

will result in higher prices to persons in the fishing industry, improved product quality to the consumer, and increased state employment.

The department of agriculture, in conjunction with the department of fisheries and the department of trade and economic development, shall examine and report on the means by which the state may promote and assist in marketing Washington caught fish. For each of those means with the greatest potential for assisting such marketing, the department shall design a marketing plan, project the effectiveness of the plan, and estimate the cost of implementing each plan. Separate plans shall be prepared for each of Washington's major fisheries, including, but not limited to, bottomfish, salmon, mollusks, and crustaceans. To assist in preparing the plans, the department shall appoint advisory committees to represent each major fishery. The advisory committees shall include representatives of Indian and non-Indian fisheries, processors, wholesalers, and individuals knowledgeable in the field of fish marketing.

During the preparation of these plans, the department shall consult the agriculture committees of the house of representatives and senate. By December 1, 1986, the department shall report to the legislature its findings and alternative plans, along with estimates of costs and effectiveness, including identification of any needed legislation needed to implement the plans.

Passed the House February 13, 1986.

Passed the Senate March 3, 1986.

Approved by the Governor March 12, 1986.

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## CHAPTER 63

[House Bill No. 1424]

### ESTATE TAX APPORTIONMENT

AN ACT Relating to estate tax apportionment; and adding a new chapter to Title 83 RCW.

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

**NEW SECTION.** Sec. 1. **DEFINITIONS.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(2) "Fiduciary" means executor, administrator of any description, and trustee;

(3) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(4) "Person interested in the estate" means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent's taxable estate;

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

(6) "Tax" means the federal estate tax and the estate tax payable to this state and interest and penalties imposed in addition to the tax.

NEW SECTION. Sec. 2. APPORTIONMENT. Except as provided in section 9 of this act and unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose.

NEW SECTION. Sec. 3. PROCEDURE FOR DETERMINING APPORTIONMENT. (1) The court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the court of the county wherein the decedent was domiciled at death shall determine the apportionment of the tax upon the application of the person required to pay the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in this chapter because of special circumstances, it may direct apportionment thereon in the manner it finds equitable.

(3) The expenses reasonably incurred by any fiduciary and by other persons interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in section 2 of this act and charged and collected as a part of the tax apportioned. If the court finds it is inequitable to apportion the expenses as provided in section 2 of this act, it may direct apportionment thereof equitably.

(4) If the court finds that the assessment of penalties and interest is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(5) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter, the determination of the court in respect thereto is prima facie correct.

NEW SECTION. Sec. 4. METHOD OF PRORATION. (1) The fiduciary or other person required to pay the tax may withhold from any property of the decedent in his or her possession, distributable to any person interested in the estate, the amount of tax attributable to his or her interest.

If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax, the fiduciary or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter.

(2) If property held by the fiduciary or other person is distributed prior to final apportionment of the tax, the fiduciary or other person may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the court having jurisdiction of the administration of the estate.

NEW SECTION. Sec. 5. ALLOWANCE FOR EXEMPTIONS, DEDUCTIONS, AND CREDITS. (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing that relationship or receiving the gift. When an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the decedent's estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that or in proportion that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this chapter, and to that extent no apportionment shall be made against the property. This does not apply in any instance where the result under section 2053(d) of the Internal Revenue Code of 1954 of the United States relates to deduction for state death taxes on transfers for public, charitable, or religious uses.

**NEW SECTION.** Sec. 6. APPORTIONMENT BETWEEN TEMPORARY AND REMAINDER INTERESTS. No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

**NEW SECTION.** Sec. 7. EXONERATION OF FIDUCIARY. Neither the fiduciary nor other person required to pay the tax is under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to that person until the expiration of the three months next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be paid from the residuary estate. To the extent that the residuary estate is not adequate, the balance shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

**NEW SECTION.** Sec. 8. ACTION BY NONRESIDENT—RECIPROCITY. Subject to this section a fiduciary acting in another state or a person required to pay the tax who is domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax or an estate tax payable to another state or of a death duty due by a decedent's estate to another state from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. The provisions of this section apply only if the state in which the determination of apportionment was made affords a substantially similar remedy.

**NEW SECTION.** Sec. 9. COORDINATION WITH FEDERAL LAW. If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the Federal Estate tax law, the liabilities imposed by the federal law will control and the balance of this chapter shall apply as if the resulting liabilities had been prescribed in this

chapter. Nothing in this chapter affects the right of a personal representative to recover payments due an estate pursuant to the provisions of section 2207A of the Internal Revenue Code of 1954.

**NEW SECTION.** Sec. 10. **UNIFORMITY OF INTERPRETATION.** This chapter shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

**NEW SECTION.** Sec. 11. **SHORT TITLE.** This chapter may be cited as the uniform estate tax apportionment act.

**NEW SECTION.** Sec. 12. **SEVERABILITY.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 13. **CAPTIONS.** As used in this chapter, section captions constitute no part of the law.

**NEW SECTION.** Sec. 14. **APPLICATION.** This chapter does not apply to taxes due on account of the death of decedents dying prior to January 1, 1987.

**NEW SECTION.** Sec. 15. **LEGISLATIVE DIRECTIVE.** Sections 1 through 14 of this act shall constitute a new chapter in Title 83 RCW.

Passed the House February 13, 1986.

Passed the Senate March 3, 1986.

Approved by the Governor March 12, 1986.

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## CHAPTER 64

[Engrossed House Bill No. 1459]

### DRIVING WHILE INTOXICATED—IMPLIED CONSENT

AN ACT Relating to implied consent warnings in cases of driving while intoxicated; and amending RCW 46.20.308 and 46.61.517.

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

Sec. 1. Section 11, chapter 260, Laws of 1981 as last amended by section 3, chapter 407, Laws of 1985 and RCW 46.20.308 are each amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a chemical test or tests of his or her breath or blood for the purpose of determining the alcoholic content of his or her blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor.