

SIXTY THIRD LEGISLATURE - SECOND SPECIAL SESSION

SECOND DAY

House Chamber, Olympia, Thursday, June 13, 2013

as not found

The House was called to order at 9:00 a.m. by the Speaker (Representative Moeller presiding). The Clerk called the roll and a quorum was present.

The flags were escorted to the rostrum by a Sergeant at Arms Color Guard, Garrett Cooper and Thomas Rhoads. The Speaker (Representative Moeller presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Representative Mark Hargrove, 47th District.

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

MESSAGE FROM THE SENATE

June 12, 2013

MR. SPEAKER:

The Senate has adopted:

HOUSE CONCURRENT RESOLUTION NO. 4410
and the same is herewith transmitted.

Hunter G. Goodman, Secretary

There being no objection, the House advanced to the sixth order of business.

SECOND READING

ENGROSSED HOUSE BILL NO. 2075, by Representatives Carlyle and Roberts

Preserving funding deposited into the education legacy trust account used to support common schools and access to higher education by restoring the application of the Washington estate and transfer tax to certain property transfers while modifying the estate and transfer tax to provide tax relief for certain estates.

The bill was read the second time.

Representative Carlyle moved the adoption of amendment (523).

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) In 2005, to address an unexpected significant loss of tax revenue resulting from the *Estate of Hemphill* decision and to provide additional funding for public education, the legislature enacted a stand-alone estate and transfer tax, effective May 17, 2005. The stand-alone estate and transfer tax applies to the transfer of property at death. By defining the term "transfer" to mean a "transfer as used in section 2001 of the internal revenue code," the legislature clearly expressed its intent that a "transfer" for purposes of

determining the federal taxable estate is also a "transfer" for purposes of determining the Washington taxable estate.

(2) In *In re Estate of Bracken*, Docket No. 84114-4, the Washington supreme court narrowly construed the term "transfer" as defined in the Washington estate tax code.

(3) The legislature finds that it is well established that the term "transfer" as used in the federal estate tax code is construed broadly and extends to the "shifting from one to another of any power or privilege incidental to the ownership or enjoyment of property" that occurs at death. *Fernandez v. Wiener*, 326 U.S. 340, 352 (1945).

(4) The legislature further finds that: The Bracken decision held certain qualified terminable interest property (QTIP) of married couples was transferred without incurring Washington state estate tax liability, which: (a) Creates an inequity never intended by the legislature because unmarried individuals did not enjoy any similar opportunities to avoid or greatly reduce their potential Washington estate tax liability; and (b) may create disparate treatment between QTIP property and other property transferred between spouses that is eligible for the marital deduction.

(5) Therefore, the legislature finds that it is necessary to reinstate the legislature's intended meaning when it enacted the estate tax, restore parity between married couples and unmarried individuals, restore parity between QTIP property and other property eligible for the marital deduction, and prevent the adverse fiscal impacts of the Bracken decision by reaffirming its intent that the term "transfer" as used in the Washington estate and transfer tax is to be given its broadest possible meaning consistent with established United States supreme court precedents, subject only to the limits and exceptions expressly provided by the legislature.

(6) As curative, clarifying, and remedial, the legislature intends for this act to apply both prospectively and retroactively to estates of decedents dying on or after May 17, 2005.

Sec. 2. RCW 83.100.020 and 2013 c 23 s 341 are each amended to read as follows:

~~((As used in this chapter:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Applicable exclusion amount" means:

(i) One million five hundred thousand dollars for decedents dying before January 1, 2006;

(ii) Two million dollars for estates of decedents dying on or after January 2006, and before January 1, 2014; and

(iii) For estates of decedents dying in calendar year 2014 and each calendar year thereafter, the amount in (a)(ii) of this subsection must be adjusted annually, except as otherwise provided in this subsection (1)(a)(iii). The annual adjustment is determined by multiplying two million dollars by one plus the percentage by which the most recent October consumer price index exceeds the consumer price index for October 2012, and rounding the result to the nearest one thousand dollars. No adjustment is made for a calendar year if the adjustment would result in the same or a lesser applicable exclusion amount than the applicable exclusion amount for the immediately preceding calendar year. The applicable exclusion amount under this subsection (1)(a)(iii) for the decedent's estate is the applicable exclusion amount in effect as of the date of the decedent's death.

(b) For purposes of this subsection, "consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle-Tacoma-Bremerton metropolitan area as calculated by the United States bureau of labor statistics.

~~((2))~~ (2) "Decedent" means a deceased individual((:)).

~~((2))~~ (3) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him or her by the director((:)).

~~((3))~~ (4) "Federal return" means any tax return required by chapter 11 of the internal revenue code((:)).

~~((4))~~ (5) "Federal tax" means a tax under chapter 11 of the internal revenue code((:)).

~~((5))~~ (6) "Gross estate" means "gross estate" as defined and used in section 2031 of the internal revenue code((:)).

~~((6))~~ (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((:)).

~~((7))~~ (8) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the internal revenue code, such as the personal representative of an estate((:)).

~~((8))~~ (9) "Property" means property included in the gross estate((:)).

~~((9))~~ (10) "Resident" means a decedent who was domiciled in Washington at time of death((:)).

~~((10))~~ (11) "Taxpayer" means a person upon whom tax is imposed under this chapter, including an estate or a person liable for tax under RCW 83.100.120((:)).

~~((11))~~ (12) "Transfer" means "transfer" as used in section 2001 of the internal revenue code and includes any shifting upon death of the economic benefit in property or any power or legal privilege incidental to the ownership or enjoyment of property. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046 or ceasing to use the property for farming purposes((:)).

~~((12))~~ (13) "Internal revenue code" means ~~(, for the purposes of this chapter and RCW 83.110.010,)~~ the United States internal revenue code of 1986, as amended or renumbered as of January 1, 2005((:)).

~~((13))~~ (14) "Washington taxable estate" means the federal taxable estate ~~(, less: (a) One million five hundred thousand dollars for decedents dying before January 1, 2006; and (b) two million dollars for decedents dying on or after January 1, 2006; and (c) the amount of any deduction allowed under RCW 83.100.046; and)~~ and includes, but is not limited to, the value of any property included in the gross estate under section 2044 of the internal revenue code, regardless of whether the decedent's interest in such property was acquired before May 17, 2005, (a) plus amounts required to be added to the Washington taxable estate under RCW 83.100.047, (b) less: (i) The applicable exclusion amount; (ii) the amount of any deduction allowed under RCW 83.100.046; (iii) amounts allowed to be deducted from the Washington taxable estate under RCW 83.100.047; and (iv) the amount of any deduction allowed under section 3 of this act.

~~((14))~~ (15) "Federal taxable estate" means the taxable estate as determined under chapter 11 of the internal revenue code without regard to: (a) The termination of the federal estate tax under section 2210 of the internal revenue code or any other provision of law, and (b) the deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the internal revenue code.

NEW SECTION. Sec. 3. A new section is added to chapter 83.100 RCW to read as follows:

(1) For the purposes of determining the tax due under this chapter, a deduction is allowed for the value of the decedent's

qualified family-owned business interests, not to exceed two million five hundred thousand dollars, if:

(a) The value of the decedent's qualified family-owned business interests exceed fifty percent of the decedent's Washington taxable estate determined without regard to the deduction for the applicable exclusion amount;

(b) During the eight-year period ending on the date of the decedent's death, there have been periods aggregating five years or more during which:

(i) Such interests were owned by the decedent or a member of the decedent's family;

(ii) There was material participation, within the meaning of section 2032A(e)(6) of the internal revenue code, by the decedent or a member of the decedent's family in the operation of the trade or business to which such interests relate;

(c) The qualified family-owned business interests are acquired by any qualified heir from, or passed to any qualified heir from, the decedent, within the meaning of RCW 83.100.046(2), and the decedent was at the time of his or her death a citizen or resident of the United States; and

(d) The value of the decedent's qualified family-owned business interests is not more than six million dollars.

(2)(a) Only amounts included in the decedent's federal taxable estate may be deducted under this subsection.

(b) Amounts deductible under RCW 83.100.046 may not be deducted under this section.

(3)(a) There is imposed an additional estate tax on a qualified heir if, within three years of the decedent's death and before the date of the qualified heir's death:

(i) The material participation requirements described in section 2032A(c)(6)(b)(ii) of the internal revenue code are not met with respect to the qualified family-owned business interest which was acquired or passed from the decedent;

(ii) The qualified heir disposes of any portion of a qualified family-owned business interest, other than by a disposition to a member of the qualified heir's family or a person with an ownership interest in the qualified family-owned business or through a qualified conservation contribution under section 170(h) of the internal revenue code;

(iii) The qualified heir loses United States citizenship within the meaning of section 877 of the internal revenue code or with respect to whom section 877(e)(1) applies, and such heir does not comply with the requirements of section 877(g) of the internal revenue code; or

(iv) The principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

(b) The amount of the additional estate tax imposed under this subsection is equal to the amount of tax savings under this section with respect to the qualified family-owned business interest acquired or passed from the decedent.

(c) Interest applies to the tax due under this subsection for the period beginning on the date that the estate tax liability was due under this chapter and ending on the date the additional estate tax due under this subsection is paid. Interest under this subsection must be computed as provided in RCW 83.100.070(2).

(d) The tax imposed by this subsection is due the day that is six months after any taxable event described in (a) of this subsection occurred and must be reported on a return as provided by the department.

(e) The qualified heir is personally liable for the additional tax imposed by this subsection unless he or she has furnished a bond in favor of the department for such amount and for such time as the department determines necessary to secure the payment of amounts due under this subsection. The qualified heir, on furnishing a bond satisfactory to the department, is discharged from personal liability for

the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of the internal revenue code is deducted from, and the value of any property for which an election under this section was previously made is added to, the Washington taxable estate.

Sec. 6. RCW 83.100.047 and 2009 c 521 s 192 are each amended to read as follows:

(1)(a) If the federal taxable estate on the federal return is determined by making an election under section 2056 or 2056A of the internal revenue code, or if no federal return is required to be filed, the department may provide by rule for a separate election on the Washington return, consistent with section 2056 or 2056A of the internal revenue code and (b) of this subsection, for the purpose of determining the amount of tax due under this chapter. The election (~~shall be~~) is binding on the estate and the beneficiaries, consistent with the internal revenue code and (b) of this subsection. All other elections or valuations on the Washington return (~~shall~~) must be made in a manner consistent with the federal return, if a federal return is required, and such rules as the department may provide.

(b) The department (~~shall~~) must provide by rule that a state registered domestic partner is deemed to be a surviving spouse and entitled to a deduction from the Washington taxable estate for any interest passing from the decedent to his or her domestic partner, consistent with section 2056 or 2056A of the internal revenue code but regardless of whether such interest would be deductible from the federal gross estate under section 2056 or 2056A of the internal revenue code.

(2) Amounts deducted for federal income tax purposes under section 642(g) of the internal revenue code of 1986 (~~shall~~) are not (~~be~~) allowed as deductions in computing the amount of tax due under this chapter.

(3) Notwithstanding any department rule, if a taxpayer makes an election consistent with section 2056 of the internal revenue code as permitted under this section, the taxpayer's Washington taxable estate, and the surviving spouse's Washington taxable estate, must be adjusted as follows:

(a) For the taxpayer that made the election, any amount deducted by reason of section 2056(b)(7) of the internal revenue code is added to, and the value of property for which a Washington election under this section was made is deducted from, the Washington taxable estate.

(b) For the estate of the surviving spouse, the amount included in the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of the internal revenue code is deducted from, and the value of any property for which an election under this section was previously made is added to, the Washington taxable estate.

Sec. 7. RCW 83.100.120 and 1981 2nd ex.s. c 7 s 83.100.120 are each amended to read as follows:

(1)(a) Except as otherwise provided in this subsection, 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~~) must 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.

(b) For the estates of decedents dying prior to April 9, 2006, a personal representative is not personally liable for taxes due on the value of any property included in the gross estate and the Washington taxable estate as a result of section 2044 of the internal revenue code unless the property is located in the state of Washington or the property has or will come into the possession or control of the personal representative.

(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~~) must 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. 8. Sections 2 and 5 of this act apply both prospectively and retroactively to all estates of decedents dying on or after May 17, 2005.

NEW SECTION. Sec. 9. This act does not affect any final judgment, no longer subject to appeal, entered by a court of competent jurisdiction before the effective date of this section.

NEW SECTION. Sec. 10. Section 4 of this act applies to estates of decedents dying on or after January 1, 2014.

NEW SECTION. Sec. 11. 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. 12. Section 5 of this act expires January 1, 2014.

NEW SECTION. Sec. 13. 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 takes effect immediately, except for sections 3, 4, and 6 of this act which take effect January 1, 2014."

Correct the title.

Representative Carlyle moved the adoption of amendment (525) to the striking amendment (523).

On page 2, at the beginning of line 22 of the amendment, after "January" and before "2006" insert "1."

On page 12, after line 3 of the amendment, insert the following:

Sec. 8. RCW 83.100.210 and 2010 c 106 s 111 are each amended to read as follows:

(1) The following provisions of chapter 82.32 RCW have full force and application with respect to the taxes imposed under this chapter unless the context clearly requires otherwise: RCW 82.32.110, 82.32.120, 82.32.130, 82.32.320, 82.32.330, and 82.32.340. The definitions in this chapter have full force and application with respect to the application of chapter 82.32 RCW to this chapter unless the context clearly requires otherwise.

(2) In addition to the provisions stated in subsection (1) of this section, the following provisions of chapter 82.32 RCW have full force and application with respect to the taxes, penalties, and interest

imposed under section 3 of this act: RCW 82.32.090, 82.32.117, 82.32.135, 82.32.210, 82.32.220, 82.32.230, 82.32.235, 82.32.237, 82.32.245, and 82.32.265.

(3) The department may enter into closing agreements as provided in RCW 82.32.350 and 82.32.360."

Renumber the remaining sections consecutively and correct any internal references accordingly.

Representatives Carlyle and Nealey spoke in favor of the adoption of the amendment to the striking amendment.

Amendment (525) to the striking amendment was adopted.

Representatives Carlyle and Nealey spoke in favor of the adoption of the striking amendment.

Amendment (523) was adopted as amended.

The bill was ordered engrossed.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Carlyle, Alexander and Pedersen spoke in favor of the passage of the bill.

Representatives Nealey, Walsh and Shea spoke against the passage of the bill.

MOTIONS

On motion of Representative Van De Wege, Representatives Farrell, Hudgins and Santos were excused. On motion of Representative MacEwen, Representatives Condotta, Crouse, Harris, Holy, Parker and Pike were excused.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed House Bill No. 2075.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 2075, and the bill passed the House by the following vote: Yeas, 53; Nays, 33; Absent, 0; Excused, 11.

Voting yea: Representatives Alexander, Appleton, Bergquist, Blake, Carlyle, Clibborn, Cody, Dunshee, Fey, Fitzgibbon, Freeman, Goodman, Green, Habib, Haigh, Hansen, Hunt, Hunter, Hurst, Jinkins, Kagi, Kirby, Liias, Lytton, Magendanz, Maxwell, McCoy, Moeller, Morrell, Morris, Moscoso, Ormsby, Orwall, Pedersen, Pettigrew, Pollet, Reykdal, Riccelli, Roberts, Ryu, Sawyer, Seaquist, Sells, Springer, Stanford, Sullivan, Takko, Tarleton, Tharinger, Upthegrove, Van De Wege, Wylie and Mr. Speaker.

Voting nay: Representatives Angel, Buys, Chandler, Dahlquist, DeBolt, Fagan, Haler, Hargrove, Hawkins, Hayes, Hope, Johnson, Klippert, Kochmar, Kretz, Kristiansen, MacEwen, Manweller, Nealey, Orcutt, Ross, Schmick, Scott, Shea, Short, Smith, Stonier, Taylor, Vick, Walsh, Warnick, Wilcox and Zeiger.

Excused: Representatives Condotta, Crouse, Farrell, Harris, Holy, Hudgins, Overstreet, Parker, Pike, Rodne and Santos.

ENGROSSED HOUSE BILL NO. 2075, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

June 12, 2013

MR. SPEAKER:

The Senate has adopted:

HOUSE CONCURRENT RESOLUTION NO. 4410

and the same are herewith transmitted.

Hunter G. Goodman, Secretary

June 13, 2013

MR. SPEAKER:

The Senate has passed:

SECOND ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5296

and the same is herewith transmitted.

Hunter G. Goodman, Secretary

There being no objection, the House reverted to the fourth order of business.

INTRODUCTIONS AND FIRST READING

2E2SSB 5296 by Senate Committee on Ways & Means (originally sponsored by Senators Ericksen, Baumgartner, Rivers, Bailey, Delvin and Honeyford)

AN ACT Relating to the model toxics control act; amending RCW 70.105D.020, 70.105D.030, 70.105D.040, 70.105D.050, and 70.105.280; reenacting and amending RCW 70.105D.070, 43.84.092, and 43.84.092; adding new sections to chapter 70.105D RCW; adding a new section to chapter 70.105 RCW; creating new sections; providing an effective date; providing a contingent effective date; providing a contingent expiration date; and declaring an emergency.

Referred to Committee on Environment.

There being no objection, SECOND ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5296 was read the first time, and under suspension of the rules was placed on the second reading calendar.

There being no objection, the House advanced to the sixth order of business.

SECOND READING

SECOND ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5296, by Senate Committee on Ways & Means (originally sponsored by Senators Ericksen, Baumgartner, Rivers, Bailey, Delvin and Honeyford)

Concerning the model toxics control act.

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Dunshee, Short and Taylor spoke in favor of the passage of the bill.

Representative Lias spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Second Engrossed Second Substitute Senate Bill No. 5296.

MOTIONS

On motion of Representative Van De Wege, Representative Moscoso was excused.

ROLL CALL

The Clerk called the roll on the final passage of Second Engrossed Second Substitute Senate Bill No. 5296, and the bill passed the House by the following vote: Yeas, 67; Nays, 18; Absent, 0; Excused, 12.

Voting yea: Representatives Alexander, Angel, Appleton, Blake, Buys, Chandler, Clibborn, Cody, Dahlquist, DeBolt, Dunshee, Fagan, Freeman, Goodman, Green, Habib, Haigh, Haler, Hansen, Hargrove, Hawkins, Hayes, Hope, Hunter, Hurst, Johnson, Kirby, Klippert, Kochmar, Kretz, Kristiansen, Lytton, MacEwen, Magendanz, Manweller, McCoy, Moeller, Morris, Nealey, Orcutt, Ormsby, Orwall, Pettigrew, Riccelli, Roberts, Ross, Schmick, Scott, Seaquist, Sells, Shea, Short, Smith, Springer, Stonier, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Vick, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Voting nay: Representatives Bergquist, Carlyle, Fey, Fitzgibbon, Hunt, Jinkins, Kagi, Lias, Maxwell, Morrell, Pedersen, Pollet, Reykdal, Ryu, Sawyer, Stanford, Tarleton and Tharinger.

Excused: Representatives Condotta, Crouse, Farrell, Harris, Holy, Hudgins, Moscoso, Overstreet, Parker, Pike, Rodne and Santos.

SECOND ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5296, having received the necessary constitutional majority, was declared passed.

There being no objection, House Rule 13 (C) was suspended allowing the House to work past 10:00 p.m.

MESSAGE FROM THE SENATE

June 13, 2013

MR. SPEAKER:

The Senate has passed:

ENGROSSED HOUSE BILL NO. 2075

and the same is herewith transmitted.

Hunter G. Goodman, Secretary

The Speaker assumed the chair.

SIGNED BY THE SPEAKER

The Speaker signed the following bills:

ENGROSSED HOUSE BILL NO. 2075

HOUSE CONCURRENT RESOLUTION NO. 4410

The Speaker called upon Representative Moeller to preside.

MESSAGE FROM THE SENATE

June 13, 2013

MR. SPEAKER:

The President has signed:

ENGROSSED HOUSE BILL NO. 2075

and the same is herewith transmitted.

Hunter G. Goodman, Secretary

June 13, 2013

MR. SPEAKER:

The President has signed:

SECOND ENGROSSED SECOND SUBSTITUTE SENATE BILL
NO. 5296

and the same are herewith transmitted.

Hunter G. Goodman, Secretary

There being no objection, the House advanced to the eleventh order of business.

There being no objection, the House adjourned until 12:00 p.m., June 14, 2013, the 3rd Day of the 2nd Special Session.

FRANK CHOPP, Speaker

BARBARA BAKER, Chief Clerk

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