 (2) RCW 83.100.045 (Generation-skipping transfers--Tax imposed--
33 Credit for tax paid to another state) and 1988 c 64 s 5.

1 NEW SECTION. **Sec. 18.** The repealed sections in section 17 of this
2 act do not affect any existing right acquired or liability or
3 obligation incurred under the statutes repealed or under any rule or
4 order adopted under those statutes nor do they affect any proceeding
5 instituted under them.

6 **Sec. 19.** RCW 83.100.010 and 1988 c 64 s 1 are each amended to read
7 as follows:

8 This chapter may be cited as the "Estate and Transfer Tax Act (~~of~~
9 ~~1988~~))."

10 NEW SECTION. **Sec. 20.** This act applies prospectively only and not
11 retroactively. Sections 2 through 17 of this act apply only to estates
12 of decedents dying on or after the effective date of this section.

13 NEW SECTION. **Sec. 21.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and takes effect
20 immediately.

--- END ---