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# Lawmakers to consider changes to estate-tax law

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OLYMPIA — Lawsuits seeking millions of dollars in tax refunds are stacking up in court while lawmakers mull whether to circumvent a 2012 state Supreme Court decision allowing some married couples to escape Washington's estate tax.

The court ruled the state can't tax estates that used a certain kind of trust allowing one spouse to transfer assets to another spouse, and their heirs.

Even so, the Department of Revenue (DOR) is still holding on to money it's collected in case the Legislature passes a law that lets the state keep the taxes. The agency says it's "giving deference to the legislative process."

The delay has riled tax attorneys, and their clients, who've filed more than a dozen lawsuits seeking \$34 million in refunds.

They argue the state should hand over the money, considering the top court has ruled.

Everyone should abide by the Supreme Court's rulings, said George Mastrodonato, an attorney with Carney Badley Spellman in Seattle.

"If the taxpayer wins, they get their refunds, if the department wins, or the state wins, everybody goes away and we don't get our refund," Mastrodonato said.

Except, it often doesn't work that way in Olympia. Since 2005, the Legislature has passed four laws to get around Supreme Court decisions that otherwise would have reduced state tax collections.

Lawmakers, who go into a special session on Monday, will debate whether they should make changes to the estate-tax law as well. Budget writers project the court ruling could cost the state \$160 million, including refund requests, in the next two-year budget.

Legislators are scrounging for every dollar they can get to close a large budget shortfall and come up with \$1 billion or more in additional funding for education to satisfy a different state Supreme Court ruling.

The estate-tax case deals with something called a Qualified Terminable Interest Property trust. It allows a spouse to transfer assets tax free to a surviving spouse and then onto other heirs upon the death of the surviving spouse.

Under federal law the value of the trust was taxed only when the surviving spouse died. That was also the case in Washington until the state Supreme Court decision.

As a result of the court decision, the estate also cannot be taxed when the surviving spouse dies under this kind of trust.

There's some disagreement over the effect of the court ruling. Some private tax attorneys contend that it was relatively narrow in scope and only affected estates where one of the spouses died before May 17, 2005.

However the DOR and the state Attorney General's Office contend the court ruling was so broad it effectively eliminates the estate tax for couples who create such trusts, even after 2005.

State officials said they expect more of the trusts being created to prevent estates from being taxed in the future.

If that proves to be true, state officials say it would create a fairness problem because married couples would be able to escape the estate tax while single residents would get hit with taxes.

"Right now if you die single, your heirs pay an estate tax, but if they are married they don't," said House Appropriations Chairman [Ross Hunter, D-Medina](#). "Really? The tax code should be fair."

Democrats, who control the House and governor's office, have supported legislation that would ensure all estates worth more than \$2 million would be subject to taxes.

Taxes apply only to the portion of an estate above that amount. The assets of such estates are taxed at a graduated rate ranging from 10 to 19 percent. The value of property used primarily for farming can be deducted from the taxable estate.

The House passed [House Bill 1920](#) during the regular session to address the court ruling, but the measure went nowhere in the Senate. The bill returns to the House in special session, where it must be passed again.

Republicans, who control the Senate, have resisted any changes to the tax system and it's not clear how that will play out during final budget negotiations.

The state has not paid out any refunds yet, although it has lost seven cases so far in the lower courts. All of them are being appealed.

If any of the estates make it through the appeals case, collect their money and have their cases closed, the state cannot make them pay it back even if the Legislature changes the law and makes it retroactive.

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