

HB 2075 - H AMD 523

By Representative Carlyle

ADOPTED AS AMENDED 06/13/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) In 2005, to address an unexpected
4 significant loss of tax revenue resulting from the *Estate of Hemphill*
5 decision and to provide additional funding for public education, the
6 legislature enacted a stand-alone estate and transfer tax, effective
7 May 17, 2005. The stand-alone estate and transfer tax applies to the
8 transfer of property at death. By defining the term "transfer" to mean
9 a "transfer as used in section 2001 of the internal revenue code," the
10 legislature clearly expressed its intent that a "transfer" for purposes
11 of determining the federal taxable estate is also a "transfer" for
12 purposes of determining the Washington taxable estate.

13 (2) In *In re Estate of Bracken*, Docket No. 84114-4, the Washington
14 supreme court narrowly construed the term "transfer" as defined in the
15 Washington estate tax code.

16 (3) The legislature finds that it is well established that the term
17 "transfer" as used in the federal estate tax code is construed broadly
18 and extends to the "shifting from one to another of any power or
19 privilege incidental to the ownership or enjoyment of property" that
20 occurs at death. *Fernandez v. Wiener*, 326 U.S. 340, 352 (1945).

21 (4) The legislature further finds that: The Bracken decision held
22 certain qualified terminable interest property (QTIP) of married
23 couples was transferred without incurring Washington state estate tax
24 liability, which: (a) Creates an inequity never intended by the
25 legislature because unmarried individuals did not enjoy any similar
26 opportunities to avoid or greatly reduce their potential Washington
27 estate tax liability; and (b) may create disparate treatment between
28 QTIP property and other property transferred between spouses that is
29 eligible for the marital deduction.

1 (5) Therefore, the legislature finds that it is necessary to
2 reinstate the legislature's intended meaning when it enacted the estate
3 tax, restore parity between married couples and unmarried individuals,
4 restore parity between QTIP property and other property eligible for
5 the marital deduction, and prevent the adverse fiscal impacts of the
6 Bracken decision by reaffirming its intent that the term "transfer" as
7 used in the Washington estate and transfer tax is to be given its
8 broadest possible meaning consistent with established United States
9 supreme court precedents, subject only to the limits and exceptions
10 expressly provided by the legislature.

11 (6) As curative, clarifying, and remedial, the legislature intends
12 for this act to apply both prospectively and retroactively to estates
13 of decedents dying on or after May 17, 2005.

14 **Sec. 2.** RCW 83.100.020 and 2013 c 23 s 341 are each amended to
15 read as follows:

16 ~~((As used in this chapter*))~~ The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.

18 (1)(a) "Applicable exclusion amount" means:

19 (i) One million five hundred thousand dollars for decedents dying
20 before January 1, 2006;

21 (ii) Two million dollars for estates of decedents dying on or after
22 January 2006, and before January 1, 2014; and

23 (iii) For estates of decedents dying in calendar year 2014 and each
24 calendar year thereafter, the amount in (a)(ii) of this subsection must
25 be adjusted annually, except as otherwise provided in this subsection
26 (1)(a)(iii). The annual adjustment is determined by multiplying two
27 million dollars by one plus the percentage by which the most recent
28 October consumer price index exceeds the consumer price index for
29 October 2012, and rounding the result to the nearest one thousand
30 dollars. No adjustment is made for a calendar year if the adjustment
31 would result in the same or a lesser applicable exclusion amount than
32 the applicable exclusion amount for the immediately preceding calendar
33 year. The applicable exclusion amount under this subsection
34 (1)(a)(iii) for the decedent's estate is the applicable exclusion
35 amount in effect as of the date of the decedent's death.

36 (b) For purposes of this subsection, "consumer price index" means

1 the consumer price index for all urban consumers, all items, for the
2 Seattle-Tacoma-Bremerton metropolitan area as calculated by the United
3 States bureau of labor statistics.

4 (2) "Decedent" means a deceased individual((+)).

5 ((+2)) (3) "Department" means the department of revenue, the
6 director of that department, or any employee of the department
7 exercising authority lawfully delegated to him or her by the
8 director((+)).

9 ((+3)) (4) "Federal return" means any tax return required by
10 chapter 11 of the internal revenue code((+)).

11 ((+4)) (5) "Federal tax" means a tax under chapter 11 of the
12 internal revenue code((+)).

13 ((+5)) (6) "Gross estate" means "gross estate" as defined and used
14 in section 2031 of the internal revenue code((+)).

15 ((+6)) (7) "Person" means any individual, estate, trust, receiver,
16 cooperative association, club, corporation, company, firm, partnership,
17 joint venture, syndicate, or other entity and, to the extent permitted
18 by law, any federal, state, or other governmental unit or subdivision
19 or agency, department, or instrumentality thereof((+)).

20 ((+7)) (8) "Person required to file the federal return" means any
21 person required to file a return required by chapter 11 of the internal
22 revenue code, such as the personal representative of an estate((+)).

23 ((+8)) (9) "Property" means property included in the gross
24 estate((+)).

25 ((+9)) (10) "Resident" means a decedent who was domiciled in
26 Washington at time of death((+)).

27 ((+10)) (11) "Taxpayer" means a person upon whom tax is imposed
28 under this chapter, including an estate or a person liable for tax
29 under RCW 83.100.120((+)).

30 ((+11)) (12) "Transfer" means "transfer" as used in section 2001
31 of the internal revenue code and includes any shifting upon death of
32 the economic benefit in property or any power or legal privilege
33 incidental to the ownership or enjoyment of property. However,
34 "transfer" does not include a qualified heir disposing of an interest
35 in property qualifying for a deduction under RCW 83.100.046 or ceasing
36 to use the property for farming purposes((+)).

37 ((+12)) (13) "Internal revenue code" means(~~(, for the purposes of~~

1 ~~this chapter and RCW 83.110.010,~~) the United States internal revenue
2 code of 1986, as amended or renumbered as of January 1, 2005(~~(+)~~).

3 ~~((+13))~~ (14) "Washington taxable estate" means the federal taxable
4 estate(~~(, less: (a) One million five hundred thousand dollars for~~
5 ~~decedents dying before January 1, 2006; and (b) two million dollars for~~
6 ~~decedents dying on or after January 1, 2006; and (c) the amount of any~~
7 ~~deduction allowed under RCW 83.100.046; and~~) and includes, but is not
8 limited to, the value of any property included in the gross estate
9 under section 2044 of the internal revenue code, regardless of whether
10 the decedent's interest in such property was acquired before May 17,
11 2005, (a) plus amounts required to be added to the Washington taxable
12 estate under RCW 83.100.047, (b) less: (i) The applicable exclusion
13 amount; (ii) the amount of any deduction allowed under RCW 83.100.046;
14 (iii) amounts allowed to be deducted from the Washington taxable estate
15 under RCW 83.100.047; and (iv) the amount of any deduction allowed
16 under section 3 of this act.

17 ~~((+14))~~ (15) "Federal taxable estate" means the taxable estate as
18 determined under chapter 11 of the internal revenue code without regard
19 to: (a) The termination of the federal estate tax under section 2210
20 of the internal revenue code or any other provision of law, and (b) the
21 deduction for state estate, inheritance, legacy, or succession taxes
22 allowable under section 2058 of the internal revenue code.

23 NEW SECTION. Sec. 3. A new section is added to chapter 83.100 RCW
24 to read as follows:

25 (1) For the purposes of determining the tax due under this chapter,
26 a deduction is allowed for the value of the decedent's qualified
27 family-owned business interests, not to exceed two million five hundred
28 thousand dollars, if:

29 (a) The value of the decedent's qualified family-owned business
30 interests exceed fifty percent of the decedent's Washington taxable
31 estate determined without regard to the deduction for the applicable
32 exclusion amount;

33 (b) During the eight-year period ending on the date of the
34 decedent's death, there have been periods aggregating five years or
35 more during which:

36 (i) Such interests were owned by the decedent or a member of the
37 decedent's family;

1 (ii) There was material participation, within the meaning of
2 section 2032A(e)(6) of the internal revenue code, by the decedent or a
3 member of the decedent's family in the operation of the trade or
4 business to which such interests relate;

5 (c) The qualified family-owned business interests are acquired by
6 any qualified heir from, or passed to any qualified heir from, the
7 decedent, within the meaning of RCW 83.100.046(2), and the decedent was
8 at the time of his or her death a citizen or resident of the United
9 States; and

10 (d) The value of the decedent's qualified family-owned business
11 interests is not more than six million dollars.

12 (2)(a) Only amounts included in the decedent's federal taxable
13 estate may be deducted under this subsection.

14 (b) Amounts deductible under RCW 83.100.046 may not be deducted
15 under this section.

16 (3)(a) There is imposed an additional estate tax on a qualified
17 heir if, within three years of the decedent's death and before the date
18 of the qualified heir's death:

19 (i) The material participation requirements described in section
20 2032A(c)(6)(b)(ii) of the internal revenue code are not met with
21 respect to the qualified family-owned business interest which was
22 acquired or passed from the decedent;

23 (ii) The qualified heir disposes of any portion of a qualified
24 family-owned business interest, other than by a disposition to a member
25 of the qualified heir's family or a person with an ownership interest
26 in the qualified family-owned business or through a qualified
27 conservation contribution under section 170(h) of the internal revenue
28 code;

29 (iii) The qualified heir loses United States citizenship within the
30 meaning of section 877 of the internal revenue code or with respect to
31 whom section 877(e)(1) applies, and such heir does not comply with the
32 requirements of section 877(g) of the internal revenue code; or

33 (iv) The principal place of business of a trade or business of the
34 qualified family-owned business interest ceases to be located in the
35 United States.

36 (b) The amount of the additional estate tax imposed under this
37 subsection is equal to the amount of tax savings under this section

1 with respect to the qualified family-owned business interest acquired
2 or passed from the decedent.

3 (c) Interest applies to the tax due under this subsection for the
4 period beginning on the date that the estate tax liability was due
5 under this chapter and ending on the date the additional estate tax due
6 under this subsection is paid. Interest under this subsection must be
7 computed as provided in RCW 83.100.070(2).

8 (d) The tax imposed by this subsection is due the day that is six
9 months after any taxable event described in (a) of this subsection
10 occurred and must be reported on a return as provided by the
11 department.

12 (e) The qualified heir is personally liable for the additional tax
13 imposed by this subsection unless he or she has furnished a bond in
14 favor of the department for such amount and for such time as the
15 department determines necessary to secure the payment of amounts due
16 under this subsection. The qualified heir, on furnishing a bond
17 satisfactory to the department, is discharged from personal liability
18 for any additional tax and interest under this subsection and is
19 entitled to a receipt or writing showing such discharge.

20 (f) Amounts due under this subsection attributable to any qualified
21 family-owned business interest are secured by a lien in favor of the
22 state on the property in respect to which such interest relates. The
23 lien under this subsection (3)(f) arises at the time the Washington
24 return is filed on which a deduction under this section is taken and
25 continues in effect until: (i) The tax liability under this subsection
26 has been satisfied or has become unenforceable by reason of lapse of
27 time; or (ii) the department is satisfied that no further tax liability
28 will arise under this subsection.

29 (g) Security acceptable to the department may be substituted for
30 the lien imposed by (f) of this subsection.

31 (h) For purposes of the assessment or correction of an assessment
32 for additional taxes and interest imposed under this subsection, the
33 limitations period in RCW 83.100.095 begins to run on the due date of
34 the return required under (d) of this subsection.

35 (i) For purposes of this subsection, a qualified heir may not be
36 treated as disposing of an interest described in section 2057(e)(1)(A)
37 of the internal revenue code by reason of ceasing to be engaged in a

1 trade or business so long as the property to which such interest
2 relates is used in a trade or business by any member of the qualified
3 heir's family.

4 (4)(a) The department may require a taxpayer claiming a deduction
5 under this section to provide the department with the names and contact
6 information of all qualified heirs.

7 (b) The department may also require any qualified heir to submit to
8 the department on an ongoing basis such information as the department
9 determines necessary or useful in determining whether the qualified
10 heir is subject to the additional tax imposed in subsection (3) of this
11 section. The department may not require such information more
12 frequently than twice per year. The department may impose a penalty on
13 a qualified heir who fails to provide the information requested within
14 thirty days of the date the department's written request for the
15 information was sent to the qualified heir. The amount of the penalty
16 under this subsection is five hundred dollars and may be collected in
17 the same manner as the tax imposed under subsection (3) of this
18 section.

19 (5) For purposes of this section, references to section 2057 of the
20 internal revenue code refer to section 2057 of the internal revenue
21 code, as existing on December 31, 2003.

22 (6) For purposes of this section, the following definitions apply:

23 (a) "Member of the decedent's family" and "member of the qualified
24 heir's family" have the same meaning as "member of the family" in RCW
25 83.100.046(10).

26 (b) "Qualified family-owned business interest" has the same meaning
27 as provided in section 2057(e) of the internal revenue code of 1986.

28 (c) "Qualified heir" has the same meaning as provided in section
29 2057(i) of the internal revenue code of 1986.

30 (7) This section applies to the estates of decedents dying on or
31 after January 1, 2014.

32 **Sec. 4.** RCW 83.100.040 and 2010 c 106 s 234 are each amended to
33 read as follows:

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

(2)(a) Except as provided in (b) of this subsection, the amount of tax is the amount provided in the following table:

If Washington Taxable		The amount of Tax Equals		Of Washington
Estate is at least	But Less Than	Initial Tax Amount	Plus Tax Rate %	Taxable Estate Value Greater than
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	((17.00%))	\$4,000,000
			<u>18.00%</u>	
\$6,000,000	\$7,000,000	((890,000))	((18.00%))	\$6,000,000
		<u>\$910,000</u>	<u>19.00%</u>	
\$7,000,000	\$9,000,000	((1,070,000))	((18.50%))	\$7,000,000
		<u>\$1,100,000</u>	<u>19.50%</u>	
\$9,000,000		((1,440,000))	((19.00%))	\$9,000,000
		<u>\$1,490,000</u>	<u>20.00%</u>	

(b) If any property in the decedent's estate is located outside of Washington, the amount of tax is the amount determined in (a) of this subsection multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Property qualifying for a deduction under RCW 83.100.046 must be excluded from the numerator and denominator of the fraction.

(3) The tax imposed under this section is a stand-alone estate tax that incorporates only those provisions of the internal revenue code as amended or renumbered as of January 1, 2005, that do not conflict with the provisions of this chapter. The tax imposed under this chapter is independent of any federal estate tax obligation and is not affected by termination of the federal estate tax.

Sec. 5. RCW 83.100.047 and 2005 c 516 s 13 are each amended to read as follows:

(1) If the federal taxable estate on the federal return is

1 determined by making an election under section 2056 or 2056A of the
2 internal revenue code, or if no federal return is required to be filed,
3 the department may provide by rule for a separate election on the
4 Washington return, consistent with section 2056 or 2056A of the
5 internal revenue code, for the purpose of determining the amount of tax
6 due under this chapter. The election (~~((shall be))~~) is binding on the
7 estate and the beneficiaries, consistent with the internal revenue
8 code. All other elections or valuations on the Washington return
9 (~~((shall))~~) must be made in a manner consistent with the federal return,
10 if a federal return is required, and such rules as the department may
11 provide.

12 (2) Amounts deducted for federal income tax purposes under section
13 642(g) of the internal revenue code of 1986(~~((, shall))~~) are not (~~((be))~~)
14 allowed as deductions in computing the amount of tax due under this
15 chapter.

16 (3) Notwithstanding any department rule, if a taxpayer makes an
17 election consistent with section 2056 of the internal revenue code as
18 permitted under this section, the taxpayer's Washington taxable estate,
19 and the surviving spouse's Washington taxable estate, must be adjusted
20 as follows:

21 (a) For the taxpayer that made the election, any amount deducted by
22 reason of section 2056(b)(7) of the internal revenue code is added to,
23 and the value of property for which a Washington election under this
24 section was made is deducted from, the Washington taxable estate.

25 (b) For the estate of the surviving spouse, the amount included in
26 the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of
27 the internal revenue code is deducted from, and the value of any
28 property for which an election under this section was previously made
29 is added to, the Washington taxable estate.

30 **Sec. 6.** RCW 83.100.047 and 2009 c 521 s 192 are each amended to
31 read as follows:

32 (1)(a) If the federal taxable estate on the federal return is
33 determined by making an election under section 2056 or 2056A of the
34 internal revenue code, or if no federal return is required to be filed,
35 the department may provide by rule for a separate election on the
36 Washington return, consistent with section 2056 or 2056A of the
37 internal revenue code and (b) of this subsection, for the purpose of

1 determining the amount of tax due under this chapter. The election
2 (~~shall be~~) is binding on the estate and the beneficiaries, consistent
3 with the internal revenue code and (b) of this subsection. All other
4 elections or valuations on the Washington return (~~shall~~) must be made
5 in a manner consistent with the federal return, if a federal return is
6 required, and such rules as the department may provide.

7 (b) The department (~~shall~~) must provide by rule that a state
8 registered domestic partner is deemed to be a surviving spouse and
9 entitled to a deduction from the Washington taxable estate for any
10 interest passing from the decedent to his or her domestic partner,
11 consistent with section 2056 or 2056A of the internal revenue code but
12 regardless of whether such interest would be deductible from the
13 federal gross estate under section 2056 or 2056A of the internal
14 revenue code.

15 (2) Amounts deducted for federal income tax purposes under section
16 642(g) of the internal revenue code of 1986 (~~shall~~) are not (~~be~~)
17 allowed as deductions in computing the amount of tax due under this
18 chapter.

19 (3) Notwithstanding any department rule, if a taxpayer makes an
20 election consistent with section 2056 of the internal revenue code as
21 permitted under this section, the taxpayer's Washington taxable estate,
22 and the surviving spouse's Washington taxable estate, must be adjusted
23 as follows:

24 (a) For the taxpayer that made the election, any amount deducted by
25 reason of section 2056(b)(7) of the internal revenue code is added to,
26 and the value of property for which a Washington election under this
27 section was made is deducted from, the Washington taxable estate.

28 (b) For the estate of the surviving spouse, the amount included in
29 the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of
30 the internal revenue code is deducted from, and the value of any
31 property for which an election under this section was previously made
32 is added to, the Washington taxable estate.

33 **Sec. 7.** RCW 83.100.120 and 1981 2nd ex.s. c 7 s 83.100.120 are
34 each amended to read as follows:

35 (1)(a) Except as otherwise provided in this subsection, any
36 personal representative who distributes any property without first
37 paying, securing another's payment of, or furnishing security for

1 payment of the taxes due under this chapter is personally liable for
2 the taxes due to the extent of the value of any property that may come
3 or may have come into the possession of the personal representative.
4 Security for payment of the taxes due under this chapter (~~(shall)~~) must
5 be in an amount equal to or greater than the value of all property that
6 is or has come into the possession of the personal representative, as
7 of the time the security is furnished.

8 (b) For the estates of decedents dying prior to April 9, 2006, a
9 personal representative is not personally liable for taxes due on the
10 value of any property included in the gross estate and the Washington
11 taxable estate as a result of section 2044 of the internal revenue code
12 unless the property is located in the state of Washington or the
13 property has or will come into the possession or control of the
14 personal representative.

15 (2) Any person who has the control, custody, or possession of any
16 property and who delivers any of the property to the personal
17 representative or legal representative of the decedent outside
18 Washington without first paying, securing another's payment of, or
19 furnishing security for payment of the taxes due under this chapter is
20 liable for the taxes due under this chapter to the extent of the value
21 of the property delivered. Security for payment of the taxes due under
22 this chapter (~~(shall)~~) must be in an amount equal to or greater than
23 the value of all property delivered to the personal representative or
24 legal representative of the decedent outside Washington by such a
25 person.

26 (3) For the purposes of this section, persons who do not have
27 possession of a decedent's property include anyone not responsible
28 primarily for paying the tax due under this section or their
29 transferees, which includes but is not limited to mortgagees or
30 pledgees, stockbrokers or stock transfer agents, banks and other
31 depositories of checking and savings accounts, safe-deposit companies,
32 and life insurance companies.

33 (4) For the purposes of this section, any person who has the
34 control, custody, or possession of any property and who delivers any of
35 the property to the personal representative or legal representative of
36 the decedent may rely upon the release certificate or the release of
37 nonliability certificate, furnished by the department to the personal
38 representative, as evidence of compliance with the requirements of this

1 chapter, and make such deliveries and transfers as the personal
2 representative may direct without being liable for any taxes due under
3 this chapter.

4 NEW SECTION. **Sec. 8.** Sections 2 and 5 of this act apply both
5 prospectively and retroactively to all estates of decedents dying on or
6 after May 17, 2005.

7 NEW SECTION. **Sec. 9.** This act does not affect any final judgment,
8 no longer subject to appeal, entered by a court of competent
9 jurisdiction before the effective date of this section.

10 NEW SECTION. **Sec. 10.** Section 4 of this act applies to estates of
11 decedents dying on or after January 1, 2014.

12 NEW SECTION. **Sec. 11.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 12.** Section 5 of this act expires January 1,
17 2014.

18 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and takes effect
21 immediately, except for sections 3, 4, and 6 of this act which take
22 effect January 1, 2014."

23 Correct the title.

EFFECT: Provides a \$2.5 million deduction for the value of a family business. Disallows the deduction if the value of the business exceeds \$6 million. Annually adjusts the \$2 million exclusion amount by inflation. Eliminates liability for the personal representative for estate taxes on QTIP if the decedent dies prior to April 9, 2006, and the property is not located in Washington or under the control of the

personal representative.

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