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SENATE BILL 5849

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Prentice and Parlette

Read first time 02/22/11. Referred to Committee on Judiciary.

1 AN ACT Relating to estates and trusts; amending RCW 11.108.090 and  
2 11.86.031; creating new sections; and declaring an emergency.

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

4 NEW SECTION. **Sec. 1.** On December 17, 2010, the federal tax  
5 relief, unemployment insurance reauthorization, and job creation act of  
6 2010, House Resolution No. 4853, P.L. 111-312, was enacted into law.  
7 Federal House Resolution No. 4853 amended the federal gift, estate, and  
8 generation-skipping transfer taxes by retroactively reinstating those  
9 taxes to January 1, 2010, with an increased applicable exemption amount  
10 per taxpayer of five million dollars. House Resolution No. 4853 also  
11 extended the time for making certain qualified disclaimers. In light  
12 of these changes in federal law, the legislature finds in order: To  
13 carry out the intent of decedents and grantors in the construction of  
14 wills, trusts, and other dispositive instruments; to continue the  
15 uniformity of the Washington disclaimer law with federal law; and to  
16 promote judicial economy in the administration of trusts and estates,  
17 it is necessary to amend certain time limitations and to clarify  
18 procedures to construe certain formula clauses that refer to federal

1 estate, gift, and generation-skipping transfer tax rules applicable to  
2 estates of decedents dying after December 31, 2009, and prior to  
3 December 18, 2010.

4 **Sec. 2.** RCW 11.108.090 and 2010 c 11 s 3 are each amended to read  
5 as follows:

6 The personal representative, trustee, or any affected beneficiary  
7 under a will or trust may bring a proceeding under the trust and estate  
8 dispute resolution act in chapter 11.96A RCW, to determine whether the  
9 decedent intended that the references, presumptions, or rules of  
10 construction under RCW 11.108.080 be construed with respect to the  
11 federal law as it existed after December 31, 2009, including but not  
12 limited to the amendments made to federal law by the federal tax  
13 relief, unemployment insurance reauthorization, and job creation act of  
14 2010, federal House Resolution No. 4853, P.L. 111-312. In making such  
15 determinations, extrinsic evidence may be considered, whether or not  
16 the governing instrument is found to be ambiguous, including but not  
17 limited to, information provided by the decedent to the decedent's  
18 attorney or personal representative. Such a proceeding must be  
19 commenced (~~within twelve months~~) not later than two years following  
20 the death of the testator or grantor, and not thereafter.

21 **Sec. 3.** RCW 11.86.031 and 1995 c 292 s 4 are each amended to read  
22 as follows:

- 23 (1) The disclaimer (~~shall~~) must:
- 24 (a) Be in writing;
- 25 (b) Be signed by the disclaimant;
- 26 (c) Identify the interest to be disclaimed; and
- 27 (d) State the disclaimer and the extent thereof.
- 28 (2) The disclaimer (~~shall~~) must be delivered or mailed as  
29 provided in subsection (3) of this section at any time after the  
30 creation of the interest, but in all events by nine months after the  
31 latest of:
- 32 (a) The date the beneficiary attains the age of twenty-one years;
- 33 (b) The date of the transfer; (~~or~~)
- 34 (c) The date that the beneficiary is finally ascertained and the  
35 beneficiary's interest is indefeasibly vested; or

1        (d) December 17, 2010, if the date of the transfer is the date of  
2 the death of the creator of the interest and the creator dies after  
3 December 31, 2009, and before December 18, 2010.

4        (3) The disclaimer shall be mailed by first-class mail, or  
5 otherwise delivered, to the creator of the interest, the creator's  
6 legal representative, or the holder of the legal title to the property  
7 to which the interest relates or, if the creator is dead and there is  
8 no legal representative or holder of legal title, to the person having  
9 possession of the property.

10        (4) If the date of the transfer is the date of the death of the  
11 creator of the interest, a copy of the disclaimer may be filed with the  
12 clerk of the probate court in which the estate of the creator is, or  
13 has been, administered, or, if no probate administration has been  
14 commenced, then with the clerk of the court of any county provided by  
15 law as the place for probate administration of such person, where it  
16 shall be indexed under the name of the decedent in the probate index  
17 upon the payment of a fee established under RCW 36.18.016.

18        (5) The disclaimer of an interest in real property may be recorded,  
19 but shall constitute notice to all persons only from and after the date  
20 of recording. If recorded, a copy of the disclaimer shall be recorded  
21 in the office of the auditor in the county or counties where the real  
22 property is situated.

23        NEW SECTION.    **Sec. 4.** The provisions of this act are effective  
24 retroactive to December 31, 2009, and apply to estates of decedents  
25 dying after December 31, 2009, and prior to December 18, 2010. Returns  
26 and payments for estate tax imposed under chapter 83.100 RCW will  
27 continue to be due and owing as provided in chapter 83.100 RCW and  
28 nothing in this act is intended to affect the application of that  
29 chapter to any taxpayer.

30        NEW SECTION.    **Sec. 5.** This act is remedial in nature and must be  
31 applied and construed liberally in order to carry out its intent.

32        NEW SECTION.    **Sec. 6.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 7.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of the  
3    state government and its existing public institutions, and takes effect  
4    immediately.

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