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**HOUSE BILL 2061**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Representatives Dolan and Ryu

Read first time 02/15/19. Referred to Committee on Finance.

1 AN ACT Relating to the creation of portability of the deceased  
2 spousal unused estate tax exclusion amount to benefit the surviving  
3 spouse with an estate tax rate adjustment to capture revenue forgone  
4 by the federal government; amending RCW 83.100.040, 83.100.050, and  
5 83.100.095; reenacting and amending RCW 83.100.020; adding new  
6 sections to chapter 83.100 RCW; creating a new section; and providing  
7 an effective date.

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

9 **Sec. 1.** RCW 83.100.020 and 2013 2nd sp.s. c 2 s 2 are each  
10 reenacted and amended to read as follows:

11 The definitions in this section apply throughout this chapter  
12 unless the context clearly requires otherwise.

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

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

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

18 (iii) For estates of decedents dying in calendar year 2014 and  
19 each calendar year thereafter, the amount in (a)(ii) of this  
20 subsection must be adjusted annually, except as otherwise provided in  
21 this subsection (1)(a)(iii). The annual adjustment is determined by

1 multiplying two million dollars by one plus the percentage by which  
2 the most recent October consumer price index exceeds the consumer  
3 price index for October 2012, and rounding the result to the nearest  
4 one thousand dollars. No adjustment is made for a calendar year if  
5 the adjustment would result in the same or a lesser applicable  
6 exclusion amount than the applicable exclusion amount for the  
7 immediately preceding calendar year. The applicable exclusion amount  
8 under this subsection (1)(a)(iii) for the decedent's estate is the  
9 applicable exclusion amount in effect as of the date of the  
10 decedent's death.

11 (b) For purposes of this subsection, "consumer price index" means  
12 the consumer price index for all urban consumers, all items, for the  
13 Seattle-Tacoma-Bremerton metropolitan area as calculated by the  
14 United States bureau of labor statistics.

15 (2) "Deceased spousal unused exclusion amount" means the portion  
16 of the applicable exclusion amount that was not needed to reduce the  
17 Washington taxable estate of the last deceased spouse of a surviving  
18 spouse to zero.

19 (3) "Decedent" means a deceased individual.

20 ((+3)) (4) "Department" means the department of revenue, the  
21 director of that department, or any employee of the department  
22 exercising authority lawfully delegated to him or her by the  
23 director.

24 ((+4)) (5) "Federal return" means any tax return required by  
25 chapter 11 of the internal revenue code.

26 ((+5)) (6) "Federal tax" means a tax under chapter 11 of the  
27 internal revenue code.

28 ((+6)) (7) "Federal taxable estate" means the taxable estate as  
29 determined under chapter 11 of the internal revenue code without  
30 regard to: (a) The termination of the federal estate tax under  
31 section 2210 of the internal revenue code or any other provision of  
32 law, and (b) the deduction for state estate, inheritance, legacy, or  
33 succession taxes allowable under section 2058 of the internal revenue  
34 code.

35 ((+7)) (8) "Gross estate" means "gross estate" as defined and  
36 used in section 2031 of the internal revenue code.

37 ((+8)) (9) "Internal revenue code" means the United States  
38 internal revenue code of 1986, as amended or renumbered as of January  
39 1, 2005.

1       ~~((9))~~ (10) "Person" means any individual, estate, trust,  
2 receiver, cooperative association, club, corporation, company, firm,  
3 partnership, joint venture, syndicate, or other entity and, to the  
4 extent permitted by law, any federal, state, or other governmental  
5 unit or subdivision or agency, department, or instrumentality  
6 thereof.

7       ~~((10))~~ (11) "Person required to file the federal return" means  
8 any person required to file a return required by chapter 11 of the  
9 internal revenue code, such as the personal representative of an  
10 estate.

11       ~~((11))~~ (12) "Property" means property included in the gross  
12 estate.

13       ~~((12))~~ (13) "Resident" means a decedent who was domiciled in  
14 Washington at time of death.

15       ~~((13))~~ (14) "Taxpayer" means a person upon whom tax is imposed  
16 under this chapter, including an estate or a person liable for tax  
17 under RCW 83.100.120.

18       ~~((14))~~ (15) "Transfer" means "transfer" as used in section 2001  
19 of the internal revenue code and includes any shifting upon death of  
20 the economic benefit in property or any power or legal privilege  
21 incidental to the ownership or enjoyment of property. However,  
22 "transfer" does not include a qualified heir disposing of an interest  
23 in property qualifying for a deduction under RCW 83.100.046 or  
24 ceasing to use the property for farming purposes.

25       ~~((15))~~ (16) "Washington taxable estate" means the federal  
26 taxable estate and includes, but is not limited to, the value of any  
27 property included in the gross estate under section 2044 of the  
28 internal revenue code, regardless of whether the decedent's interest  
29 in such property was acquired before May 17, 2005, (a) plus amounts  
30 required to be added to the Washington taxable estate under RCW  
31 83.100.047, (b) less: (i) The applicable exclusion amount; (ii) the  
32 amount of any deduction allowed under RCW 83.100.046; (iii) amounts  
33 allowed to be deducted from the Washington taxable estate under RCW  
34 83.100.047; ~~((and))~~ (iv) the amount of any deduction allowed under  
35 RCW 83.100.048; and (v) the amount of any exclusion allowed under  
36 section 3 of this act.

37       **Sec. 2.** RCW 83.100.040 and 2013 2nd sp.s. c 2 s 4 are each  
38 amended to read as follows:

(1) This section applies only to the estates of decedents who die before January 1, 2020. A tax in an amount computed as provided in this section is imposed on every transfer of property located in Washington. For the purposes of this section, any intangible property owned by a resident 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 Taxable Estate Value Greater than
Estate is at least	But Less Than	Initial Tax Amount	Plus Tax Rate %	
\$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	18.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$910,000	19.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,100,000	19.50%	\$7,000,000
\$9,000,000		\$1,490,000	20.00%	\$9,000,000

(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.

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

1 (1) This section applies only to the estates of decedents who die  
2 on or after January 1, 2020.

3 A tax in an amount computed as provided in this section is  
4 imposed on every transfer of property located in Washington. For the  
5 purposes of this section, any intangible property owned by a resident  
6 is located in Washington.

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

If Washington Taxable		The amount of Tax Equals		Of Washington Taxable Estate Value Greater than
Estate is at least	But Less Than	Initial Tax Amount	Plus Tax Rate %	
\$0	\$1,000,000	\$0	14.00%	\$0
\$1,000,000	\$1,500,000	\$140,000	17.00%	\$1,000,000
\$1,500,000	\$2,000,000	\$225,000	18.00%	\$1,500,000
\$2,000,000	\$2,500,000	\$315,000	23.00%	\$2,000,000
\$2,500,000	\$3,000,000	\$430,000	24.00%	\$2,500,000
\$3,000,000	\$4,000,000	\$550,000	26.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$810,000	27.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$1,350,000	28.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,630,000	29.00%	\$7,000,000
\$9,000,000		\$2,210,000	30.00%	\$9,000,000

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

30 (3) The tax imposed under this section is a stand-alone estate  
31 tax that incorporates only those provisions of the internal revenue  
32 code as amended or renumbered as of January 1, 2020, that do not  
33 conflict with the provisions of this chapter. The tax imposed under  
34 this chapter is independent of any federal estate tax obligation and  
35 is not affected by termination of the federal estate tax.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 83.100  
2 RCW to read as follows:

3        (1) The estate of a surviving spouse may use a deceased spousal  
4 unused exclusion amount only if the estate of the last deceased  
5 spouse of the surviving spouse filed an estate tax return within the  
6 time required by RCW 83.100.050(2), on which:

7            (a) The Washington taxable estate is computed; and

8            (b) An election is taken allowing the deceased spousal unused  
9 exclusion amount to be used by the estate of the surviving spouse.

10        (2) Any election made under subsection (1)(b) of this section is  
11 irrevocable.

12        (3) This section applies only to the estates of decedents who die  
13 after December 31, 2019.

14        **Sec. 5.**    RCW 83.100.050 and 2017 c 323 s 601 are each amended to  
15 read as follows:

16        (1) A Washington return must be filed if the gross estate equals  
17 or exceeds the applicable exclusion amount, or if the estate elects  
18 to transfer a deceased spousal unused exclusion amount as provided in  
19 section 3 of this act.

20        (2) If a Washington return is required as provided in subsection  
21 (1) of this section:

22            (a) A person required to file a federal return must file with the  
23 department on or before the date the federal return is required to be  
24 filed, including any extension of time for filing under subsection  
25 (4) or (6) of this section, a Washington return for the tax due under  
26 this chapter.

27            (b) If no federal return is required to be filed, a taxpayer  
28 shall file with the department on or before the date a federal return  
29 would have been required to be filed, including any extension of time  
30 for filing under subsection (5) or (6) of this section, a Washington  
31 return for the tax due under this chapter.

32        (3) A Washington return delivered to the department by United  
33 States mail is considered to have been received by the department on  
34 the date of the United States postmark stamped on the cover in which  
35 the return is mailed, if the postmark date is within the time allowed  
36 for filing the Washington return, including extensions.

37        (4) In addition to the Washington return required to be filed in  
38 subsection (2) of this section, a person must file with the  
39 department on or before the date the federal return is or would have

1 been required to be filed all supporting documentation for completed  
2 Washington return schedules, and, if a federal return has been filed,  
3 a copy of the federal return. If the person required to file the  
4 federal return has obtained an extension of time for filing the  
5 federal return, the person must file the Washington return within the  
6 same time period and in the same manner as provided for the federal  
7 return. A copy of the federal extension must be filed with the  
8 department on or before the date the Washington return is due, not  
9 including any extension of time for filing, or within thirty days of  
10 issuance, whichever is later.

11 (5) A person may obtain an extension of time for filing the  
12 Washington return as provided by rule of the department, if the  
13 person is required to file a Washington return under subsection (2)  
14 of this section, but is not required to file a federal return.

15 (6) During a state of emergency declared under RCW 43.06.010(12),  
16 the department, on its own motion or at the request of any taxpayer  
17 affected by the emergency, may extend the time for filing a  
18 Washington return under this section as the department deems proper.

19 **Sec. 6.** RCW 83.100.095 and 2005 c 516 s 14 are each amended to  
20 read as follows:

21 (1) If upon examination of any returns or from other information  
22 obtained by the department it appears that a tax or penalty has been  
23 paid less than that properly due, the department shall assess against  
24 the taxpayer an additional amount found to be due and shall add  
25 interest as provided in RCW 83.100.070 on the tax only. The  
26 department shall notify the taxpayer by mail of the additional  
27 amount, and the additional amount shall become due and shall be paid  
28 within thirty days from the date of the notice, or within such  
29 further time as the department may provide.

30 (2) Interest shall be computed from the original due date of the  
31 Washington return until the due date of the notice. If payment in  
32 full is not made by the due date of the notice, additional interest  
33 shall be computed until the date of payment.

34 (3) No assessment or correction of an assessment for additional  
35 taxes, penalties, or interest due may be made by the department more  
36 than four years after the close of the calendar year in which a  
37 Washington return is due under this chapter, including any extension  
38 of time for filing, except upon a showing of fraud or of  
39 misrepresentation of a material fact by the taxpayer or as provided

1 under subsections (4) ~~((or))~~, (5), and (6) of this section or as  
2 otherwise provided in this chapter.

3 (4) For persons liable for tax under RCW 83.100.120, the period  
4 for assessment or correction of an assessment shall extend an  
5 additional three years beyond the period described in subsection (3)  
6 of this section.

7 (5) A taxpayer may extend the periods of limitation under  
8 subsection (3) or (4) of this section by executing a written waiver.  
9 The execution of the waiver shall also extend the period for making a  
10 refund as provided in RCW 83.100.130.

11 (6) If an estate tax return includes an election permitted under  
12 section 3 of this act to allow a surviving spouse to use a deceased  
13 spousal unused exclusion amount, the period for assessment or  
14 correction of assessment is extended until the applicable periods of  
15 limitation under subsections (3), (4), and (5) of this section have  
16 expired for the estate tax return of the surviving spouse.

17 NEW SECTION. **Sec. 7.** This act does not affect any existing  
18 right acquired or liability or obligation incurred under the sections  
19 amended or repealed or under any rule or order adopted under those  
20 sections, nor does it affect any proceeding instituted under those  
21 sections.

22 NEW SECTION. **Sec. 8.** This act takes effect January 1, 2020.

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