

**WAC 458-57-025 Determining the tax liability of nonresidents.**

(1) **Introduction.** This rule applies to deaths occurring on or before May 16, 2005, and discusses how property of nonresident decedents is taxed if that property is located within Washington at the time of death. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 458-57-165.

(2) **Nonresident decedents and Washington's estate tax.** If any decedent has tangible personal property and/or real property located in Washington state at the time of death, that property is subject to Washington's estate tax.

(a) **The reciprocity exemption.** A nonresident decedent's estate is exempt from Washington's estate tax if the nonresident's state of domicile exempts the property of Washington residents from estate, inheritance, or other death taxes normally imposed by the domicile state. The nonresident decedent must have been a citizen and resident of the United States at the time of death. Also, at the time of death the laws of the domicile state must have made specific reference to this state, or must have contained a reciprocal provision under which nonresidents of the domicile state were exempted from applicable death taxes with respect to property or transfers otherwise subject to the jurisdiction of that state.

In those instances where application of this provision results in loss of available federal credit which would otherwise be allowed for federal tax purposes, Washington will absorb that proportional share which is applicable to property within the jurisdiction of this state. Application of this provision will not act to increase the total tax obligation of the estate.

(b) **Property of a nonresident's estate which is located in Washington.** A nonresident decedent's estate may have either real property or tangible personal property located in Washington at the time of death.

(i) All real property physically situated in this state, with the exception of federal trust lands, and all interests in such property, are deemed "located in" Washington. Such interests include, but are not limited to:

- (A) Leasehold interests;
- (B) Mineral interests;
- (C) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property;
- (D) Trusts (beneficial interest in trusts of realty); and
- (E) Decedent's interest in jointly owned property (e.g., tenants in common, joint with right of survivorship).

(ii) Tangible personal property of a nonresident decedent shall be deemed located in Washington only if:

- (A) At the time of death the property is situated in Washington; and
- (B) It is present for a purpose other than transiting the state.

(iii) For example, consider a nonresident decedent who was a construction contractor doing business as a sole proprietor. The decedent was constructing a large building in Washington. At the time of death, any of the decedent's equipment that was located at the job site in Washington, such as tools, earthmovers, bulldozers, trucks, etc., would be deemed located in Washington for estate tax purposes. Also, the decedent had negotiated and signed a purchase contract for speculative property in another part of Washington. For estate tax purposes, that real property should also be considered a part of the decedent's estate located in Washington.

(c) **Formula to calculate Washington's estate tax for nonresident decedents.** The amount of tax payable to Washington for a nonresident decedent equals the amount of federal credit multiplied by a fraction, the numerator of which is the value of the property located in Washington, and the denominator of which is the value of the decedent's gross estate. Restated:  $\text{Federal Credit} \times (\text{Gross Value of Property in Washington/Decedent's Gross Estate}) = \text{Amount of Washington Estate Tax Due}$ . This formula uses the gross value determined for estate tax purposes of any property located in Washington. No reduction will be allowed for any mortgages, liens, or other encumbrances or debts associated with such property except to the extent allowable in computing the gross estate for estate tax purposes.

[Statutory Authority: RCW 83.100.047 and 83.100.200. WSR 06-07-051, § 458-57-025, filed 3/9/06, effective 4/9/06. Statutory Authority: RCW 83.100.200. WSR 02-18-078, § 458-57-025, filed 8/30/02, effective 9/30/02; WSR 99-15-095, § 458-57-025, filed 7/21/99, effective 8/21/99.]