

## CHAPTER 7

[Initiative Measure No. 402]

## ESTATE AND TRANSFER TAX REFORM ACT OF 1981

AN ACT Reforming gift and inheritance taxation; adding a new chapter to Title 83 RCW to be designated chapter 83.100 RCW; creating new sections; repealing chapters 83.01, 83.04, 83.05, 83.08, 83.12, 83.14, 83.16, 83.20, 83.24, 83.28, 83.32, 83.36, 83.40, 83.44, 83.48, 83.52, 83.58, 83.60, and 83.98 RCW; prescribing penalties; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 83.100.010. SHORT TITLE. This chapter may be cited as the "Estate and Transfer Tax Reform Act of 1981."

NEW SECTION. Sec. 83.100.020. DEFINITIONS. As used in this chapter:

- (1) "Decedent" means a deceased individual;
- (2) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;
- (3) "Federal credit" means the maximum amount of the credit for estate death taxes allowed by section 2011 for the decedent's net estate;
- (4) "Gross estate" means "gross estate" as defined and used in section 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered;
- (5) "Net estate" means "taxable estate" as defined in section 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered;
- (6) "Nonresident" means a decedent who was domiciled outside Washington at his death;
- (7) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;
- (8) "Personal representative" means the executor or administrator of a decedent or, if no executor or administrator is appointed, qualified, and acting, any person who has possession of any property;
- (9) "Property" means property included in the gross estate;
- (10) "Release" means a release of no tax due or a receipt for payment of the tax due under this chapter;
- (11) "Resident" means a decedent who was domiciled in Washington at time of death;

(12) "Section 2011" means section 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered; and

(13) "Transfer" means "transfer" as defined and used in section 2001 of the United States Internal Revenue Code of 1954, as amended or renumbered.

**NEW SECTION. Sec. 83.100.030. RESIDENTS—TAX IMPOSED—CREDIT FOR TAX PAID OTHER STATE.** (1) A tax in an amount equal to the federal credit is imposed on the transfer of the net estate of every resident.

(2) If any property of a resident is subject to a death tax imposed by another state for which a credit is allowed by section 2011, and if the tax imposed by the other state is not qualified by a reciprocal provision allowing the property to be taxed in the state of decedent's domicile, the amount of the tax due under this section shall be credited with the lesser of:

(a) The amount of the death tax paid the other state and credited against the federal estate tax; or

(b) An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property subject to the death tax imposed by the other state, and the denominator of which is the value of the decedent's gross estate.

**NEW SECTION. Sec. 83.100.040. NONRESIDENTS—TAX IMPOSED—EXEMPTION.** (1) Tax in an amount computed as provided in this section is imposed on the transfer of the net estate located in Washington of every nonresident.

(2) The tax shall be computed by multiplying the federal credit 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.

(3) The transfer of the property of a nonresident is exempt from the tax imposed by this section to the extent that the property of residents is exempt from taxation under the laws of the state in which the nonresident is domiciled.

**NEW SECTION. Sec. 83.100.050. TAX REPORTS—DATE TO BE FILED—EXTENSIONS.** (1) The personal representative of every estate subject to the tax imposed by this chapter who is required by the laws of the United States to file a federal estate tax return shall file with the department on or before the date the federal estate tax return is required to be filed, including any extension of time for filing the federal estate tax return:

(a) A report for the taxes due under this chapter; and

(b) A true copy of the federal estate tax return.

(2) If the personal representative has obtained an extension of time for filing the federal return, the filing required by subsection (1) of this section shall be similarly extended until the end of the time period granted in the

extension of time for the federal return. A true copy of the extension shall be filed with the department within thirty days of issuance.

(3) No Washington report need be filed if the estate is not subject to the tax imposed by this chapter.

(4) If the estate is not subject to the tax imposed by this chapter, the personal representative may apply to the department for the automatic issuance of a release of nonliability. The release, when issued, shall indicate it has been determined that the estate is not subject to the tax and that the estate and the personal representative are free of any claim by the state for taxes owed under this chapter.

**NEW SECTION.** Sec. 83.100.060. DATE PAYMENT DUE—DATE DEEMED RECEIVED. (1) The taxes imposed by this chapter shall be paid by the personal representative to the department on or before the date the return for the taxes is required to be filed under RCW 83.100.050.

(2) For the purposes of this chapter, a return or payment delivered to the department by United States mail shall be considered to have been received by the department on the date of the United States postmark stamped on the cover in which the payment or the request for release of nonliability is mailed, if the postmark date is within the time allowed for filing the return or making the payment, including any extensions.

**NEW SECTION.** Sec. 83.100.070. INTEREST ON AMOUNT DUE—EXTENSION OF TIME TO FILE FEDERAL RETURN. (1) Any tax due under this chapter which is not paid by the time prescribed for the filing of the report as provided in RCW 83.100.050, not including any extensions in respect to the filing of the report or the payment of the tax, shall bear interest at the rate of twelve percent per annum from the date any tax is due until paid.

(2) If the report provided for in RCW 83.100.050 is not filed within the time periods specified, then the personal representative shall pay, in addition to the interest provided in this section, a penalty equal to five percent of the tax due in respect to the transfer for each month beyond the time periods that the report has not been filed, but no penalty so imposed may exceed a total of twenty-five percent of the tax.

(3) If the personal representative has obtained an extension of time for payment of the federal tax, the personal representative may elect to extend the time for payment of the tax due under this chapter in accordance with the extension. The election shall be made by filing a true copy of the extension of time for payment with the report and the returns required under RCW 83.100.050.

**NEW SECTION.** Sec. 83.100.080. DEPARTMENT TO ISSUE RELEASE—FINAL SETTLEMENT OF ACCOUNT. (1) The department shall issue an automatic release to the personal representative when:

(a) No taxes imposed by this chapter are due and upon the receipt of a request for a release of nonliability, if the release includes the sworn statement of the personal representative that in fact no taxes are due; or

(b) The taxes due under this chapter have been paid as prescribed in RCW 83.100.050, and the request for a release includes the sworn statement of the personal representative that in fact all taxes due have been paid.

(2) The obtaining of this release shall give to the personal representative sufficient authority to effectuate the transfer of all property composing the decedent's estate.

NEW SECTION. Sec. 83.100.090. AMENDED RETURNS—FINAL DETERMINATION. (1) If the personal representative files an amended federal return, the personal representative shall immediately file with the department an amended Washington report with a true copy of the amended federal return. If the personal representative is required to pay an additional tax under this chapter pursuant to the amended return, the personal representative shall pay the additional tax, together with interest as provided in RCW 83.100.070, at the same time the personal representative files the amended return, subject, however, to any extension election under RCW 83.100.070.

(2) Upon final determination of the federal tax due with respect to any transfer, the personal representative shall, within sixty days after the determination, give written notice of it to the department in such form as may be prescribed by rule. If any additional tax is due under this chapter by reason of the determination, the personal representative shall pay the same, together with interest as provided in RCW 83.100.070, at the same time he files the notice, subject, however, to any extension election under RCW 83.100.070.

NEW SECTION. Sec. 83.100.100. ADMINISTRATION—RULES. The department shall adopt such rules as may be necessary to carry into effect the provisions of this chapter, including rules relating to the return for taxes due under this chapter. The rules shall have the same force and effect as if specifically set forth in this chapter, unless declared invalid by a judgment of a court of record not appealed from.

NEW SECTION. Sec. 83.100.110. SALE OF PROPERTY TO PAY TAX—CREATION OF LIEN. (1) A personal representative may sell so much of any property as is necessary to pay the taxes due under this chapter. A personal representative may sell so much of any property specifically bequeathed or devised as is necessary to pay the proportionate amount of the taxes due on the transfer of the property and the fees and expenses of the sale, unless the legatee or devisee pays the personal representative the proportionate amount of the taxes due.

(2) Unless any tax due is sooner paid in full, it shall be a lien upon the gross estate of the decedent for a period of ten years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of the lien. Liens created under this subsection shall be qualified as follows:

(a) The limitation period, as described in this subsection, shall in each case be extended for a period of time equal to the period of pendency of litigation of questions affecting the determination of the amount of tax due, provided a lis pendens has been filed with the auditor of the county in which the property is located;

(b) Any part of the gross estate which is transferred to a bona fide purchaser shall be divested of the lien and the lien shall be transferred to the proceeds arising out of the transfer; and

(c) A mortgage on property pursuant to an order of court for payment of charges against the estate and expenses of administration shall constitute a lien upon the property prior and superior to the tax lien, which tax lien shall attach to the proceeds.

**NEW SECTION. Sec. 83.100.120. LIABILITY FOR FAILURE TO PAY TAX BEFORE DISTRIBUTION OR DELIVERY.** (1) Any personal representative who distributes any property without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this chapter is personally liable for the taxes due to the extent of the value of any property that may come or may have come into the possession of the personal representative. Security for payment of the taxes due under this chapter shall be in an amount equal to or greater than the value of all property that is or has come into the possession of the personal representative, as of the time the security is furnished.

(2) Any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent outside Washington without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this chapter is liable for the taxes due under this chapter to the extent of the value of the property delivered. Security for payment of the taxes due under this chapter shall be in an amount equal to or greater than the value of all property delivered to the personal representative or legal representative of the decedent outside Washington by such a person.

(3) For the purposes of this section, persons who do not have possession of a decedent's property include anyone not responsible primarily for paying the tax due under this section or their transferees, which includes but is not limited to mortgagees or pledgees, stockbrokers or stock transfer agents, banks and other depositories of checking and savings accounts, safe-deposit companies, and life insurance companies.

(4) For the purposes of this section, any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent may rely upon the release certificate or the release of nonliability certificate, furnished by the department to the personal representative, as evidence of compliance with the requirements of this chapter, and make such deliveries and transfers as the personal representative may direct without being liable for any taxes due under this chapter.

NEW SECTION. Sec. 83.100.130. REFUND FOR OVERPAYMENT. Whenever it is determined that a personal representative has overpaid the tax due under this chapter, the department may refund the amount of the overpayment, together with interest at the then existing statutory rate of interest. No claim for refund may be initiated more than one year after the date the federal tax has been first paid.

NEW SECTION. Sec. 83.100.140. CRIMINAL ACTS RELATING TO ESTATE TAX RETURNS. Any person who wilfully fails to file a Washington estate tax return when required by this chapter or who wilfully files a false return commits a gross misdemeanor as defined in chapter 9A RCW and shall be punished as provided in Title 9A RCW for the perpetration of a gross misdemeanor.

NEW SECTION. Sec. 83.100.150. ADMINISTRATION BY DEPARTMENT—ACTION FOR COLLECTION OF TAX—APPEAL. (1) The department may collect the tax provided for in this chapter, including applicable interest and penalties, and shall represent this state in all matters pertaining to the same, either before courts or in any other manner. The department, through the attorney general, may institute proceedings for the collection of this tax and any interest and penalties on the tax. The superior court for any county which has assumed lawful jurisdiction over the property of the decedent for general probate or administration purposes under the laws of Washington shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this chapter. If no probate or administration proceedings have been taken out in any court of this state, the superior court for the county in which the decedent was a resident, if the decedent was a domiciliary, or, if the decedent was a nondomiciliary, any court which has sufficient jurisdiction over the property of the decedent, the transfer of which is taxable, to issue probate or administration proceedings thereon, had the same been justified by the legal status of the property or had the same been applied for, shall have jurisdiction. Any such court first acquiring jurisdiction shall retain the same to the exclusion of every other.

(2) Nothing in this chapter denies the right of appellate review as provided by law and the Washington appellate rules.

NEW SECTION. Sec. 83.100.160. (1) The following chapters and their session law bases are each repealed: Chapters 83.01, 83.04, 83.05, 83.08, 83.12, 83.14, 83.16, 83.20, 83.24, 83.28, 83.32, 83.36, 83.40, 83.44, 83.48, 83.52, 83.58, 83.60, and 83.98 RCW.

(2) These repeals shall not be construed as affecting any existing right acquired under the statutes repealed or under any rule, regulation, or order adopted pursuant thereto; nor as affecting any proceeding instituted thereunder.

NEW SECTION. Sec. 83.100.170. As used in this act, section captions constitute no part of the law.

NEW SECTION. Sec. 83.100.180. Sections 83.100.010 through 83.100.150 of this act shall constitute a new chapter in Title 83 RCW to be designated chapter 83.100 RCW.

NEW SECTION. Sec. 83.100.190. This act shall take effect January 1, 1982.

Filed in Office of Secretary of State April 3, 1981.

Passed by the vote of the people at the November 3, 1981 state general election.

Proclamation signed by the Governor December 3, 1981.

## CHAPTER 8

[Second Substitute House Bill No. 788]

### SALES AND USE TAXES—TEMPORARY RATE INCREASE

AN ACT Relating to state sales and use taxation; amending section 82.08.020, chapter 15, Laws of 1961 as last amended by section 2, chapter 324, Laws of 1977 ex. sess. and RCW 82.08.020; amending section 82.12.020, chapter 15, Laws of 1961 as last amended by section 79, chapter 37, Laws of 1980 and RCW 82.12.020; and declaring an emergency.

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

Section 1. Section 82.08.020, chapter 15, Laws of 1961 as last amended by section 2, chapter 324, Laws of 1977 ex. sess. and RCW 82.08.020 are each amended to read as follows:

(1) There is levied and there shall be collected a tax on each retail sale in this state equal to four and one-half percent of the selling price: PROVIDED, That from and after the first day of (~~June, 1976~~) December, 1981, until the thirtieth day of June, (~~1979~~) 1983, such tax shall be levied and collected in an amount equal to (~~four and six-tenths~~) five and five-tenths percent of the selling price.

(2) The tax imposed under this chapter shall apply to successive retail sales of the same property.

Sec. 2. Section 82.12.020, chapter 15, Laws of 1961 as last amended by section 79, chapter 37, Laws of 1980 and RCW 82.12.020 are each amended to read as follows: