
HOUSE BILL 2224

State of Washington

62nd Legislature

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By Representatives Nealey and Pedersen; by request of Washington State Bar Association

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1 AN ACT Relating to Washington estate tax apportionment; and
2 amending RCW 83.110A.020.

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

4 **Sec. 1.** RCW 83.110A.020 and 2005 c 332 s 3 are each amended to
5 read as follows:

6 (1) Except as otherwise provided in subsection (3) of this section,
7 the following rules apply:

8 (a) To the extent that a provision of a decedent's will provides
9 for the apportionment of an estate tax, the tax must be apportioned
10 accordingly.

11 (b) Any portion of an estate tax not apportioned pursuant to (a) of
12 this subsection must be apportioned in accordance with any provision of
13 a revocable trust of which the decedent was the settlor which provides
14 for the apportionment of an estate tax. If conflicting apportionment
15 provisions appear in two or more revocable trust instruments, the
16 provision in the most recently dated instrument prevails. For purposes
17 of this subsection (1)(b):

18 (i) A trust is revocable if it was revocable immediately after the

1 trust instrument was executed, even if the trust subsequently becomes
2 irrevocable; and

3 (ii) The date of an amendment to a revocable trust instrument is
4 the date of the amended instrument only if the amendment contains an
5 apportionment provision.

6 (c) If any portion of an estate tax is not apportioned pursuant to
7 (a) or (b) of this subsection, and a provision in any other dispositive
8 instrument provides that any interest in the property disposed of by
9 the instrument is or is not to be applied to the payment of the estate
10 tax attributable to the interest disposed of by the instrument, the
11 provision controls the apportionment of the tax to that interest.

12 (2) Subject to subsection (3) of this section, and unless the
13 decedent provides to the contrary, the following rules apply:

14 (a) If an apportionment provision provides that a person receiving
15 an interest in property under an instrument is to be exonerated from
16 the responsibility to pay an estate tax that would otherwise be
17 apportioned to the interest:

18 (i) The tax attributable to the exonerated interest must be
19 apportioned among the other persons receiving interests passing under
20 the instrument; or

21 (ii) If the values of the other interests are less than the tax
22 attributable to the exonerated interest, the deficiency must be
23 apportioned ratably among the other persons receiving interests in the
24 apportionable estate that are not exonerated from apportionment of the
25 tax.

26 (b) If an apportionment provision provides that an estate tax is to
27 be apportioned to an interest in property a portion of which qualifies
28 for a marital or charitable deduction, the estate tax must first be
29 apportioned ratably among the holders of the portion that does not
30 qualify for a marital or charitable deduction and then apportioned
31 ratably among the holders of the deductible portion to the extent that
32 the value of the nondeductible portion is insufficient.

33 (c) Except as otherwise provided in (d) of this subsection, if an
34 apportionment provision provides that an estate tax be apportioned to
35 property in which one or more time-limited interests exist, other than
36 interests in specified property under RCW 83.110A.060, the tax must be
37 apportioned to the principal of that property, regardless of the
38 deductibility of some of the interests in that property.

1 (d) If an apportionment provision provides that an estate tax is to
2 be apportioned to the holders of interests in property in which one or
3 more time-limited interests exist and a charity has an interest that
4 otherwise qualifies for an estate tax charitable deduction, the tax
5 must first be apportioned, to the extent feasible, to interests in
6 property that have not been distributed to the persons entitled to
7 receive the interests. No tax shall be paid from a charitable
8 remainder annuity trust or a charitable remainder unitrust described in
9 section 664 of the internal revenue code and created during the
10 decedent's life.

11 (e) Persons receiving tangible personal property as defined in RCW
12 11.12.260 by specific gifts pursuant to the provisions of a will or
13 revocable trust or by right of survivorship, are exonerated from
14 apportionment of estate tax up to an aggregate value of property
15 permitted to pass by affidavit for small estates pursuant to RCW
16 11.62.010(2)(c).

17 (f) Persons receiving specific pecuniary gifts pursuant to the
18 provisions of a will or revocable trust are exonerated from
19 apportionment of estate tax up to an aggregate amount of money equal to
20 one-half of the value of property permitted to pass by affidavit for
21 small estates pursuant to RCW 11.62.010(2)(c).

22 (g) If persons receive an aggregate value of tangible personal
23 property or the amount of money in excess of the ceiling allowed to be
24 exonerated for apportionment for estate taxes for that type of
25 property, the portion of each gift to be exonerated is the maximum
26 amount of money or value of tangible personal property that is allowed
27 to be exonerated multiplied by the proportion of money received by each
28 person over the amount of money received by all persons, or the value
29 of tangible personal property received by each person over the value of
30 all tangible personal property received by all persons.

31 (3) A provision that apportions an estate tax is ineffective to the
32 extent that it increases the tax apportioned to a person having an
33 interest in the gross estate over which the decedent had no power to
34 transfer immediately before the decedent executed the instrument in
35 which the apportionment direction was made. For purposes of this
36 section, a testamentary power of appointment is a power to transfer the

1 property that is subject to the power.

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