

NO. 70514-8-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

U.S. BANK, Personal Representative of the Estate of ELAINE B.
GREEN-ELDRIDGE,

Respondent,

v.

THE DEPARTMENT OF REVENUE OF THE STATE OF
WASHINGTON,

Appellant.

DEPARTMENT OF REVENUE'S SUPPLEMENTAL BRIEF

ROBERT W. FERGUSON
Attorney General

David Hankins, WSBA No. 19194
Senior Counsel
Charles Zalesky, WSBA No. 37777
Assistant Attorney General
Revenue Division, OID No. 91027
P.O. Box 40123
Olympia, WA 98504-0123
(360) 753-5528

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STATE OF WASHINGTON
DEPARTMENT OF REVENUE
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I. INTRODUCTION

After the Supreme Court held in *In re Estate of Bracken* that Washington's estate tax statutes were not intended to apply to qualified terminable interest property ("QTIP") passing under Internal Revenue Code § 2044, the Legislature responded rapidly by amending the relevant statutes to expressly provide that QTIP passing under section 2044 is subject to the Washington tax. The Supreme Court in *In re Estate of Hambleton* upheld these amendments, and they resolve this case.

II. STATEMENT OF THE CASE

In 2009 the estate of Elaine Green-Eldridge ("Estate") filed a complaint seeking review of a Department letter decision denying the Estate's claim for refund of estate tax. CP 4. The Estate asserted that it had overpaid the Washington tax on the value of QTIP included in the Estate's federal gross estate. The trial court proceedings were stayed pending final resolution of *In re Estate of Bracken*, which involved the same QTIP issue. CP 38. *Bracken* was decided in October 2012. In that case, the Supreme Court held that the Legislature did not intend to impose estate tax on QTIP passing at the death of the second spouse. *In re Estate of Bracken*, 175 Wn.2d 549, 574, 290 P.3d 99 (2012), *superseded by statute as recognized in In re Estate of Hambleton*, ___ Wn.2d ___, 335 P.3d 398 (2014).

After the Supreme Court issued *Bracken*, the Estate moved for summary judgment asserting that, under the holding in *Bracken*, it was entitled to the estate tax refund it was seeking. CP 40. The trial court granted the Estate’s motion with respect to the tax refund issue, and the Department appealed. CP 187, 190.¹

On June 13, 2013, the same day this appeal was filed, the Legislature amended the estate tax code in response to *Bracken*. Laws of 2013, 2d Spec. Sess., ch. 2. That 2013 legislation (the “2013 Act”) amended the definitions of “transfer” and “Washington taxable estate” to expressly include QTIP in the Washington taxable estate of a decedent. *Id.* at § 2. These amendments apply retroactively to “all estates of decedents dying on or after May 17, 2005.” *Id.* at § 9. The amended law applies to the estate of Elaine Green-Eldridge, who died in December 2005. CP 6 at ¶ III.C.1.

Several estates, including the Green-Eldridge Estate, challenged the 2013 Act on constitutional grounds. The Supreme Court consolidated for argument two of those appeals—the appeals filed by the estates of Helen Hambleton and Jessie Campbell MacBride. *See Hambleton*, 335 P.3d at 403. The Supreme Court rejected all of the estates’ arguments and held that the 2013 Act was constitutional. *Hambleton*, 335 P.3d at 416.

¹ The Superior Court denied the Estate’s claim for attorneys’ fees. The Estate has not appealed that issue.

III. ARGUMENT

The Legislature may pass a law that directly impacts a pending court case. *Hambleton*, 335 P.3d at 408-09; *Washington State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 304, 174 P.3d 1142 (2007). Appellate courts apply the new law in deciding the case “even if the new law alters the outcome.” *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 627, 90 P.3d 659 (2004) (citing *Plaut v. Spendthrift Farms, Inc.*, 514 U.S. 211, 226-27, 115 S. Ct. 1447, 131 L. Ed. 2d 328 (1995)). The Supreme Court’s holding in *Hambleton* that the 2013 Act was a valid and constitutional exercise of legislative authority “is binding on all lower courts in the state.” *1000 Virginia Ltd. P’ship v. Vertecs Corp.*, 158 Wn.2d 566, 578, 146 P.3d 423 (2006). Under *Hambleton*, the Estate is not entitled to the estate tax refund it is seeking.

A. ***Hambleton* Is Controlling And Resolves This Appeal In Favor Of The Department.**

Hambleton involved two estates (Hambleton and Macbride) that challenged the 2013 Act on constitutional and equitable grounds. The Supreme Court unanimously rejected all of the estates’ arguments and concluded that the Department was entitled to judgment in both cases as a matter of law.

The Green-Eldridge Estate asserts all of the same constitutional arguments that were rejected in *Hambleton*. Specifically, the Estate

challenged the retroactive application of the 2013 Act on separation of powers and due process grounds, and also claimed that the Act violated the contracts clauses of the federal and Washington constitutions and imposed a non-uniform property tax on the QTIP assets in violation of Article VII, section 1 of the Washington Constitution. *See* Br. of Resp. at 17-47. As explained in *Hambleton*, none of these arguments has any merit.

1. *Hambleton* holds that retroactive application of the 2013 Act does not violate the separation of powers doctrine.

The 2013 Act retroactively amended the statutory definitions of “transfer” and “Washington taxable estate” to make clear that QTIP is subject to the Washington tax. These amendments did not “impede upon the court’s right and duty to apply [the] new law to the facts” of a case being litigated, did not “dictate how the court should decide a factual issue,” and did not “affect a final judgment.” *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 144, 744 P.2d 1032, 750 P.2d 254 (1987). Instead, as the Court explained in *Hambleton*, the Legislature “was careful not to affect the rights of any parties to a prior judgment, reopen a case, or interfere with any judicial functions,” and it “did not violate the separation of powers doctrine when it passed the retroactive amendments” to the estate tax code. *Hambleton*, 335 P.3d at 406, 409.

The Court's analysis was guided by the "principles and reasoning" of *Hale v. Wellpinit School District No. 49*, 165 Wn.2d 494, 198 P.3d 1021 (2009), and *Lummi Indian Nations v. State*, 170 Wn.2d 247, 241 P.3d 1220 (2010). See *Hambleton*, 335 P.3d at 408. In both *Hale* and *Lummi Indian Nations* the Supreme Court "firmly rejected the contention that just because an appellate court's statutory interpretation relates back to the time the state was originally adopted, any retroactive amendment of that statute violates separation of powers." *Id.* (quoting *Lummi Indian Nation*, 170 Wn.2d at 262). And just as in *Hale* and *Lummi Indian Nations*, the Legislature did not offend the separation of powers doctrine when it retroactively amended the Washington estate tax code in response to a Supreme Court decision interpreting the prior law. *Id.*

The Supreme Court's holding that the 2013 Act does not violate separation of powers principles "is binding on all lower courts in the state." *1000 Virginia Ltd.*, 158 Wn.2d at 578. Consequently, the Estate's separation of powers argument must be rejected under settled and controlling law.

2. *Hambleton* holds that retroactive application of the 2013 Act does not violate due process.

The Court in *Hambleton* also rejected the estates' due process challenge to the 2013 Act, holding that retroactive application of the law

meets the rational basis standard that applies to economic legislation. *Hambleton*, 335 P.3d at 409. Under that rational basis test, a court will uphold the retroactive application of tax legislation if it serves a legitimate legislative purpose furthered by rational means. *United States v. Carlton*, 512 U.S. 26, 30-31, 114 S. Ct. 2018, 129 L. Ed. 2d 22 (1994). The 2013 Act served the legitimate legislative purpose of preventing the adverse fiscal impact of the *Bracken* decision, and “[t]he period of retroactivity [was] rationally related to preventing the fiscal shortfall.” *Hambleton*, 335 P.3d at 411. Consequently, “the retroactive period meets the due process clause’s rational basis test.” *Id.*

The Court also rejected the estates’ claims that the 2013 Act imposed a “wholly new tax” and “impairs a vested right” acquired under the prior law. *Hambleton*, 335 P.3d at 412. Although beneficiaries of a QTIP trust have a vested right to the trust property upon the death of the second spouse, the 2013 Act properly taxes the “shift in interest” that occurs when the second spouse dies. *Id.* “The estate tax does not deprive the remainder of their interest in the property or change the nature of their interest. It simply taxes the transfer of assets.” *Id.*

Retroactive application of the 2013 Act does not violate due process. The Green-Eldridge Estate’s arguments to the contrary were expressly rejected in *Hambleton* and must be rejected here.

3. *Hambleton* holds that taxing QTIP when the second spouse dies does not violate the contracts clause.

Both the federal constitution and the Washington constitution protect citizens from state laws that impermissibly impair contracts. This constitutional protection has limits: “The contracts clause does not prohibit the states from repealing or amending statutes generally, or from enacting legislation with retroactive effects.” *Hambleton*, 335 P.3d at 413 (quoting *Haberman*, 109 Wn.2d at 145). Before a state law will be held invalid under the contracts clause, the person challenging the law must establish a substantial impairment to a contract. *Id.* If that threshold inquiry is met and the contract is between private parties, the courts must then determine whether the enactment was reasonably necessary. *Id.*

The 2013 Act did not violate the contracts clause. As explained in *Hambleton*, amending the Washington estate tax code to prevent QTIP from escaping the Washington tax did not substantially impair a contract. *See id.* (the prior law as interpreted in *Bracken* was not a promise and “it was reasonable for the Estates to expect that the estate tax law would change.”). In addition, the 2013 Act was reasonably necessary because it “prevented the fiscal shortfall created by *Bracken*.” *Id.* Therefore, the 2013 Act would not violate the contracts clause even if it had resulted in a substantial impairment to a contract.

The Court's holding that the 2013 Act did not violate the contracts clause is binding in this appeal and clearly resolves this issue in favor of the Department.

4. *Hambleton* holds that taxing QTIP when the second spouse dies does not result in an unconstitutional, non-uniform, property tax.

Prior to the Supreme Court's decision in *Hambleton*, the Green-Eldridge Estate argued that if a "transfer" under the 2013 Act is interpreted to apply to QTIP, the Washington estate tax would be an unconstitutional, non-uniform, property tax. Br. of Resp. at 45-48. The Supreme Court in *Hambleton* rejected this argument, explaining that the estate tax is an excise tax imposed on "a particular use or enjoyment of property or the shifting from one to another of any power or privilege incidental to the ownership or enjoyment of property." *Hambleton*, 335 P.3d at 414 (quoting *Fernandez v. Wiener*, 326 U.S. 340, 352, 66 S. Ct. 178, 90 L. Ed. 116 (1945)). In other words, the Washington estate tax—like the federal estate tax—is not a direct tax on property. As a result, constitutional limitations that apply to property taxes or other "direct" taxes do not apply to the Washington or the federal estate taxes. *Id.*; see also *Knowlton v. Moore*, 178 U.S. 41, 81-82, 20 S. Ct. 747, 44 L. Ed. 969 (1900) (rejecting claim that the federal estate tax is an unconstitutional direct tax on property).

5. *Hambleton* holds that a “transfer” occurs when QTIP passes at the death of the second spouse.

In addition to attacking the constitutionality of the 2013 Act, the Estate also argued that it is per se unconstitutional to tax QTIP passing at the death of the second spouse because—according to the Estate—there is no “present transfer.” See Br. of Resp. at 10-17. The Estate relies primarily on *Coolidge v. Long*, 282 U.S. 582, 51 S. Ct. 306, 75 L. Ed. 562 (1931), which is a *Lochner* era due process case that has been limited by subsequent United States Supreme Court decisions. See *Fernandez*, 326 U.S. at 357 (expressly limiting the holding in *Coolidge*). In any event, our Supreme Court in *Hambleton* rejected the Estate’s overly restrictive view of “transfer” and held that it is permissible to tax QTIP.

While the Court did not directly state that *Coolidge v. Long* was no longer applicable, the Court did rely on more recent cases to support its holding. Specifically, the Court in *Hambleton* held that the power of Congress and the states to impose estate taxes “is not limited to the taxation of transfers at death. It extends to the creation, exercise, acquisition, or relinquishment of any power of legal privilege which is incident to the ownership of property.” *Hambleton*, 335 P.3d at 414 (quoting *Fernandez*, 326 U.S. at 352). The Legislature acted well within its authority to amend the definition of “transfer” to make the Washington

tax consistent with the federal tax. As amended, a transfer subject to the Washington tax includes QTIP passing to the remainder beneficiaries at the death of the second spouse. *Hambleton*, 335 P.3d at 414.

B. Because All Issues In This Appeal Are Clearly Controlled By Settled Law, The Court Should Decide This Case Without Oral Argument.

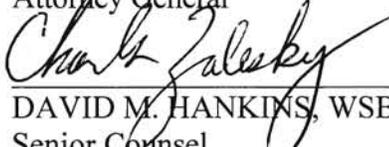
All issues pertaining to whether the Estate owes estate tax on the value of QTIP passing at the death of Ms. Green-Eldridge have been decided in *Hambleton*. As a result, the Court should decide this appeal without oral argument. *See* RAP 11.4(j).

IV. CONCLUSION

Under the Washington estate tax code as amended, the Estate is not entitled to deduct QTIP in computing the Washington tax. The amended law is constitutional and controlling. For this reason, the Court should reverse the judgment below and remand the case with instructions to enter judgment in favor of the Department.

RESPECTFULLY SUBMITTED this 17th day of December, 2014.

ROBERT W. FERGUSON
Attorney General



DAVID M. HANKINS, WSBA No. 19194
Senior Counsel
CHARLES ZALESKY, WSBA No. 37777
Assistant Attorney General
OID No. 91027
Attorneys for Appellant

PROOF OF SERVICE

I certify that I served a copy of this document via electronic service on the following:

Rhys M. Farren
DAVIS WRIGHT TREMAINE LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
rhysfarren@dwt.com
susanbright@dwt.com

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 17th day of December, 2014, at Tumwater, WA.


Carrie A. Parker, Legal Assistant