

SSB 5939 - S AMD 339
By Senator Billig

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 following definitions in this
17 section apply throughout this chapter unless the context clearly
18 requires otherwise.

- 19 (1) "Decedent" means a deceased individual((+)).
- 20 (2) "Department" means the department of revenue, the director of
21 that department, or any employee of the department exercising authority
22 lawfully delegated to him or her by the director((+)).
- 23 (3) "Federal return" means any tax return required by chapter 11 of
24 the internal revenue code((+)).
- 25 (4) "Federal tax" means a tax under chapter 11 of the internal
26 revenue code((+)).
- 27 (5) "Gross estate" means "gross estate" as defined and used in
28 section 2031 of the internal revenue code((+)).
- 29 (6) "Person" means any individual, estate, trust, receiver,
30 cooperative association, club, corporation, company, firm, partnership,
31 joint venture, syndicate, or other entity and, to the extent permitted
32 by law, any federal, state, or other governmental unit or subdivision
33 or agency, department, or instrumentality thereof((+)).
- 34 (7) "Person required to file the federal return" means any person
35 required to file a return required by chapter 11 of the internal
36 revenue code, such as the personal representative of an estate((+)).
- 37 (8) "Property" means property included in the gross estate((+)).

1 (9) "Resident" means a decedent who was domiciled in Washington at
2 time of death((+)).

3 (10) "Taxpayer" means a person upon whom tax is imposed under this
4 chapter, including an estate or a person liable for tax under RCW
5 83.100.120((+)).

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

13 (12) "Internal revenue code" means(~~(, for the purposes of this~~
14 ~~chapter and RCW 83.110.010,)~~) the United States internal revenue code
15 of 1986, as amended or renumbered as of January 1, 2005((+)).

16 (13) "Washington taxable estate" means the federal taxable estate
17 and includes, but is not limited to, the value of any property included
18 in the gross estate under section 2044 of the internal revenue code,
19 regardless of whether the decedent's interest in such property was
20 acquired before May 17, 2005, (a) plus amounts required to be added to
21 the Washington taxable estate under RCW 83.100.047, (b) less: ((+a))
22 (i) One million five hundred thousand dollars for decedents dying
23 before January 1, 2006; and ((+b)) (ii) two million dollars for
24 decedents dying on or after January 1, 2006; and ((+c)) (iii) the
25 amount of any deduction allowed under RCW 83.100.046; and (iv) amounts
26 allowed to be deducted from the Washington taxable estate under RCW
27 83.100.047.

28 (14) "Federal taxable estate" means the taxable estate as
29 determined under chapter 11 of the internal revenue code without regard
30 to: (a) The termination of the federal estate tax under section 2210
31 of the internal revenue code or any other provision of law, and (b) the
32 deduction for state estate, inheritance, legacy, or succession taxes
33 allowable under section 2058 of the internal revenue code.

34 **Sec. 3.** RCW 83.100.047 and 2005 c 516 s 13 are each amended to
35 read as follows:

36 (1) If the federal taxable estate on the federal return is
37 determined by making an election under section 2056 or 2056A of the

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

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

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

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

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

29 **Sec. 4.** RCW 83.100.047 and 2009 c 521 s 192 are each amended to
30 read as follows:

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

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

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

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

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

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

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

32 **Sec. 5.** RCW 83.100.120 and 1981 2nd ex.s. c 7 s 83.100.120 are
33 each amended to read as follows:

34 (1)(a) Except as otherwise provided in this subsection, any
35 personal representative who distributes any property without first
36 paying, securing another's payment of, or furnishing security for
37 payment of the taxes due under this chapter is personally liable for

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

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

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

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

32 (4) For the purposes of this section, any person who has the
33 control, custody, or possession of any property and who delivers any of
34 the property to the personal representative or legal representative of
35 the decedent may rely upon the release certificate or the release of
36 nonliability certificate, furnished by the department to the personal
37 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. 6.** Sections 2 and 3 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. 7.** 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. 8.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 9.** Section 3 of this act expires January 1,
15 2014.

16 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 immediately, except for section 4 of this act which takes effect
20 January 1, 2014."

SSB 5939 - S AMD
By Senator Hasegawa

21 On page 1, line 1 of the title, after "tax;" strike the remainder
22 of the title and insert "amending RCW 83.100.020, 83.100.047,
23 83.100.047, and 83.100.120; creating new sections; providing an
24 effective date; providing an expiration date; and declaring an
25 emergency."

EFFECT: Includes language that provides that a personal representative (pre-2006) is not personally liable for taxes due for a QTIP election. Removes the sections that increase the filing threshold and reduce the applicable tax due.

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