

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 2224**

62nd Legislature  
2012 Regular Session

Passed by the House February 9, 2012  
Yeas 93 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate March 1, 2012  
Yeas 45 Nays 3

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2224** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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HOUSE BILL 2224

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Passed Legislature - 2012 Regular Session

State of Washington

62nd Legislature

2012 Regular Session

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

Prefiled 01/04/12. Read first time 01/09/12. Referred to Committee on Judiciary.

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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