
SUBSTITUTE SENATE BILL 5939

State of Washington 63rd Legislature 2013 1st Special Session

By Senate Ways & Means (originally sponsored by Senators Hill and Braun)

READ FIRST TIME 06/03/13.

1 AN ACT Relating to the estate tax; amending RCW 83.100.020,
2 83.100.040, 83.100.047, and 83.100.047; creating new sections;
3 providing an effective date; providing an expiration date; and
4 declaring an emergency.

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

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

16 (2) In *In re Estate of Bracken*, 175 Wn.2d 549, 290 P.3d 99 (2012),
17 the Washington supreme court narrowly construed the term "transfer" as
18 defined in the Washington estate tax code.

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

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

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

25 (6) As curative, clarifying, and remedial, the legislature intends
26 for sections 2 and 4 of this act to apply both prospectively and
27 retroactively to estates of decedents dying on or after May 17, 2005.

28 (7) The legislature, while finding it necessary to address the
29 inequity and significant unanticipated fiscal impact created by the
30 *Bracken* decision, also finds that the state's estate tax burdens family
31 owned businesses, undermines job creation, and discourages savings and
32 investment. Therefore, the legislature also intends by this act to
33 increase the threshold for determining whether the tax applies to an
34 estate, and also to decrease the tax rate to seventy-five percent of
35 current rates by calendar year 2022.

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

1 ~~((As used in this chapter:~~
2 ~~(1))~~) Subject to the enactment into law of the 2013 amendments to
3 RCW 83.100.040 in section 3 of this act, the 2013 amendments to RCW
4 83.100.047 in section 4 of this act, and the 2013 amendments to RCW
5 83.100.047 in section 5 of this act: The definitions in this section
6 apply throughout this chapter unless the context clearly requires
7 otherwise.

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

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

11 (ii) Two million dollars for estates of decedents dying on or after
12 January 2006, and before January 1, 2015;

13 (iii) Three million dollars for estates of decedents dying during
14 the 2015 calendar year;

15 (iv) Four million dollars for estates of decedents dying during the
16 2016 calendar year; and

17 (v) For estates of decedents dying after December 31, 2016, the
18 applicable exclusion amount equals the federal exclusion amount.

19 (b) For purposes of this subsection "federal exclusion amount"
20 means the estate's basic exclusion amount as determined under section
21 2010(c)(3) of the internal revenue code as existing on January 1, 2013.

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

23 ~~((+2))~~ (3) "Department" means the department of revenue, the
24 director of that department, or any employee of the department
25 exercising authority lawfully delegated to him or her by the
26 director((+)).

27 ~~((+3))~~ (4) "Federal return" means any tax return required by
28 chapter 11 of the internal revenue code((+)).

29 ~~((+4))~~ (5) "Federal tax" means a tax under chapter 11 of the
30 internal revenue code((+)).

31 ~~((+5))~~ (6) "Gross estate" means "gross estate" as defined and used
32 in section 2031 of the internal revenue code((+)).

33 ~~((+6))~~ (7) "Person" means any individual, estate, trust, receiver,
34 cooperative association, club, corporation, company, firm, partnership,
35 joint venture, syndicate, or other entity and, to the extent permitted
36 by law, any federal, state, or other governmental unit or subdivision
37 or agency, department, or instrumentality thereof((+)).

1 ~~((7))~~ (8) "Person required to file the federal return" means any
2 person required to file a return required by chapter 11 of the internal
3 revenue code, such as the personal representative of an estate(~~(+)~~).

4 ~~((8))~~ (9) "Property" means property included in the gross
5 estate(~~(+)~~).

6 ~~((9))~~ (10) "Resident" means a decedent who was domiciled in
7 Washington at time of death(~~(+)~~).

8 ~~((10))~~ (11) "Taxpayer" means a person upon whom tax is imposed
9 under this chapter, including an estate or a person liable for tax
10 under RCW 83.100.120(~~(+)~~).

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

18 ~~((12))~~ (13) "Internal revenue code" means, for the purposes of
19 this chapter and RCW 83.110.010, the United States internal revenue
20 code of 1986, as amended or renumbered as of January 1, 2005(~~(+)~~).

21 ~~((13))~~ (14) "Washington taxable estate" means the federal taxable
22 estate(~~(, less: (a) One million five hundred thousand dollars for~~
23 ~~decedents dying before January 1, 2006; and (b) two million dollars for~~
24 ~~decedents dying on or after January 1, 2006; and (c))~~) and includes,
25 but is not limited to, the value of any property included in the gross
26 estate under section 2044 of the internal revenue code, regardless of
27 whether the decedent's interest in such property was acquired before
28 May 17, 2005, (a) plus amounts required to be added to the Washington
29 taxable estate under RCW 83.100.047, (b) less: (i) The applicable
30 exclusion amount; (ii) the amount of any deduction allowed under RCW
31 83.100.046; and (iii) amounts allowed to be deducted from the
32 Washington taxable estate under RCW 83.100.047.

33 ~~((14))~~ (15) "Federal taxable estate" means the taxable estate as
34 determined under chapter 11 of the internal revenue code without regard
35 to: (a) The termination of the federal estate tax under section 2210
36 of the internal revenue code or any other provision of law, and (b) the
37 deduction for state estate, inheritance, legacy, or succession taxes
38 allowable under section 2058 of the internal revenue code.

1 **Sec. 3.** RCW 83.100.040 and 2010 c 106 s 234 are each amended to
 2 read as follows:

3 Subject to the enactment into law of the 2013 amendments to RCW
 4 83.100.020 in section 2 of this act, the 2013 amendments to RCW
 5 83.100.047 in section 4 of this act, and the 2013 amendments to RCW
 6 83.100.047 in section 5 of this act:

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

11 (2)(a) Except as provided in (b) and (c) of this subsection, the
 12 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
\$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
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
\$9,000,000		\$1,440,000	19.00%	\$9,000,000

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

32 (c) The applicable tax rate due under this chapter is reduced for
 33 estates of decedents dying after December 31, 2017, as follows:

34 (i) For decedents dying in calendar year 2018, the amount of tax
 35 due is the amount determined in (a) or (b) of this subsection, as
 36 applicable, multiplied by ninety-five percent;

1 (ii) For decedents dying in calendar year 2019, the amount of tax
2 due is the amount determined in (a) or (b) of this subsection, as
3 applicable, multiplied by ninety percent;

4 (iii) For decedents dying in calendar year 2020, the amount of tax
5 due is the amount determined in (a) or (b) of this subsection, as
6 applicable, multiplied by eighty-five percent;

7 (iv) For decedents dying in calendar year 2021, the amount of tax
8 due is the amount determined in (a) or (b) of this subsection, as
9 applicable, multiplied by eighty percent;

10 (v) For decedents dying in calendar year 2022 and thereafter, the
11 amount of tax due is the amount determined in (a) or (b) of this
12 subsection, as applicable, multiplied by seventy-five percent.

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

19 **Sec. 4.** RCW 83.100.047 and 2005 c 516 s 13 are each amended to
20 read as follows:

21 Subject to the enactment into law of the 2013 amendments to RCW
22 83.100.020 in section 2 of this act and the 2013 amendments to RCW
23 83.100.040 in section 3 of this act:

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

36 (2) Amounts deducted for federal income tax purposes under section

1 642(g) of the internal revenue code of 1986(~~(, shall))~~ are not (~~(be))~~
2 allowed as deductions in computing the amount of tax due under this
3 chapter.

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

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

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

18 **Sec. 5.** RCW 83.100.047 and 2009 c 521 s 192 are each amended to
19 read as follows:

20 Subject to the enactment into law of the 2013 amendments to RCW
21 83.100.020 in section 2 of this act and the 2013 amendments to RCW
22 83.100.040 in section 3 of this act:

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

35 (b) The department (~~(shall))~~ must provide by rule that a state
36 registered domestic partner is deemed to be a surviving spouse and
37 entitled to a deduction from the Washington taxable estate for any

1 interest passing from the decedent to his or her domestic partner,
2 consistent with section 2056 or 2056A of the internal revenue code but
3 regardless of whether such interest would be deductible from the
4 federal gross estate under section 2056 or 2056A of the internal
5 revenue code.

6 (2) Amounts deducted for federal income tax purposes under section
7 642(g) of the internal revenue code of 1986 (~~shall~~) are not (~~be~~)
8 allowed as deductions in computing the amount of tax due under this
9 chapter.

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

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

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

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

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

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

1 NEW SECTION. **Sec. 9.** Section 4 of this act expires January 1,
2 2014.

3 NEW SECTION. **Sec. 10.** Section 5 of this act takes effect January
4 1, 2014.

5 NEW SECTION. **Sec. 11.** Except for section 5 of this act, this act
6 is necessary for the immediate preservation of the public peace,
7 health, or safety, or support of the state government and its existing
8 public institutions, and takes effect immediately.

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