

NEW SECTION. Sec. 13. This act shall take effect July 1, 1990.

Passed the Senate February 7, 1990.

Passed the House March 2, 1990.

Approved by the Governor March 26, 1990.

Filed in Office of Secretary of State March 26, 1990.

CHAPTER 179

[Substitute Senate Bill No. 6390]

MARITAL DEDUCTION GIFTS—NONCITIZEN SURVIVING SPOUSE

AN ACT Relating to qualified domestic trusts regarding estate tax marital deductions for gifts to surviving spouses; amending RCW 11.96.070, 11.108.025, and 11.108.050; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 8, chapter 31, Laws of 1985 as amended by section 6, chapter 29, Laws of 1988 and RCW 11.96.070 are each amended to read as follows:

A trustor, grantor, personal representative, trustee, or other fiduciary, creditor, devisee, legatee, heir, or trust beneficiary interested in the administration of a trust, or the attorney general in the case of a charitable trust under RCW 11.110.120, or of the estate of a decedent, incompetent, or disabled person, may have a judicial proceeding for the declaration of rights or legal relations in respect to the trust or estate:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;

(2) To direct the personal representatives or trustees to do or abstain from doing any particular act in their fiduciary capacity;

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings;

(4) To confer upon the personal representatives or trustees any necessary or desirable powers not otherwise granted in the instrument or given by law that the court determines are not inconsistent with the provisions or purposes of the will or trust;

(5) To amend or conform the will or the trust instrument in the manner required to qualify the gift thereunder for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest; or

(6) To amend or conform the will or the trust instrument in the manner required to qualify any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital

deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code as required by final regulations and rulings of the United States treasury department or internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest; or

(7) To resolve any other matter in this title referencing this judicial proceedings section.

The provisions of this chapter apply to disputes arising in connection with estates of incompetents or disabled persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The provisions of this chapter shall not supersede the otherwise applicable provisions and procedures of chapter 11.24, 11.28, 11.40, 11.52, 11.56, or 11.60 RCW with respect to any rights or legal obligations that are subject to those chapters.

Sec. 2. Section 29, chapter 64, Laws of 1988 and RCW 11.108.025 are each amended to read as follows:

Unless a governing instrument directs to the contrary:

(1) The fiduciary shall have the power to make elections, in whole or in part, to qualify property for the marital deduction as qualified terminable interest property under section 2056(b)(7) of the internal revenue code or, if the surviving spouse is not a citizen of the United States, under section 2056A of the internal revenue code.

(2) The fiduciary making an election under section 2056(b)(7) or 2056A of the internal revenue code may benefit personally from the election, with no duty to reimburse any other person interested in the election. The fiduciary shall have no duty to make any equitable adjustment and shall have no duty to treat interested persons impartially in respect of the election.

(3) The fiduciary making an election under section 2056(b)(7) or 2056A of the internal revenue code shall have the power to divide the trust into two or more separate trusts, of equal or unequal value, provided that the division shall not prevent a separate trust for which the election is made from qualifying for the marital deduction under the internal revenue code and its regulations.

Sec. 3. Section 110, chapter 30, Laws of 1985 and RCW 11.108.050 are each amended to read as follows:

(1) If a governing instrument indicates the testator's intention to make a marital deduction gift in trust, in addition to the other provisions of this section, each of the following also applies to the trust; provided, however, that such provisions shall not apply to any trust which provides for the entire then remaining trust estate to be paid on the termination of the income interest to the estate of the spouse of the trust's creator, or to a charitable beneficiary, contributions to which are tax deductible for federal income tax purposes:

~~((1))~~ (a) The only income beneficiary of a marital deduction trust is the testator's surviving spouse;

~~((2))~~ (b) The income beneficiary is entitled to all of the trust income until the trust terminates;

~~((3))~~ (c) The trust income is payable to the income beneficiary not less frequently than annually; and

~~((4))~~ (d) Except in the case of a marital deduction gift in trust, described in subsection (2) of this section, or property that has or would otherwise have qualified for the marital deduction only as the result of an election under section 2056(b)(7) of the internal revenue code, upon termination of the trust, all of the remaining trust assets, including accrued or undistributed income, pass either to the income beneficiary or under the exercise of a general power of appointment granted to the income beneficiary in favor of the income beneficiary's estate or to any other person or entity in trust or outright. The general power of appointment is exercisable by the income beneficiary alone and in all events.

(2) If a governing instrument indicates the testator's intention to make a marital deduction gift in trust and the surviving spouse is not a citizen of the United States, subsection (1)(a), (b), and (c) of this section and each of the following shall apply to the trust:

(a) At least one trustee of the trust shall be an individual citizen of the United States or of a domestic corporation. However, any distribution from the trust must be approved by this trustee;

(b) The trust shall meet such requirements as the secretary of the treasury of the United States may by regulations prescribe to ensure collection of estate tax, under section 2056A(b) of the internal revenue code; and

(c) (a) and (b) of this subsection shall no longer apply to the trust if the surviving spouse becomes a citizen of the United States and (i) the surviving spouse is a resident of the United States at all times after the testator's death and before becoming a citizen, or (ii) no tax has been imposed on the trust under section 2056A(b)(1)(A) of the internal revenue code before the surviving spouse becomes a citizen, or (iii) the surviving spouse makes an election under section 2056A(b)(12)(C) of the internal revenue code regarding tax imposed on distributions from the trust before becoming a citizen.

(3) The exercise of the general power of appointment provided in this section shall be done only by the income beneficiary in the manner provided by RCW 11.95.060 by specifically referring to this section.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state

government and its existing public institutions, and shall take effect immediately.

Passed the Senate February 13, 1990.

Passed the House March 2, 1990.

Approved by the Governor March 26, 1990.

Filed in Office of Secretary of State March 26, 1990.

CHAPTER 180

[Substitute Senate Bill No. 6395]

INHERITANCE TAX—DELETION OF OBSOLETE REFERENCES

AN ACT Relating to the deletion of obsolete inheritance tax references; amending RCW 11.44.066, 11.56.030, 11.56.280, 11.62.020, 11.68.110, and 83.110.030; adding new sections to chapter 11.02 RCW; and repealing RCW 11.86.075 and 11.44.061.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 49, chapter 117, Laws of 1974 ex. sess. and RCW 11.44.066 are each amended to read as follows:

Within the time required to file an inventory as provided in RCW 11.44.015, the personal representative shall determine the fair net value, as of the date of the decedent's death, of each item contained in the inventory after deducting the encumbrances, liens, and other secured charges thereon. The personal representative may employ a qualified and disinterested person to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The appraisal may, but need not be, filed in the probate cause: PROVIDED HOWEVER, That upon receipt of a written request for a copy of said inventory and appraisal from any heir, legatee, devisee or unpaid creditor who has filed a claim, or from the (~~inheritance tax division of the~~) department of revenue, the personal representative shall furnish to said person, a true and correct copy thereof.

Sec. 2. Section 11.56.030, chapter 145, Laws of 1965 and RCW 11.56.030 are each amended to read as follows:

Whenever it shall appear to the satisfaction of the court that any portion or all of the real property should be sold, mortgaged or leased for the purpose of raising money to pay the debts and obligations of the estate, and the expenses of administration, (~~inheritance and federal death tax~~) estate taxes, or for the support of the family, to make distribution, or for such other purposes as the court may deem right and proper, the court may order the sale, lease or mortgage of such portion of the property as appears to the court necessary for the purpose aforesaid. It shall be the duty of the personal representative to present a petition to the court giving a description of