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ENGROSSED HOUSE BILL 1920

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State of Washington

63rd Legislature

2013 Regular Session

By Representatives Ormsby, Carlyle, Hunter, and Pollet; by request of Department of Revenue

Read first time 02/18/13. Referred to Committee on Finance.

1 AN ACT Relating to preserving funding deposited into the education  
2 legacy trust account used to support common schools and access to  
3 higher education by restoring the application of the Washington estate  
4 and transfer tax to certain property transfers; amending RCW  
5 83.100.020, 83.100.047, and 83.100.047; creating new sections;  
6 providing an effective date; and providing an expiration date.

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

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

18 (2) In *In re Estate of Bracken*, Docket No. 84114-4, the Washington

1 supreme court narrowly construed the term "transfer" as defined in the  
2 Washington estate tax code.

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

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

17 (5) Therefore, the legislature finds that it is necessary to  
18 reinstate the legislature's intended meaning when it enacted the estate  
19 tax, restore parity between married couples and unmarried individuals,  
20 restore parity between QTIP property and other property eligible for  
21 the marital deduction, and prevent the adverse fiscal impacts of the  
22 Bracken decision by reaffirming its intent that the term "transfer" as  
23 used in the Washington estate and transfer tax is to be given its  
24 broadest possible meaning consistent with established United States  
25 supreme court precedents, subject only to the limits and exceptions  
26 expressly provided by the legislature.

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

30 **Sec. 2.** RCW 83.100.020 and 2005 c 516 s 2 are each amended to read  
31 as follows:

32 (~~As used in this chapter:~~) The following definitions in this  
33 section apply throughout this chapter unless the context clearly  
34 requires otherwise.

- 35 (1) "Decedent" means a deceased individual(~~(+)~~).  
36 (2) "Department" means the department of revenue, the director of

1 that department, or any employee of the department exercising authority  
2 lawfully delegated to him by the director((+)).  
3 (3) "Federal return" means any tax return required by chapter 11 of  
4 the internal revenue code((+)).  
5 (4) "Federal tax" means a tax under chapter 11 of the internal  
6 revenue code((+)).  
7 (5) "Gross estate" means "gross estate" as defined and used in  
8 section 2031 of the internal revenue code((+)).  
9 (6) "Person" means any individual, estate, trust, receiver,  
10 cooperative association, club, corporation, company, firm, partnership,  
11 joint venture, syndicate, or other entity and, to the extent permitted  
12 by law, any federal, state, or other governmental unit or subdivision  
13 or agency, department, or instrumentality thereof((+)).  
14 (7) "Person required to file the federal return" means any person  
15 required to file a return required by chapter 11 of the internal  
16 revenue code, such as the personal representative of an estate((+)).  
17 (8) "Property" means property included in the gross estate((+)).  
18 (9) "Resident" means a decedent who was domiciled in Washington at  
19 time of death((+)).  
20 (10) "Taxpayer" means a person upon whom tax is imposed under this  
21 chapter, including an estate or a person liable for tax under RCW  
22 83.100.120((+)).  
23 (11) "Transfer" means "transfer" as used in section 2001 of the  
24 internal revenue code and includes any shifting upon death of the  
25 economic benefit in property or any power or legal privilege incidental  
26 to the ownership or enjoyment of property. However, "transfer" does  
27 not include a qualified heir disposing of an interest in property  
28 qualifying for a deduction under RCW 83.100.046 or ceasing to use the  
29 property for farming purposes((+)).  
30 (12) "Internal revenue code" means(~~(, for the purposes of this~~  
31 ~~chapter and RCW 83.110.010,~~) the United States internal revenue code  
32 of 1986, as amended or renumbered as of January 1, 2005((+)).  
33 (13) "Washington taxable estate" means the federal taxable estate  
34 and includes, but is not limited to, the value of any property included  
35 in the gross estate under section 2044 of the internal revenue code,  
36 regardless of whether the decedent's interest in such property was  
37 acquired before May 17, 2005, (a) plus amounts required to be added to  
38 the Washington taxable estate under RCW 83.100.047, (b) less:

1 (~~(a)~~)(i) One million five hundred thousand dollars for decedents  
2 dying before January 1, 2006; and (~~(b)~~) (ii) two million dollars for  
3 decedents dying on or after January 1, 2006; and (~~(c)~~) (iii) the  
4 amount of any deduction allowed under RCW 83.100.046; and (iv) amounts  
5 allowed to be deducted from the Washington taxable estate under RCW  
6 83.100.047.

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

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

15 (1) If the federal taxable estate on the federal return is  
16 determined by making an election under section 2056 or 2056A of the  
17 internal revenue code, or if no federal return is required to be filed,  
18 the department may provide by rule for a separate election on the  
19 Washington return, consistent with section 2056 or 2056A of the  
20 internal revenue code, for the purpose of determining the amount of tax  
21 due under this chapter. The election (~~(shall be)~~) is binding on the  
22 estate and the beneficiaries, consistent with the internal revenue  
23 code. All other elections or valuations on the Washington return  
24 (~~(shall)~~) must be made in a manner consistent with the federal return,  
25 if a federal return is required, and such rules as the department may  
26 provide.

27 (2) Amounts deducted for federal income tax purposes under section  
28 642(g) of the internal revenue code of 1986(~~(, shall)~~) are not (~~(be)~~)  
29 allowed as deductions in computing the amount of tax due under this  
30 chapter.

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

36 (a) For the taxpayer that made the election, any amount deducted by

1 reason of section 2056(b)(7) of the internal revenue code is added to,  
2 and the value of property for which a Washington election under this  
3 section was made is deducted from, the Washington taxable estate.

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

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

11 (1)(a) If the federal taxable estate on the federal return is  
12 determined by making an election under section 2056 or 2056A of the  
13 internal revenue code, or if no federal return is required to be filed,  
14 the department may provide by rule for a separate election on the  
15 Washington return, consistent with section 2056 or 2056A of the  
16 internal revenue code and (b) of this subsection, for the purpose of  
17 determining the amount of tax due under this chapter. The election  
18 (~~shall be~~) is binding on the estate and the beneficiaries, consistent  
19 with the internal revenue code and (b) of this subsection. All other  
20 elections or valuations on the Washington return (~~shall~~) must be made  
21 in a manner consistent with the federal return, if a federal return is  
22 required, and such rules as the department may provide.

23 (b) The department (~~shall~~) must provide by rule that a state  
24 registered domestic partner is deemed to be a surviving spouse and  
25 entitled to a deduction from the Washington taxable estate for any  
26 interest passing from the decedent to his or her domestic partner,  
27 consistent with section 2056 or 2056A of the internal revenue code but  
28 regardless of whether such interest would be deductible from the  
29 federal gross estate under section 2056 or 2056A of the internal  
30 revenue code.

31 (2) Amounts deducted for federal income tax purposes under section  
32 642(g) of the internal revenue code of 1986 (~~shall~~) are not (~~be~~)  
33 allowed as deductions in computing the amount of tax due under this  
34 chapter.

35 (3) Notwithstanding any department rule, if a taxpayer makes an  
36 election consistent with section 2056 of the internal revenue code as

1 permitted under this section, the taxpayer's Washington taxable estate,  
2 and the surviving spouse's Washington taxable estate, must be adjusted  
3 as follows:

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

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

13 NEW SECTION. Sec. 5. Sections 2 and 3 of this act apply both  
14 prospectively and retroactively to all estates of decedents dying on or  
15 after May 17, 2005.

16 NEW SECTION. Sec. 6. This act does not affect any final judgment,  
17 no longer subject to appeal, entered by a court of competent  
18 jurisdiction before the effective date of this section.

19 NEW SECTION. Sec. 7. If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

23 NEW SECTION. Sec. 8. Section 3 of this act expires January 1,  
24 2014.

25 NEW SECTION. Sec. 9. Section 4 of this act takes effect January  
26 1, 2014.

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