

CHAPTER 39

[House Bill No. 1049]

PROSECUTING ATTORNEYS—PERMISSIBLE PRIVATE PRACTICE

AN ACT Relating to the private practice of law by prosecuting attorneys; and amending RCW 36.27.060.

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

Sec. 1. Section 36.27.060, chapter 4, Laws of 1963 as last amended by section 1, chapter 86, Laws of 1973 1st ex. sess. and RCW 36.27.060 are each amended to read as follows:

(1) The prosecuting attorneys and their deputies of class four counties and counties with population larger than class four counties shall serve full time and except as otherwise provided for in this section shall not engage in the private practice of law(~~(-PROVIDED, That)~~).

(2) Deputy prosecuting attorneys in counties of the second class, third class, and fourth class may serve part time and engage in the private practice of law if the board of county commissioners so provides.

(3) Except as provided in subsection (4) of this section, nothing in this section prohibits a prosecuting attorney or deputy prosecuting attorney in any county from:

(a) Performing legal services for himself or herself or his or her immediate family; or

(b) Performing legal services of a charitable nature.

(4) The legal services identified in subsection (3) of this section may not be performed if they would interfere with the duties of a prosecuting attorney, or deputy prosecuting attorney and no services that are performed shall be deemed within the scope of employment of a prosecutor or deputy prosecutor.

Passed the House February 24, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 40

[Substitute House Bill No. 1168]

ESTATE TAX—APPORTIONMENT

AN ACT Relating to the uniform estate tax apportionment act; amending RCW 83.110-.010, 83.110.020, 83.110.030, 83.110.050, 83.110.060, 83.110.090, and 11.98.070; creating a new section; and declaring an emergency.

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

Sec. 1. Section 1, chapter 63, Laws of 1986 and RCW 83.110.010 are each amended to read as follows:

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) "Excise tax" means the federal excise tax imposed by section 4980A(d), or such section as renumbered, of the Internal Revenue Code, which was enacted by section 1133(a) of the tax reform act of 1986, P.L. 99-514 or as subsequently amended, and interest and penalties imposed in addition to the excise tax;

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

~~((3))~~ (4) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered from time to time;

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

~~((4))~~ (6) "Persons interested in retirement distributions" means any person determined as of the date the excise tax is due, including a personal representative, guardian, trustee, or beneficiary, entitled to receive, or who has received, by reason of or following the death of a decedent, any property or interest therein which constitutes a retirement distribution as defined in section 4980A(e), or such section as renumbered, of the Internal Revenue Code, but this definition excludes any alternate payee under a qualified domestic relations order as such terms are defined in section 414(p) of the Internal Revenue Code;

(7) "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))~~ (8) "Qualified heir" means a person interested in the estate who is entitled to receive, or who has received, an interest in qualified real property;

(9) "Qualified real property" means real property for which the election described in section 2032A of the Internal Revenue Code has been made;

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

~~((6))~~ (11) "Tax" means the federal estate tax, the excise tax defined in subsection (2) of this section, and the estate tax payable to this state and interest and penalties imposed in addition to the tax.

Sec. 2. Section 2, chapter 63, Laws of 1986 and RCW 83.110.020 are each amended to read as follows:

(1) Tax other than excise tax. Except as provided in RCW 83.110.090 or subsection (2) of this section, and unless the will, trust, or other dispositive instrument otherwise provides, the tax, but not the excise tax, shall be apportioned among all persons interested in the estate. Except as provided in RCW 83.110.050, 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. Except as provided in RCW 83.110.050, the values used in determining the tax shall be used for that purpose.

(2) Excise tax. Except as provided in RCW 83.110.030(6) and unless the will, beneficiary designation, trust, or other instrument governing the disposition of property subject to the excise tax otherwise provides, the excise tax shall be apportioned among and charged to the persons interested in retirement distributions on which the excise tax is actually imposed. Each person shall be severally liable for the timely payment of the portion of the excise tax so apportioned to the person. The apportionment shall be made in the proportion that the value of the interest of each person interested in the retirement distributions bears to the total value of the interests of all persons interested in the retirement distributions. The values used in determining the excise tax shall be used for that purpose. In order to facilitate timely payment of the excise tax, the fiduciary shall have the right, but not the obligation, in addition to any other power and consistent with the power granted by RCW 11.98.070(13), to make loans, either secured or unsecured at such interest as the fiduciary may determine, not exceeding the amount of the excise tax so apportioned to the persons liable for payment of the excise tax. If the fiduciary or other person is required to pay the excise tax, the fiduciary or other person shall have the rights of recovery provided in RCW 83.110.040 or otherwise.

Sec. 3. Section 3, chapter 63, Laws of 1986 and RCW 83.110.030 are each amended to read as follows:

(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

RCW 83.110.020 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 RCW 83.110.020, 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.

(6) In the case where there are successive interests with respect to retirement distributions, the excise tax shall be equitably apportioned by the court having jurisdiction over the administration of the estate among the persons interested in the retirement distributions as defined in RCW 11.110.010(6).

Sec. 4. Section 5, chapter 63, Laws of 1986 and RCW 83.110.050 are each amended to read as follows:

(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.

(6) In the case of qualified real property, the apportionment of the tax shall be based on the values that would have been used to determine the tax without regard to section 2032A of the Internal Revenue Code. The reduction in the tax attributable to the application of section 2032A shall inure as follows:

(a) First to the benefit of the qualified heirs in proportion to their relative interests in the qualified real property, until the tax attributable to the qualified real property is reduced to zero;

(b) Then to the qualified heirs in proportion to their relative interests in other property of the estate, until the tax attributable to the property is reduced to zero; and

(c) Then to other persons interested in the estate in proportion to their relative interests in other property of the estate.

(7) Any extension in the payment of a part of the tax under any provision of the Internal Revenue Code shall inure to the benefit of, and the tax subject to the extension shall be equitably apportioned among, the persons receiving the property relating to the extension. Any tax benefit derived from the interest paid with respect to the tax shall be equitably apportioned among the persons receiving the property.

Sec. 5. Section 6, chapter 63, Laws of 1986 and RCW 83.110.060 are each amended to read as follows:

Except as otherwise provided in RCW 83.110.030(6), 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.

Sec. 6. Section 9, chapter 63, Laws of 1986 and RCW 83.110.090 are each amended to read as follows:

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)~~).

Sec. 7. Section 50, chapter 30, Laws of 1985 and RCW 11.98.070 are each amended to read as follows:

A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

(1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;

(2) Sell on credit;

(3) Grant, purchase or exercise options;

(4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;

(5) Deposit stock or other corporate securities with any protective or other similar committee;

(6) Assent to corporate sales, leases, and encumbrances;

(7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

(8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by RCW 11.98.070(31);

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

(10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

(11) Compromise or submit claims to arbitration;

(12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

(13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust, unless the loan is as described in RCW 83.110.020(2), and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

(14) Determine the hazards to be insured against and maintain insurance for them;

(15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to

the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

(16) Pay any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian, custodian under the uniform gifts to minors act of any state, person with whom he resides, or third person;

(17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or

officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

(23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

(24) Limit participation in the management of any partnership and act as a limited or general partner;

(25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee;

(27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except a trustee may not delegate all of the trustee's duties and responsibilities, and except that this employment does not relieve the trustee of liability for the discretionary acts of a person, which if done by the trustee, would result in liability to the trustee, or of the duty to select and retain a person with reasonable care;

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

(29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

(30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

(31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;

(33) Rely with acquittance on advice of counsel on questions of law; and

(34) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust.

NEW SECTION. Sec. 8. (1) The amendments made in this act with respect to the excise tax imposed under section 4980A(d) of the Internal

Revenue Code of 1986, as amended, are to be effective as to excise tax imposed by reason of a decedent's death occurring after the effective date of this act.

(2) The amendments made in this act regarding apportionment of the tax with respect to qualified real property, and regarding extensions to pay tax, shall be effective with respect to the tax attributable to deaths occurring after the effective date of this act.

(3) The amendment to RCW 11.98.070(13) shall be effective with respect to loans described in RCW 83.110.020(2) made or committed to be made after the effective date of this act.

NEW SECTION. Sec. 9. 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. 10. 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 House February 1, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 41

[Substitute House Bill No. 1259]

GUIDE AND SERVICE DOGS—EXEMPTION FROM LOCAL LICENSE FEES

AN ACT Relating to license fees for guide and service dogs; and adding a new section to chapter 70.84 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 70.84 RCW to read as follows:

A county, city, or town shall honor a request by a blind person or hearing impaired person not to be charged a fee to license his or her guide dog, or a request by a physically disabled person not to be charged a fee to license his or her service dog.

Passed the House March 2, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.