

CHAPTER 64

[House Bill No. 1371]

ESTATE AND TRANSFER TAX ACT OF 1988

AN ACT Relating to estates and estate tax; amending RCW 83.100.010, 83.100.020, 83.100.030, 83.100.040, 83.100.050, 83.100.060, 83.100.070, 83.100.080, 83.100.090, 83.100.110, 83.100.130, 83.100.140, 83.100.150, 82.32.240, 11.40.080, 11.08.160, 11.62.005, 11.62.010, 83.110.903, 11.108.010, and 11.108.020; adding a new section to chapter 11.108 RCW; adding new sections to chapter 83.100 RCW; creating new sections; repealing RCW 83.100.100; and declaring an emergency.

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

PART I

Sec. 1. Section 83.100.010, chapter 7, Laws of 1981 2nd ex. sess. and RCW 83.100.010 are each amended to read as follows:

SHORT TITLE. This chapter may be cited as the "Estate and Transfer Tax (~~Reform~~) Act of (~~1981~~) 1988."

Sec. 2. Section 83.100.020, chapter 7, Laws of 1981 2nd ex. sess and RCW 83.100.020 are each amended to read as follows:

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~~) (a) for a transfer, the maximum amount of the credit for state taxes allowed by section 2011 of the United States Internal Revenue Code of 1986, as amended or renumbered; and (b) for a generation-skipping transfer, the maximum amount of the credit for state taxes allowed by section 2604 of the United States Internal Revenue Code of 1986, as amended or renumbered;
- (4) "Federal return" means any tax return required by chapter 11 or 13 of the United States Internal Revenue Code of 1986, as amended or renumbered, and any regulations thereunder;
- (5) "Federal tax" means (a) for a transfer, a tax under chapter 11 of the United States Internal Revenue Code of 1986, as amended or renumbered; and (b) for a generation-skipping transfer, the tax under chapter 13 of the United States Internal Revenue Code of 1986, as amended or renumbered;
- (6) "Generation-skipping transfer" means a "generation-skipping transfer" as defined and used in section 2611 of the United States Internal Revenue Code of 1986, as amended or renumbered;

~~((4))~~ (7) "Gross estate" means "gross estate" as defined and used in section 2031 of the United States Internal Revenue Code of ~~((1954))~~ 1986, 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))~~ (8) "Nonresident" means a decedent who was domiciled outside Washington at his death;

~~((7))~~ (9) "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)) (10) "Person required to file the federal return" means any person required to file a return required by chapter 11 or 13 of the Internal Revenue Code of 1986, as amended or renumbered, such as the personal representative of an estate; or a transferor, trustee, or beneficiary of a generation-skipping transfer; or a qualified heir with respect to qualified real property, as defined and used in section 2032A(c) of the United States Internal Revenue Code of 1986, as amended or renumbered;

(11) "Property" means (a) for a transfer, property included in the gross estate; and (b) for a generation-skipping transfer, all real and personal property subject to the federal tax;

~~((10))~~ "Release" means a release of no tax due or a receipt for payment of the tax due under this chapter;

~~((11))~~ (12) "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))~~ 1986, as amended or renumbered, or a disposition or cessation of qualified use as defined and used in section 2032A(c) of the United States Internal Revenue Code of 1986, as amended or renumbered; and

(14) "Trust" means "trust" under Washington law and any arrangement described in section 2652 of the Internal Revenue Code of 1986, as amended or renumbered.

Sec. 3. Section 83.100.030, chapter 7, Laws of 1981 2nd ex. sess. and RCW 83.100.030 are each amended to read as follows:

RESIDENTS—ESTATE TAX IMPOSED—CREDIT FOR TAX PAID OTHER STATE. (1) A tax in an amount equal to the federal

credit is imposed on ~~((the))~~ every transfer of ~~((the net estate of every))~~ property of a resident.

(2) If ~~((any property of a resident))~~ the transfer is subject to a ~~((death))~~ similar tax imposed by another state for which ~~((a))~~ the federal 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))~~ transfer to be taxed ~~((in the))~~ only in this 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.

Sec. 4. Section 83.100.040, chapter 7, Laws of 1981 2nd ex. sess. and RCW 83.100.040 are each amended to read as follows:

NONRESIDENTS—ESTATE TAX IMPOSED—EXEMPTION. (1) A tax in an amount computed as provided in this section is imposed on ~~((the))~~ every transfer of ~~((the net estate))~~ property 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. 5. GENERATION-SKIPPING TRANSFERS—TAX IMPOSED—CREDIT FOR TAX PAID TO ANOTHER STATE. (1) A tax in an amount equal to the federal credit is imposed on every generation-skipping transfer, if real or tangible personal property subject to the federal tax is located in this state or if the trust has its principal place of administration in this state at the time of the generation-skipping transfer.

(2) If the generation-skipping transfer is subject to a similar tax imposed by another state for which the federal credit is allowed, the amount of the tax due under this section shall be credited with the lesser of:

(a) The amount of the tax paid to the other state and credited against the federal 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

generation-skipping transfer tax imposed by the other state, and the denominator of which is the value of all property subject to the federal tax.

Sec. 6. Section 83.100.050, chapter 7, Laws of 1981 2nd ex. sess. as amended by section 1, chapter 44, Laws of 1986 and RCW 83.100.050 are each amended to read as follows:

TAX RETURN—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))~~ person required to file the federal 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))~~ Washington return for the tax~~((es))~~ due under this chapter; and

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

No Washington return need be filed if no federal return is required. A Washington return 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 return is mailed, if the postmark date is within the time allowed for filing the Washington return, including extensions.

(2) ~~If the ((personal representative))~~ person required to file the federal return 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))~~ person shall file the Washington return within the same time period and in the same manner as provided for the federal return. A ((true)) copy of the federal extension shall be filed with the department on or before the date the Washington return is due, not including any extension of time for filing, or within thirty days of issuance, whichever is later.

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

Sec. 7. Section 83.100.060, chapter 7, Laws of 1981 2nd ex. sess. and RCW 83.100.060 are each amended to read as follows:

DATE PAYMENT DUE—EXTENSIONS. (1) The taxes imposed by this chapter shall be paid by the ~~((personal representative to the department))~~ person required to file the federal return on or before the date the Washington return ((for the taxes)) is required to be filed under RCW 83.100.050, not including any extension of time for filing. 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 payment is mailed, if the postmark date is within the time allowed for making the payment, including any extensions.

(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:))~~ If the person required to file the federal return has obtained an extension of time for payment of the federal tax or has elected to pay such tax in installments, the person may elect to pay the tax imposed by this chapter within the same time period and in the same manner as provided for payment of the federal tax. A copy of the federal extension shall be filed on or before the date the tax imposed by this chapter is due, not including any extension of time for payment, or within thirty days of issuance, whichever is later.

Sec. 8. Section 83.100.070, chapter 7, Laws of 1981 2nd ex. sess. and RCW 83.100.070 are each amended to read as follows:

INTEREST ON AMOUNT DUE—PENALTY FOR LATE FILING. (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;))~~ due date under RCW 83.100.060(1) shall bear interest at the rate of twelve percent per annum from the date ~~((any))~~ the tax is due until paid.

(2) If the ~~((report provided for in RCW 83.100.050))~~ Washington return is not filed ~~((within the time periods specified))~~ when due under RCW 83.100.050, then the ~~((personal representative))~~ person required to file the federal return 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))~~ after the date the return is due until filed. 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:)

Sec. 9. Section 83.100.080, chapter 7, Laws of 1981 2nd ex. sess. as amended by section 2, chapter 44, Laws of 1986 and RCW 83.100.080 are each amended to read as follows:

DEPARTMENT TO ISSUE RELEASE. ~~((+))~~ The department shall issue ~~((an automatic))~~ a release ~~((to the personal representative))~~ when the ~~((taxes))~~ tax due under this chapter ~~((have))~~ has 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).~~ Upon issuance of a release, all property subject to the tax shall be free of any claim for the tax by the state.

Sec. 10. Section 83.100.090, chapter 7, Laws of 1981 2nd ex. sess. and RCW 83.100.090 are each amended to read as follows:

AMENDED RETURNS—ADJUSTMENTS. (1) ~~If the ((personal representative)) person required to file the federal return files an amended federal return, ((the personal representative)) that person shall immediately file with the department an amended Washington ((report)) return 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)) amended Washington return requires payment of an additional tax under this chapter, the tax shall be paid in accordance with RCW 83.100.060 and interest shall be paid in accordance with RCW 83.100.070.~~

(2) ~~Upon ((final determination of the federal tax due with respect to any transfer, the personal representative)) any adjustment in, or final determination of, the amount of federal tax due, the person required to file the federal return 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)) notify the department in writing within sixty days after the adjustment or final determination. If the adjustment or final determination requires payment of an additional tax under this chapter, the tax shall be paid in accordance with RCW 83.100.060 and interest shall be paid in accordance with RCW 83.100.070.~~

Sec. 11. Section 83.100.110, chapter 7, Laws of 1981 2nd ex. sess. and RCW 83.100.110 are each amended to read as follows:

TAX 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 under this chapter is sooner paid in full, it shall be a lien upon the ~~((gross estate of the decedent))~~ property subject to the tax for a period of ten years from the date of ~~((death))~~ the transfer or the generation-skipping transfer, except that ~~((such))~~ any part of the ~~((gross estate as))~~ property which is used for the payment of ~~((charges))~~ claims against the ~~((estate and))~~ property or 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))~~ property subject to the tax which is ~~((transferred))~~ sold 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))~~ of the sale; and

~~((c) A)~~ ~~(b)~~ The lien shall be subordinate to any mortgage or deed of trust on the property pursuant to an order of court for payment of ~~((charges))~~ claims against the ~~((estate and))~~ property or 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)).~~ The lien shall attach to any proceeds from the sale of the property in excess of the obligations secured by the mortgage or deed of trust and the expenses of sale, including a reasonable charge by the trustee and by his or her attorney where the property has been sold by a nonjudicial trustee's sale pursuant to chapter 61.24 RCW, and including court costs and any attorneys' fees awarded by the superior court of the county in which the property is sold at sheriff's sale pursuant to a judicial foreclosure of the mortgage or deed of trust.

(2) If the person required to file the federal return has obtained an extension of time for payment of the federal tax or has elected to pay such tax in installments, the tax lien under this section shall be extended as necessary to prevent its expiration prior to twelve months following the expiration of any such extension or the installment.

(3) The tax lien shall be extended as necessary to prevent its expiration prior to twelve months following the conclusion of litigation of any question affecting the determination of the amount of tax due if a lis pendens has been filed with the auditor of the county in which the property is located.

Sec. 12. Section 83.100.130, chapter 7, Laws of 1981 2nd ex. sess. and RCW 83.100.130 are each amended to read as follows:

REFUND FOR OVERPAYMENT. Whenever ~~((it is determined))~~ the department determines that a ~~((personal representative))~~ person required to file the federal return has overpaid the tax due under this chapter,

the department ~~((may))~~ shall refund the amount of the overpayment, together with interest at the then existing ~~((statutory))~~ rate ~~((of interest))~~ under RCW 83.100.070(1). ~~((No claim for refund may be initiated more than one year after the date the federal tax has been first paid.))~~ If the application for refund, with supporting documents, is filed within four months after an adjustment or final determination of federal tax liability, the department shall pay interest until the date the refund is mailed. If the application for refund, with supporting documents, is filed after four months after the adjustment or final determination, the department shall pay interest only until the end of the four-month period.

Sec. 13. Section 83.100.140, chapter 7, Laws of 1981 2nd ex. sess. and RCW 83.100.140 are each amended to read as follows:

CRIMINAL ACTS RELATING TO TAX RETURNS. Any person required to file the federal return 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 [Title]))~~ Title 9A RCW and shall be punished as provided in Title 9A RCW for the perpetration of a gross misdemeanor.

Sec. 14. Section 83.100.150, chapter 7, Laws of 1981 2nd ex. sess. and RCW 83.100.150 are each amended to read as follows:

COLLECTION OF TAX—FINDINGS FILED IN COURT. (1) The department may collect the estate tax ((provided for in this chapter)) imposed under RCW 83.100.030 and 83.100.040, 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)) At any time after the Washington return is due, the department may file its findings regarding the amount of the tax, the federal credit, the person required to file the federal return, and all persons having an interest in property subject to the tax with the clerk of the superior court in the

matter of the estate of the decedent or, if no probate or administration proceedings have been commenced in any court of this state, of the superior court for the county in which the decedent was a resident, if the resident was a domiciliary, or, if the decedent was a nondomiciliary, of any superior court which has jurisdiction over the property. Such a court first acquiring jurisdiction shall retain jurisdiction to the exclusion of every other court.

(2) The department may collect the generation-skipping transfer tax under section 5 of this 1988 act, including interest and penalties, and shall represent this state in all matters pertaining to the same, either before courts or in any other manner. At any time after the Washington return is due, the department may file its findings regarding the amount of the tax, the federal credit, the person required to file the federal return, and all persons having an interest in property subject to the tax with the clerk of the superior court in the matter of the trust or the estate of the decedent, if any, or, if no trust, probate or administration proceedings have been commenced in any court of this state, of any superior court which has jurisdiction over the property. Such a court first acquiring jurisdiction shall retain jurisdiction to the exclusion of every other court.

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

NEW SECTION. Sec. 15. CLERK TO GIVE NOTICE OF FINDINGS. Upon filing findings under RCW 83.100.150, the clerk of the superior court shall give notice of the filing to all persons interested in the proceeding by causing notice thereof to be posted at the courthouse in the county in which the court is located, and in addition thereto shall mail a copy of the notice to all persons having an interest in property subject to the tax.

NEW SECTION. Sec. 16. COURT ORDER. At any time after the expiration of sixty days from the mailing of the notice under section 15 of this act, if no objection to the findings is filed, the superior court or a judge thereof shall, without further notice, give and make its order confirming the findings and fixing the tax in accordance therewith.

NEW SECTION. Sec. 17. OBJECTIONS. At any time prior to the making of an order under section 16 of this act, any person having an interest in property subject to the tax may file objections in writing with the clerk of the superior court and serve a copy thereof upon the department, and the same shall be noted for trial before the court and a hearing had thereon as provided for hearings in chapter 11.96 RCW.

NEW SECTION. Sec. 18. HEARING BY COURT. Upon the hearing of objections under section 17 of this act, the court shall make such order as it may deem proper. For the purposes of the hearing, the findings of the department shall be presumed to be correct and it shall be the duty of the objector or objectors to proceed in support of the objection or objections.

NEW SECTION. Sec. 19. 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 returns 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. 20. REPEALER. Section 83.100.100, chapter 7, Laws of 1981 2nd ex. sess. and RCW 83.100.100 are each repealed.

PART II

Sec. 21. Section 82.32.240, chapter 15, Laws of 1961 as amended by section 86, chapter 278, Laws of 1975 1st ex. sess. and RCW 82.32.240 are each amended to read as follows:

Any tax due and unpaid and all increases and penalties thereon, shall constitute a debt to the state and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to any and all other existing remedies.

In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, involving any taxpayer who is, or decedent who was, engaging in business, the claim of the state for said taxes and all increases and penalties thereon shall be a lien upon all real and personal property of the taxpayer, and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and in all such cases it shall be the duty of all administrators, executors, guardians, receivers, trustees in bankruptcy or assignees for the benefit of creditors, to notify the department of revenue of such administration, receivership or assignment within ~~((thirty))~~ sixty days from the date of their appointment and qualification.

The lien provided for by this section shall attach as of the date of the assignment for the benefit of creditors or of the initiation of the probate, insolvency, or bankruptcy proceedings: PROVIDED, That this sentence shall not be construed as affecting the validity or priority of any earlier lien that may have attached previously in favor of the state under any other section of this title.

Any administrator, executor, guardian, receiver or assignee for the benefit of creditors not giving the notification as provided for above shall become personally liable for payment of the taxes and all increases and penalties thereon to the extent of the value of the property subject to administration that otherwise would have been available for the payment of such taxes, increases, and penalties by the administrator, executor, guardian, receiver, or assignee.

Sec. 22. Section 11.40.080, chapter 145, Laws of 1965 and RCW 11.40.080 are each amended to read as follows:

No holder of any claim against a decedent shall maintain an action thereon, unless the claim shall have been first presented as herein provided. Nothing in this chapter affects the notice under RCW 82.32.240.

PART III

Sec. 23. Section 11.08.160, chapter 145, Laws of 1965 as amended by section 1, chapter 278, Laws of 1975 1st ex. sess. and RCW 11.08.160 are each amended to read as follows:

The department of revenue of this state shall have supervision of and jurisdiction over escheat property and may institute and prosecute any proceedings, including any proceeding under chapter 11.62 RCW, deemed necessary or proper in the handling of such property, and it shall be the duty of the department of revenue to protect and conserve escheat property for the benefit of the permanent common school fund of the state until such property or the proceeds thereof have been forwarded to the state treasurer or the state land commissioner as hereinafter provided.

Sec. 24. Section 29, chapter 234, Laws of 1977 ex. sess. and RCW 11.62.005 are each amended to read as follows:

As used in this chapter, the following terms shall have the meanings indicated.

(1) "Personal property" shall include any tangible personal property, any instrument evidencing a debt, obligation, stock, chose in action, license or ownership, any debt or any other intangible property.

(2) (a) "Successor" and "successors" shall mean (subject to subsection (2)(b) of this section):

(i) That person or those persons who are entitled to the claimed property pursuant to the terms and provisions of the last will and testament of the decedent or by virtue of the laws of intestate succession contained in this title; and/or

(ii) The surviving spouse of the decedent to the extent that the surviving spouse is entitled to the property claimed as his or her undivided one-half interest in the community property of said spouse and the decedent; and/or

(iii) This state, in the case of escheat property.

(b) Any person claiming to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate shall be excluded from the definition of "successor".

(3) "Person" shall mean any individual or organization.

(4) "Organization" shall include a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

Sec. 25. Section 4, chapter 117, Laws of 1974 ex. sess. as last amended by section 1, chapter 157, Laws of 1987 and RCW 11.62.010 are each amended to read as follows:

(1) At any time after forty days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse as a community, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of subsection (2) of this section.

(2) An affidavit which is to be made pursuant to this section shall state:

(a) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in RCW 11.62.005;

(b) That the decedent was a resident of the state of Washington on the date of his death;

(c) That the value of the decedent's entire estate subject to probate, not including the surviving spouse's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed ten thousand dollars;

(d) That forty days have elapsed since the death of the decedent;

(e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) That all debts of the decedent including funeral and burial expenses have been paid or provided for;

(g) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;

(h) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten days have elapsed since the service or mailing of such notice; and

(i) That the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

(3) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to be the successor with respect to such security upon the presentation of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section. Any governmental agency required to issue certificates of ownership or of license registration to personal property shall issue a new certificate of ownership or of license registration to a

person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section.

~~((4) Upon receipt of notification from the inheritance tax division of the state department of revenue that an inheritance tax report is requested; the holder of any property subject to claim by a successor hereunder shall withhold payment, delivery, transfer or issuance of such property until provided with an inheritance tax release:))~~

PART IV

Sec. 26. Section 14, chapter 63, Laws of 1986 and RCW 83.110.903 are each amended to read as follows:

APPLICATION. This chapter does not apply to taxes due on account of the death of decedents dying prior to January 1, 1987, or on or after January 1, 1987, if at all times after June 11, 1986, the decedent was not competent to change the disposition of his or her property by will.

PART V

Sec. 27. Section 106, chapter 30, Laws of 1985 and RCW 11.108.010 are each amended to read as follows:

DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) The term "pecuniary bequest" means a gift in a governing instrument which either is expressly stated as a fixed dollar amount or is a gift of a dollar amount determinable by the governing instrument, and a gift expressed in terms of a "sum" or an "amount," unless the context dictates otherwise, is a gift of a dollar amount.

(2) The term "marital deduction" means the federal estate tax deduction allowed for transfers under section 2056 of the internal revenue code.

(3) The term "maximum marital deduction" means the maximum amount qualifying for the marital deduction.

(4) The term "marital deduction gift" means a gift intended to qualify for the marital deduction.

(5) The term "governing instrument" includes a will and codicils, irrevocable, and revocable trusts.

(6) "Fiduciary" means trustee or personal representative. Reference to a fiduciary in the singular includes the plural where the context requires.

(7) References to the "internal revenue code" are to the United States internal revenue code of ~~((1954))~~ 1986, as it is amended from time to time. Each reference to a section of the internal revenue code refers as well to any subsequent provisions of law enacted in its place.

(8) The term "gift" refers to all legacies, devises, and bequests made in a governing instrument.

Sec. 28. Section 107, chapter 30, Laws of 1985 and RCW 11.108.020 are each amended to read as follows:

MARITAL DEDUCTION GIFT—COMPLIANCE WITH INTERNAL REVENUE CODE—INTENT. If a governing instrument contains a marital deduction gift, the governing instrument, including any power, duty, or discretionary authority given to the fiduciary, shall be construed to comply with the marital deduction provisions of the internal revenue code and the regulations thereunder in order to conform to that intent. Whether the governing instrument contains a marital deduction gift depends upon the intent of the testator, grantor, or other transferor at the time the governing instrument is executed. If the testator, grantor, or other transferor has adequately evidenced an intention to make a marital deduction gift, the fiduciary shall not take any action or have any power that may impair that deduction~~((:)), but this ((section shall neither))~~ does not require ~~((nor prohibit a))~~ the fiduciary ~~((from making))~~ to make the election ~~((referred to in))~~ under section 2056(b)(7) of the internal revenue code that is referred to in section 29 of this 1988 act.

NEW SECTION. Sec. 29. A new section is added to chapter 11.108 RCW to read as follows:

ELECTION TO QUALIFY PROPERTY FOR THE MARITAL DEDUCTION. 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.

(2) The fiduciary making an election under section 2056(b)(7) 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.

PART VI

NEW SECTION. Sec. 30. CAPTIONS. As used in this act, captions constitute no part of the law.

NEW SECTION. Sec. 31. 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. 32. LEGISLATIVE DIRECTIVE. Sections 5 and 15 through 19 of this act are each added to chapter 83.100 RCW.

NEW SECTION. Sec. 33. RETROSPECTIVE APPLICATION. Section 26 of this act applies retrospectively to January 1, 1987.

NEW SECTION. Sec. 34. EFFECTIVE DATE. This act is necessary for the immediate preservation of the public peace, health, and safety, the

support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 15, 1988.

Passed the Senate March 2, 1988.

Approved by the Governor March 15, 1988.

Filed in Office of Secretary of State March 15, 1988.

CHAPTER 65

[House Bill No. 1693]

EDUCATIONAL SERVICE DISTRICTS—SERVICES FOR SCHOOL FOR THE DEAF OR SCHOOL FOR THE BLIND

AN ACT Relating to authorizing educational service districts to contract with the school for the deaf and the school for the blind; and amending RCW 28A.21.010, 28A.21.086, and 28A.21.090.

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

Sec. 1. Section 1, chapter 176, Laws of 1969 ex. sess. as last amended by section 1, chapter 283, Laws of 1977 ex. sess. and RCW 28A.21.010 are each amended to read as follows:

It shall be the intent and purpose of this chapter to establish educational service districts as regional agencies which are intended to:

- (1) Provide cooperative and informational services to local school districts;
- (2) Assist the superintendent of public instruction and the state board of education in the performance of their respective statutory or constitutional duties; and
- (3) Provide services to school districts and to the school for the deaf and the school for the blind to assure equal educational opportunities.

Sec. 2. Section 11, chapter 282, Laws of 1971 ex. sess. as last amended by section 3, chapter 508, Laws of 1987 and RCW 28A.21.086 are each amended to read as follows:

In addition to other powers and duties as provided by law, every educational service district board shall:

- (1) Comply with rules or regulations of the state board of education and the superintendent of public instruction.
- (2) If the district board deems necessary, establish and operate for the schools within the boundaries of the educational service district a depository and distribution center for films, tapes, charts, maps, and other instructional material as recommended by the school district superintendents within the service area of the educational service district: PROVIDED, That the district may also provide the services of the depository and distribution center to private schools within the district so long as such private schools pay such fees that reflect actual costs for services and the use of instructional materials as may be established by the educational service district board.