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HOUSE BILL 2075

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State of Washington                      63rd Legislature                      2013 2nd Special Session

By Representatives Carlyle and Roberts

Read first time 06/12/13.

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 while modifying the  
5 estate and transfer tax to provide tax relief for certain estates;  
6 amending RCW 83.100.020, 83.100.047, 83.100.047, and 83.100.120;  
7 creating new sections; providing an effective date; providing an  
8 expiration date; and declaring an emergency.

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

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

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

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

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

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

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

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

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

36 (1) "Decedent" means a deceased individual((+)).

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

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

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

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

10 (6) "Person" means any individual, estate, trust, receiver,  
11 cooperative association, club, corporation, company, firm, partnership,  
12 joint venture, syndicate, or other entity and, to the extent permitted  
13 by law, any federal, state, or other governmental unit or subdivision  
14 or agency, department, or instrumentality thereof((+)).

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

18 (8) "Property" means property included in the gross estate((+)).

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

21 (10) "Taxpayer" means a person upon whom tax is imposed under this  
22 chapter, including an estate or a person liable for tax under RCW  
23 83.100.120((+)).

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

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

34 (13) "Washington taxable estate" means the federal taxable estate  
35 and includes, but is not limited to, the value of any property included  
36 in the gross estate under section 2044 of the internal revenue code,  
37 regardless of whether the decedent's interest in such property was  
38 acquired before May 17, 2005, (a) plus amounts required to be added to

1 the Washington taxable estate under RCW 83.100.047, (b) less: ((+a+))  
2 (i) One million five hundred thousand dollars for decedents dying  
3 before January 1, 2006; and ((+b+)) (ii) two million dollars for  
4 decedents dying on or after January 1, 2006; and ((+e+)) (iii) the  
5 amount of any deduction allowed under RCW 83.100.046; and (iv) amounts  
6 allowed to be deducted from the Washington taxable estate under RCW  
7 83.100.047.

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

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

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

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

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

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

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

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

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

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

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

36       (3) Notwithstanding any department rule, if a taxpayer makes an  
37 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 **Sec. 5.** RCW 83.100.120 and 1981 2nd ex.s. c 7 s 83.100.120 are  
14 each amended to read as follows:

15 (1)(a) Except as otherwise provided in this subsection, any  
16 personal representative who distributes any property without first  
17 paying, securing another's payment of, or furnishing security for  
18 payment of the taxes due under this chapter is personally liable for  
19 the taxes due to the extent of the value of any property that may come  
20 or may have come into the possession of the personal representative.  
21 Security for payment of the taxes due under this chapter (~~shall~~) must  
22 be in an amount equal to or greater than the value of all property that  
23 is or has come into the possession of the personal representative, as  
24 of the time the security is furnished.

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

32 (2) Any person who has the control, custody, or possession of any  
33 property and who delivers any of the property to the personal  
34 representative or legal representative of the decedent outside  
35 Washington without first paying, securing another's payment of, or  
36 furnishing security for payment of the taxes due under this chapter is  
37 liable for the taxes due under this chapter to the extent of the value

1 of the property delivered. Security for payment of the taxes due under  
2 this chapter (~~shall~~) must be in an amount equal to or greater than  
3 the value of all property delivered to the personal representative or  
4 legal representative of the decedent outside Washington by such a  
5 person.

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

13 (4) For the purposes of this section, any person who has the  
14 control, custody, or possession of any property and who delivers any of  
15 the property to the personal representative or legal representative of  
16 the decedent may rely upon the release certificate or the release of  
17 nonliability certificate, furnished by the department to the personal  
18 representative, as evidence of compliance with the requirements of this  
19 chapter, and make such deliveries and transfers as the personal  
20 representative may direct without being liable for any taxes due under  
21 this chapter.

22 NEW SECTION. **Sec. 6.** Sections 2 and 3 of this act apply both  
23 prospectively and retroactively to all estates of decedents dying on or  
24 after May 17, 2005.

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

28 NEW SECTION. **Sec. 8.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 9.** Section 3 of this act expires January 1,  
33 2014.

1        NEW SECTION.    **Sec. 10.**    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, except for section 4 of this act which takes effect  
5    January 1, 2014.

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