

NO. 47518-9

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

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ESTATE OF BARRY A. ACKERLEY,

Appellant,

v.

WASHINGTON DEPARTMENT OF REVENUE,

Respondent.

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

When Mr. Ackerley died, his estate was required to file a Washington estate tax return. The Ackerley Estate excluded from its Washington estate tax return 5.5 million dollars of the total amount of its “gross estate” reported on its federal estate tax return. The Estate should have included this amount on its Washington estate tax return, because the “Washington taxable estate” for estate tax purposes is calculated based on the federal “gross estate.”

In order to decrease the size of its taxable estate in Washington, the Estate seeks to create an implied exemption in the statutory framework where none exists. The Estate’s interpretation of the statutory definition of “transfer” in RCW 83.100.020 is contrary to the plain meaning of the statute, contrary to the statutory scheme, and contrary to the Washington Supreme Court’s recent decision in *In re Estate of Hambleton*, 181 Wn.2d 802, 335 P.3d 398 (2014). This Court should affirm the superior court’s ruling upholding the Department’s action.

## II. ISSUE

Washington’s Estate and Transfer Tax Act defines a Washington taxable estate to mean the federal taxable estate. On its federal return, the Estate reported the amount of the federal gift tax it paid as part of its gross estate, as required under federal law. When the Estate filed its

Washington estate tax return, should it have included the amount of the federal gift tax it paid in its Washington estate tax return?

### **III. COUNTERSTATEMENT OF THE CASE**

Mr. Barry Ackerley died on March 21, 2011. Administrative Record (AR) at 23. In 2008 and 2010, prior to his death, he made gifts of money that were subject to the federal gift tax. AR at 15, 16. The federal gift tax amounted to more than 5.5 million dollars. *Id.* When Mr. Ackerley passed away, his estate was required to include the federal gift tax he had paid to the federal government as part of the total gross amount of his federal estate. *See* 26 U.S.C. § 2035(a) and (b); CP at 32-35. The Estate in its federal return included the federal gift tax paid in the total gross estate amount on line 1. AR at 12a.

When the Estate filed its Washington estate tax return, it did not include the 5.5 million dollars on line A as part of its Washington total gross estate. AR at 10. The Department reviewed both the Estate's federal and Washington estate tax returns. AR at 18. After review, the Department assessed additional Washington estate tax by including the federal gift tax reported that the Estate included in the federal return and should have included in its Washington estate tax return. AR at 20. The Estate objected and requested the Department to cancel the additional

assessment of estate taxes. AR at 22-25. The Department evaluated the Estate's challenge and rejected it. AR at 27, 29.

The Estate sought judicial review of the agency action under the Administrative Procedure Act (APA), RCW 34.05, in Thurston County Superior Court. Judge Carol Murphy issued a letter ruling and order affirming the Department of Revenue's additional assessment of estate tax. CP at 93-100. The Estate timely appealed to this Court. CP at 101.

#### IV. ARGUMENT

##### A. Scope of Review Under The Administrative Procedure Act.

This is an appeal of final agency action under the APA.<sup>1</sup> The agency action at issue is the assessment of Washington estate tax on the federal gift taxes paid on Mr. Ackerley's lifetime gifts. Review of that action is governed by RCW 34.05.570(4), which pertains to "other agency action." In this appeal, the Estate bears the burden of demonstrating that the Department's action was invalid. RCW 34.05.570(1)(a).

In the context of "other agency action," the reviewing court may grant relief if it determines that the action was unconstitutional, outside the statutory authority of the agency or the authority conferred by a provision of law, arbitrary or capricious, or taken by a person who was not lawfully

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<sup>1</sup> The Court of Appeals sits in the same position as the superior court in reviewing the administrative record. *See Department of Revenue v. Nord Northwest Corp.*, 164 Wn. App. 215, 223, 264 P.3d 259 (2011).

entitled to take the action. RCW 34.05.570(4)(c)(i)-(iv). The court reviews an agency's legal conclusions under the error of law standard. *Cascade Court Ltd. P'ship v. Noble*, 105 Wn. App. 563, 567, 20 P.3d 997 (2001). The Estate argues that the Department acted outside its statutory authority, RCW 34.05.570(4)(c)(ii). Estate's Br. at 5.

**B. Washington's Estate Tax Is Calculated Based On The Total Gross Estate Reported On An Estate's Federal Return.**

In 2005, the Legislature enacted a stand-alone estate tax<sup>2</sup> which incorporates "concepts and definitions from federal law, and operates almost entirely in tandem with taxable estate and tax calculation and reporting for federal estate tax purposes." *In re Estate of Hambleton*, 181 Wn.2d at 810 (quoting *In re Estate of Bracken*, 175 Wn.2d 549, 559, 290 P.3d 99 (2012)). As the concurring opinion in *Estate of Bracken* explained, "The 2005 Act established a stand-alone tax in response to this court's invalidation of 2001 estate tax legislation, and to a large extent the *Act ties state estate taxation to federal law.*" *In re Estate of Bracken*, 175 Wn.2d at 581 (Madsen, C.J., concurring/ dissenting opinion) (citations omitted; emphasis added).

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<sup>2</sup> Washington previously participated in a "pick-up" estate tax where the federal government collected the tax and shared it with the states. *See* RCW 83.100.030(1) (repealed by 2005 c 516 § 17).

**1. The federal estate tax is based on the “gross estate,” which includes the amount of federal gift tax paid on gifts made within three years of a decedent’s death.**

The federal estate tax is set out in subtitle B, chapter 11, of the Internal Revenue Code (Title 26 U.S.C.). The tax is “imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.” 26 U.S.C. § 2001(a). The term “transfer” is construed broadly and “extends to the creation, exercise, acquisition, or relinquishment of any power or legal privilege which is incident to the ownership of property.” *Fernandez v. Wiener*, 326 U.S. 340, 352, 66 S. Ct. 178, 90 L. Ed. 116 (1945). Thus, a “transfer” for federal estate tax purposes is not limited to a formal conveyance of property under state property law. Rather, Congress may include within the estate tax base property that was not formally conveyed on the death of the decedent. *Id.*

In the Estate’s federal return, the Estate was required to report its “gross estate,” which is “determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.” 26 U.S.C. § 2031(a) (2015). Additionally, federal law required the Estate to include, as part of its “gross estate,” federal tax paid for any gift the decedent or his spouse made during the three-year period ending on the date of the decedent’s death:

The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

26 U.S.C. § 2035(b).

Congress enacted this provision to “recoup any advantage gained by so-called ‘death bed’ transfers” where the transfer of property out of the estate reduces estate tax liability. *Brown v. United States*, 329 F.3d 664, 668 (9th Cir. 2003). Section 2035(b) requires gift tax paid to be included in the federal estate tax base if the gifts that are taxed are made within three years of death, on the assumption that such gifts are made to avoid the estate tax:

Although these *inter vivos* transfers incur gift tax liability, opting to transfer assets prior to death still carries a tax advantage. Gift tax is calculated using a tax exclusive method (the applicable rate is applied to the *net* gift, exclusive of gift taxes), whereas estate taxes are calculated on a tax inclusive method (the applicable rate is applied to the *gross* estate, before taxes are deducted). Section 2035(c) (1993) presumes that gifts made within three years of death are made with tax-avoidance motives and eliminates the tax advantage for those death bed transactions.

*Id.* at 667-68 (emphasis in original; citation omitted).<sup>3</sup>

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<sup>3</sup> Section 2035(c), cited in *Brown*, is now codified under 2035(b). See Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1310(a), 111 Stat. at 1043.

All of the federal provisions are designed to arrive at the “taxable estate” of the decedent to compute the federal estate tax. 26 U.S.C. § 2001(b).

**2. The Washington’s estate tax has always been linked to the federal estate tax scheme.**

The Washington estate tax was enacted in 1981 as a result of Initiative No. 402. Laws of 1981, 2d Ex. Sess., ch. 7. Prior to that, Washington imposed an inheritance tax. Laws of 1901, ch. 55. The Washington estate tax, as enacted in 1981, imposed a tax equal to the state death tax credit allowed under 26 U.S.C. § 2011. State estate taxes of this nature are commonly referred to as “pick-up” taxes.

In June 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Pub. L. No. 107-16 (June 7, 2001). That act reduced the amount of the state death tax credit by 25% each year beginning in 2002, resulting in the total elimination of the credit by 2005. That reduction and eventual elimination of the state death tax credit had a serious impact on states like Washington that employed a pick-up tax. *See Estate of Hemphill v. Dep’t of Revenue*, 153 Wn.2d 544, 548, 105 P.3d 391 (2005) (“EGTRRA essentially ends the estate tax revenue sharing between the federal government and states.”). To keep the Washington tax viable, the Legislature needed to establish a “stand-

alone” tax that was not dependent on the federal death tax credit mechanism. *Id.* at 551. The Legislature accomplished this in 2005 when it amended the Washington estate tax to change from a pick-up tax to a stand-alone tax. *See* Laws of 2005, ch. 516.

As amended in 2005, the Washington tax is imposed “on every transfer of property located in Washington.” RCW 83.100.040(1). “Property” is defined as “property included in the gross estate.” RCW 83.100.020(11). Gross estate, in turn, is defined as “‘gross estate’ as defined and used in section 2031 of the Internal Revenue Code.” RCW 83.100.020(5). Thus, while the 2005 Act established a stand-alone estate tax, the tax was still tied to a large extent to the federal estate tax code. *See In re Estate of Bracken*, 175 Wn.2d at 581 (Madsen, C.J., concurring/dissenting).

In 2012, the Supreme Court narrowly construed the term “transfer” in the *Estate of Bracken* decision. *In re Estate of Bracken*, 175 Wn.2d 549, 290 P.3d 99 (2012). The Legislature promptly amended the estate tax code in response to the *Bracken* decision and amended the definition of “transfer” and made the law retroactive to 2005. Laws of 2013, 2d Spec. Sess., ch. 2 (codified at RCW 83.100.020(14)).<sup>4</sup> The *Bracken* decision

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<sup>4</sup> The Ackerley Estate does not challenge the retroactive application of the statute.

thus has been superseded by statute, as the Supreme Court recognized in *In re Estate of Hambleton*, 181 Wn.2d at 809.

Washington's estate tax is computed at a graduated rate based on the value of a decedent's "Washington taxable estate." RCW 83.100.040(2)(a). The term "Washington taxable estate" is defined as "the federal taxable estate," with specified additions and deductions. RCW 83.100.020(15). The "federal taxable estate" in turn means "the taxable estate as determined under chapter 11 of the internal revenue code . . . ." RCW 83.100.020(6).

**3. Washington's estate tax system mirrors the federal estate tax system.**

By using "federal taxable estate" as the starting point for computing the "Washington taxable estate" of a decedent, the Legislature "avoided having to duplicate congressional effort involved in explaining all the possible inclusions, exemptions, and deductions necessary to reach the taxable estate, and also helped to avoid the complication and confusion that a different set of state rules might create." *In re Estate of Bracken*, 175 Wn.2d at 583 (Madsen, C.J., concurring/dissenting). The Legislature's intent to link Washington's taxable estate tax to the federal taxable estate could not be clearer. Washington defines "Washington's taxable estate" to mean the "federal taxable estate" plus a few carefully

delineated additions and deductions, none of which apply here. RCW 83.100.020(15). This case demonstrates the tandem nature of the federal estate tax law and Washington estate tax law.

**4. The Ackerley Estate was required to include the federal gift tax paid in its Washington's taxable estate.**

The plain meaning of the applicable estate tax statutes required the Ackerley Estate to include in its Washington return the federal gift tax paid. The goal of statutory interpretation is to discern and apply the Legislature's intent based upon the statute's plain meaning. *See Department of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002) ("A court's goal in construing a statute is to determine and give effect to the Legislature's intent"); *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010) ("Statutory construction begins with the statute's plain meaning."). "If the statute's meaning is plain on its face, we give effect to that plain meaning as the expression of what was intended." *TracFone Wireless, Inc. v. Dep't of Revenue*, 170 Wn.2d 273, 281, 242 P.3d 810 (2010).

The Department properly construed the statute and the legislative intent as reflected in the 2013 amendments to conclude that gift tax paid would have to be included in the Estate's Washington estate tax return. Under 26 U.S.C. § 2035(b), as explained above, Ackerley's federal

taxable estate included the federal tax paid for any gift he or his spouse made during the three-year period ending on the date of his death. Mr. Ackerley died in 2011, after having made lifetime gifts and having paid federal gift taxes on those gifts. AR at 13-16. Because he died within three years from the date of the federal gift tax paid for the gifts in 2008 and 2010, his estate was required to include the federal gift tax paid in his federal return as the estate's federal gross estate. The statutory deductions provided in Washington's estate tax do not include federal gift tax paid. *See* RCW 83.100.046, .047, .048. Because Washington's taxable estate is based upon the federal taxable estate, and no deduction exists regarding the federal gift tax amounts covered by 26 U.S. C. § 2035(b), the Estate therefore was required to include the federal gift tax paid in order to calculate the proper Washington estate tax. *See* RCW 83.100.020(15).

The Department made no an error of law. To the contrary, it properly included the amount from the federal taxable estate in the Washington taxable estate, and it properly assessed the Estate, the estate tax based upon this additional amount.

**C. The Statutory Estate Tax Scheme Broadly Defines “Transfer” And The Supreme Court’s Recent Decision In *Hambleton* Broadly Construes the Term.**

Under the 2013 legislation, as construed by *Hambleton*, the entire federal taxable estate is considered a taxable “transfer” under Washington

law, and because it is clear that a taxable transfer of the estate has occurred, Washington law does not require that all of the tax measure be included within this transfer. Rather, Washington imposes its tax on the entire federal taxable estate. *In re Estate of Hambleton*, 181 Wn.2d 802,814, 335 P.3d 398 (2014).

The Estate argues that it did not have to include the federal gift tax in its Washington estate tax return because it was not a “transfer of property.” Estate’s Br. at 7. The Estate quotes in part, RCW 83.100.040(1), that “Washington’s estate tax is imposed on ‘every transfer of property located in Washington,’” and cites *Bracken*, 175 Wn.2d at 559, for the argument that in order to be taxable, there must be a transfer. Estate’s Br. at 7.

However, the court in *Bracken* used a narrow definition of “transfer” that is no longer controlling. After the *Bracken* decision, the Legislature responded by amending the definition of “transfer” and broadening the definition to its “broadest possible meaning consistent with established United States Supreme Court precedents.” Laws of 2013, 2d Spec. Sess., ch. 2, § 1(5).

The 2013 Legislature referenced the federal estate tax law and broadly defined “transfer” as:

“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. . .

*Id.*, § 2(12) (codified as RCW 83.100.020(14)).<sup>5</sup>

Under federal estate tax law, the term “transfer” also is construed broadly and “extends to the creation, exercise, acquisition, or relinquishment of any power or legal privilege which is incident to the ownership of property.” *Fernandez*, 326 U.S. at 352. Thus, a “transfer” for federal estate tax purposes is not limited to a formal conveyance of property under state property law. Rather, Congress may include within the estate tax base property that was not formally conveyed on the death of the decedent. *Id.* Because Washington’s estate tax scheme incorporates key features of the federal estate tax scheme and has broadly defined transfer like the federal estate tax scheme, the same is true for Washington estate tax purposes. Under the plain meaning of the term “transfer” in RCW 83.100.020(14), the federal gift tax paid that is reported as part of the federal taxable estate must be reported as part of Washington’s taxable estate.

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<sup>5</sup> The former statutory definition of “transfer” referenced the federal estate tax law, but did not include the broad language included in the definition today. The former statute in pertinent part read, “‘Transfer’ means ‘transfer’ as used in section 2001 of the Internal Revenue Code. . . .” RCW 83.100.020(11).

The Supreme Court considered this legislation and the definition of “transfer” in *In re Estate of Hambleton*, 181 Wn.2d 802, 335 P.3d 398 (2014). In a unanimous opinion, the Supreme Court rejected the *Bracken* opinion’s narrow construction of the term “transfer.” *Id.* at 812. The Court examined the federal estate tax law, recognizing that the state’s estate tax law is based on the federal estate tax laws and that federal courts broadly construe the term “transfer.” *Id.* at 832. Under the federal system, an “excise” or “transfer” tax exists if the government taxes “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.” *Id.* (quoting *Fernandez*, 326 U.S. at 352). The estate tax is triggered upon the death of the decedent:

[T]he estate tax is not “in a strict sense a tax upon a ‘transfer’ of the property by the death of the decedent. It is an excise tax upon the happening of an event, namely, death, where the death brings about certain described changes in legal relationships affecting property.”

*In re Estate of Hambleton*, 181 Wn.2d at 832-33 (quoting *Chickering v. Comm’r*, 118 F.2d 254, 257-58 (1st Cir. 1941)).

This Court should reject the Estate’s suggestion to interpret the definition of “transfer” in a manner contrary to the statutory scheme and plain intent of the Legislature.

**1. The trial court properly concluded that a transfer occurred.**

Applying the analysis in *Hambleton* of the term “transfer,” the superior court properly concluded that a transfer occurred within the meaning of RCW 83.100.020(14). CP 99-100. The superior court reasoned that the RCW 83.100.020(14) definition of “transfer” incorporates the federal definition of transfer “as used in section 2001 of the internal revenue code . . . .” CP at 100. Under section 2001(a), the federal estate tax is “imposed on the transfer of the taxable estate of every decedent,” and the federal taxable estate includes gift taxes for gifts made within three years of the decedent’s death. *Id.* (referencing) 26 U.S.C. §§ 2001(e), 2035(b). The superior court concluded that under the federal statutes, RCW 18.100.020(14) and (15), and the Court’s decision in *Hambleton*, the federal gift taxes Mr. Ackerley paid within the three years prior to his death must be included as part of his federal taxable estate and his Washington taxable estate. CP at 95.

**2. The federal gift tax Mr. Ackerley paid is a “transfer” because it reflects an economic benefit or legal privilege the Estate received.**

The 2013 Legislature broadly expanded the definition of “transfer” to include “any shifting upon death of the economic benefit in property or any power or legal privilege incidental to the ownership or enjoyment of

property.” RCW 83.100.020(14), as amended in Laws of 2013, 2d Spec. Sess., ch. 2, §§ 1(3), 2(12). The Estate argues that payment of the federal gift tax would not meet this part of the statutory definition. Estate’s Br. at 17-18. But the Estate did in fact receive an economic benefit. By giving away property prior to death, Mr. Ackerley reduced the amount of his estate that would be subject to estate tax, thereby reducing the total tax bill and protecting more of his assets to be distributed to his beneficiaries. Therefore, under this portion of the Legislature’s expanded definition, the federal gift tax paid reflects a “transfer” and an amount included in the Estate’s Washington taxable estate.

**3. The Estate construes the definition of “transfer” too narrowly.**

The Estate’s narrow construction of the definition of “transfer” should be rejected. The Estate asserts that the gift tax paid is not a “transfer of property” and therefore would not be includable in the Washington taxable estate. Estate Br. at 12-13. To support its proposition, the Estate cites *Estate of Armstrong v. Comm’r*, 119 T.C. No. 13, 119 T.C. 220 (2002), and argues that the Tax Court concluded that 26 U.S.C. § 2035(b) does not encompass a transfer.<sup>6</sup> The Estate extrapolates

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<sup>6</sup> The Estate also cites to an IRS’s Office of Chief Counsel’s Advisory. Estate’s Br. at 16. The Advisory specifically indicates that it “may not be used or cited as precedent.” See CP at 79. Further, the issue the memo addressed was whether 2035(b) applied to a “nonresident not citizen decedent’s U.S. estate.” These are not the facts here.

from that conclusion that, since the gift tax paid is not a transfer, it would not be subject to or included in Washington's taxable estate. Estate's Br. at 14-15. The Estate misconstrues the Tax Court's analysis and fails to grasp the import of the Tax Court's decision.

In *Armstrong*, the estate attempted to reduce the gift taxes it paid that were included in its federal taxable estate. *Id.* at 227. One of its arguments for reducing its liability centered on the argument that 26 U.S.C. § 2035(b) must describe a transfer. *Id.* at 228.<sup>7</sup> The Tax Court rejected the estate's technical argument. The Tax Court explained that the imposition of the estate tax does not hinge on the existence of a transfer: "As the Supreme Court has made clear, . . . this does not mean that the estate tax may be imposed only on 'transfers.'" *Id.* at 229 (citing *Fernandez*, 326 U.S. at 352). The Tax Court further pointed out that death taxes were not limited to taxation of transfers at death, and the gross estate includes the amount of assets required to satisfy the estate tax liability, "even though those assets are ultimately unavailable for transfer by the decedent." *Id.* at 229 n.8. And as the Estate acknowledged, the Tax Court rejected the notion that "each constituent element of the gross estate . . .

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The Estate does not contest that it had to include the federal gift taxes paid in its federal return. The Court should disregard the Advisory as entirely inapplicable to the facts here.

<sup>7</sup> At the time the case was in litigation, the applicable section was 2035(c), but this was amended in 1997 and re-lettered to subsection b. *See supra* n.3.

necessarily constitutes, depends upon, or presupposes a separate and distinct ‘transfer’ of property.” *Id.* at 229; *see* Estate’s Br. at 15-16.

Similarly, in this case one “element of the gross estate” in both the federal taxable estate and in the Washington taxable estate is the federal gift tax paid. Regardless of whether federal gift tax paid under 26 U.S.C. § 2035(b) is considered a transfer, its incorporation in the federal taxable estate requires its incorporation in the Washington taxable estate. RCW 83.100.020(15). This Court should reject the Estate’s narrow interpretation of the statute.

**D. The Estate Asks This Court to Create An Exemption From Tax.**

The Estate fails to cite to the Court any statutory provision that would exclude or exempt the federal gift tax paid from being included in Washington’s taxable estate. The Washington Estate and Transfer Act incorporates chapter 11 of the Internal Revenue Code. RCW 83.100.020(4), (5), (6), (8), (10). If the Legislature had intended to exclude the federal gift tax from Washington’s taxable estate, it would have amended any of the definitions of “federal taxable estate,” “gross estate,” or even “Washington taxable estate,” to specifically exclude the incorporation of 26 U.S.C. § 2035(b). Nowhere in the Washington Estate

and Transfer Tax Act does the Legislature exclude the federal gift tax paid from Washington's taxable estate.

The Estate effectively asks this Court to find an implied exemption from the estate tax. However, "taxation is the rule and exemption is the exception, and where there is an exception, the intention to make one should be expressed in unambiguous terms." *TracFone Wireless Inc., v. Dep't of Revenue*, 170 Wn.2d 273, 296-97, 242 P.3d 810 (2010) (quoting *Columbia Irrig. Dist. v. Benton County*, 149 Wash. 234, 240, 270 P. 813 (1928)).

The Legislature has not adopted any language or expressed any intention to exclude the federal gift tax paid during the three years prior to death from the Washington taxable estate. In fact, when faced with *Bracken*, a decision narrowing the scope of a taxable estate, the Legislature instead acted to expand the breadth of the property to be taxed. As recognized in *Estate of Hambleton*, the Legislature intended the definition of "transfer" to be "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." Laws of 2013, 2d Spec. Sess., ch. 2, § 1(3) (quoting *Fernandez*, 326 U.S. at 352); *In Re Estate of Hambleton*, 181 Wn.2d at 813.

The Court should reject the Estate's attempt to create an implied exemption and affirm the Department's decision to include federal gift tax paid as part of the Estate's Washington taxable estate.

**V. CONCLUSION**

The Washington taxable estate is calculated based on the federal taxable estate. The Ackerley Estate was required to include in its Washington taxable estate the amount of federal gift tax it paid within three years of the date of Mr. Ackerley's death. The Department properly included that amount in calculating the Washington estate tax owed by the Estate. This Court should affirm the Department's decision.

RESPECTFULLY SUBMITTED this 25th day of September,  
2015.

ROBERT W. FERGUSON  
Attorney General

A handwritten signature in black ink, appearing to read 'David M. Hankins', with a long horizontal line extending to the right.

DAVID M. HANKINS  
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## PROOF OF SERVICE

I certify that I served a copy of this document, via electronic mail,  
per agreement, on the following:

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

DATED this 25th day of September 2015, at Tumwater, WA.

  
\_\_\_\_\_  
Julie Johnson, Legal Assistant

# **APPENDIX 1**

§ 2001. Imposition and rate of tax.

**United States Statutes**

**Title 26. INTERNAL REVENUE CODE**

**Subtitle B. Estate and Gift Taxes**

**Chapter 11. ESTATE TAX**

**Subchapter A. Estates of Citizens or Residents**

**Part I. TAX IMPOSED**

*Current through P.L. 114-49*

**§ 2001. Imposition and rate of tax**

(a) **Imposition**

A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

(b) **Computation of tax**

The tax imposed by this section shall be the amount equal to the excess (if any) of-

(1) a tentative tax computed under subsection (c) on the sum of-

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the modifications described in subsection (g) had been applicable at the time of such gifts.

For purposes of paragraph (1)(B), the term "adjusted taxable gifts" means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

(c) **Rate schedule**

<b>If the amount with respect to which the tentative tax to be computed is:</b>	<b>The tentative tax is:</b>
---	------------------------------

Not over \$10,000

18 percent of such amount.

Over \$10,000 but not over \$20,000	\$1,800, plus 20 percent of the excess of such amount over \$10,000.
Over \$20,000 but not over \$40,000	\$3,800, plus 22 percent of the excess of such amount over \$20,000.
Over \$40,000 but not over \$60,000	\$8,200 plus 24 percent of the excess of such amount over \$40,000.
Over \$60,000 but not over \$80,000	\$13,000, plus 26 percent of the excess of such amount over \$60,000.
Over \$80,000 but not over \$100,000	\$18,200, plus 28 percent of the excess of such amount over \$80,000.
Over \$100,000 but not over \$150,000	\$23,800, plus 30 percent of the excess of such amount over \$100,000.
Over \$150,000 but not over \$250,000	\$38,800, plus 32 percent of the excess of such amount over \$150,000.
Over \$250,000 but not over \$500,000	\$70,800, plus 34 percent of the excess of such amount over \$250,000.
Over \$500,000 but not over \$750,000	\$155,800, plus 37 percent of the excess of such amount over \$500,000.
Over \$750,000 but not over \$1,000,000	\$248,300, plus 39 percent of the excess of such amount over \$750,000.
Over \$1,000,000	\$345,800, plus 40 percent of the excess of such amount over \$1,000,000.

(d) **Adjustment for gift tax paid by spouse**

For purposes of subsection (b)(2), if-

- (1) the decedent was the donor of any gift one-half of which was considered under section 2513 as made by the decedent's spouse, and
- (2) the amount of such gift is includible in the gross estate of the decedent, any tax payable by the spouse under chapter 12 on such gift (as determined under section 2012(d)) shall be treated as a tax payable with respect to a gift made by the decedent.

(e) **Coordination of sections 2513 and 2035**

If-

- (1) the decedent's spouse was the donor of any gift one-half of which was considered

under section 2513 as made by the decedent, and

- (2) the amount of such gift is includible in the gross estate of the decedent's spouse by reason of section 2035, such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent's spouse with respect to such gift.

(f) **Valuation of gifts**

(1) **In general**

If the time has expired under section 6501 within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on-

- (A) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or
- (B) an increase in taxable gifts required under section 2701(d), the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined for purposes of chapter 12.

(2) **Final determination**

For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if-

- (A) the value is shown on a return under such chapter and such value is not contested by the Secretary before the expiration of the time referred to in paragraph (1) with respect to such return;
- (B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the taxpayer; or
- (C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.

For purposes of subparagraph (A), the value of an item shall be treated as shown on a return if the item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(g) **Modifications to gift tax payable to reflect different tax rates**

For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute-

- (1) the tax imposed by chapter 12 with respect to such gifts, and
- (2) the credit allowed against such tax under section 2505, including in computing-
  - (A) the applicable credit amount under section 2505(a)(1), and
  - (B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).

**Cite as 26 U.S.C. § 2001**

**Source:** Aug. 16, 1954, ch. 736, 68A Stat. 373; Pub. L. 94-455 Oct. 4, 1976, 90 Stat. 1846; Pub. L. 95-600 Nov. 6, 1978, 92 Stat. 2930; Pub. L. 97-34, title IV, §402(a)-(c), Aug. 13, 1981, 95 Stat. 300; Pub. L. 98-369, div. A, title I, §21(a), July 18, 1984, 98 Stat. 506; Pub. L. 100-203, title X, §10401(a)-(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330-430, 1330-431; Pub. L. 103-66 1993; Pub. L. 105-34 1997; Pub. L. 105-206 1998; Pub. L. 105-277 1998; Pub. L. 107-16 2001; Pub. L. 111-312 Dec. 17, 2010, 124 Stat. 3301, 3302; Pub. L. 112-240 Jan. 2, 2013, 126 Stat. 2317.

**Notes from the Office of Law Revision Counsel**

current through 8/21/2015

**AMENDMENTS 2013-**Subsec. (c). Pub. L. 112-240 substituted in table separate tentative tax rates for amounts over \$500,000 but not over \$750,000, over \$750,000 but not over \$1,000,000, and over \$1,000,000, respectively, for single tentative tax rate for amounts over \$500,000. **2010-**Subsec. (b)(2). Pub. L. 111-312 substituted "if the modifications described in subsection (g)" for "if the provisions of subsection (c) (as in effect at the decedent's death)". Subsec. (c). Pub. L. 111-312 struck out par. (1) designation and heading preceding table, substituted in table a single tentative tax rate for any amount over \$500,000 for separate tentative tax rates for amounts ranging from over \$500,000 to over \$2,500,000, and struck out par. (2) which related to phasedown of maximum rate of tax. Subsec. (g). Pub. L. 111-312 added subsec. (g). **2001-**Subsec. (c)(1). Pub. L. 107-16 substituted in table provisions that if the amount on which the tax is computed is over \$2,500,000, then the tentative tax is \$1,025,800, plus 50% of the excess over \$2,500,000 for provisions that if the amount on which the tax is computed is over \$2,500,000 but not over \$3,000,000, then the tentative tax is \$1,025,800, plus 53% of the excess over \$2,500,000, and if the amount on which the tax is computed is over \$3,000,000, then the tentative tax is \$1,290,800, plus 55% of the excess over \$3,000,000. Subsec. (c)(2). Pub. L. 107-16 added par. (2). Pub. L. 107-16 struck out heading and text of par. (2). Text read as follows: "The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds \$10,000,000 but does not exceed the amount at which the average tax rate under this section is 55 percent." **1998-**Subsec. (f). Pub. L. 105-206 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If-(1) the time has expired within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), and"(2) the value of such gift is shown on the return for such preceding calendar period or is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such gift, the value of such gift shall, for purposes of computing the tax under this chapter, be the value of such gift as finally determined for purposes of

chapter 12."Subsec. (f)(2). Pub. L. 105-277 inserted concluding provisions.1997-Subsec. (c)(2). Pub. L. 105-34 substituted "the amount at which the average tax rate under this section is 55 percent" for "\$21,040,000".Subsec. (f). Pub. L. 105-34 added subsec. (f).1993-Subsec. (c)(1). Pub. L. 103-66 substituted in table provisions that if the amount on which the tax is computed is over \$2,500,000 but not over \$3,000,000, then the tentative tax is \$1,025,800, plus 53% of the excess over \$2,500,000 and if the amount on which the tax is computed is over \$3,000,000, then the tentative tax is \$1,290,800, plus 55% of the excess over \$3,000,000 for provisions that if the amount on which the tax is computed is over \$2,500,000, then the tentative tax is \$1,025,800, plus 50% of the excess over \$2,500,000. Subsec. (c)(2), (3). Pub. L. 103-66 redesignated par. (3) as (2), struck out "(\$18,340,000 in the case of decedents dying, and gifts made, after 1992)" after "exceed \$21,040,000", and struck out former par. (2) which related to the rates of tax on estates under this section for the years 1982 to 1992.1987-Subsec. (b)(1). Pub. L. 100-203 substituted "under subsection (c)" for "in accordance with the rate schedule set forth in subsection (c)".Subsec. (b)(2). Pub. L. 100-203 substituted "the provisions of subsec. (c)" for "the rate schedule set forth in subsection (c)".Subsec. (c)(2)(A). Pub. L. 100-203 substituted "1993" for "1988".Subsec. (c)(2)(D). Pub. L. 100-203 substituted in heading "After 1983 and before 1993" for "For 1984, 1985, 1986, or 1987", and in text "after 1983 and before 1993" for "in 1984, 1985, 1986, or 1987".Subsec. (c)(3). Pub. L. 100-203 added par. (3).1984-Subsec. (c)(2)(A), (D). Pub. L. 98-369 substituted "1988" for "1985" in subpar. (A) and substituted "1984, 1985, 1986, or 1987" for "1984" in heading and text of subpar. (D).1981-Subsec. (b)(2). Pub. L. 97-34 inserted "which would have been" before "payable" and ", if the rate schedule set forth in subsection (c) (as in effect at the decedent's death) had been applicable at the time of such gifts" after "December 31, 1976,".Subsec. (c). Pub. L. 97-34 designated existing provision as par. (1), inserted heading "In general" and substituted in table provision that if the amount computed is over \$2,500,000 then the tentative tax is \$1,025,800 plus 50% of the excess over \$2,500,000 for provisions that if the amount computed is over \$2,500,000 but not over \$3,000,000, then the tentative tax is \$1,025,800 plus 53% of the excess over \$2,500,000, over \$3,000,000 but not over \$3,500,000 then the tentative tax is \$1,290,000 plus 57% of the excess over \$3,000,000, over \$3,500,000 but not over \$4,000,000 then the tentative tax is \$1,575,800 plus 61% of the excess over \$3,500,000, over \$4,000,000 but not over \$4,500,000 then the tentative tax is \$1,880,800 plus 65% of the excess over \$4,000,000, over \$4,500,000 but not over \$5,000,000 then the tentative tax is \$2,205,800 plus 69% of the excess over \$4,500,000, over \$5,000,000 then the tentative tax is \$2,550,800 plus 70% of the excess over \$5,000,000, and added par. (2).1978-Subsec. (e). Pub. L. 95-600 added subsec. (e).1976- Pub. L. 94-455 substituted provisions setting a unified rate schedule for estate and gift taxes ranging from 18 percent for the first \$10,000 in taxable transfers to 70 percent of taxable transfers in excess of \$5,000,000, with provision for adjustments for gift taxes paid by spouses, for provisions setting an estate tax of 3 percent of the first \$5,000 of the taxable estate to 77 percent of the taxable estate in excess of \$10,000,000.

**EFFECTIVE DATE OF 2013 AMENDMENT** Pub. L. 112-240 Jan. 2, 2013, 126 Stat. 2318, provided that: "(A) IN GENERAL.-Except as otherwise provided by in this paragraph, the amendments made by this subsection [amending this section and section 2010 of this title] shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2012." (B) TECHNICAL CORRECTION.-The amendment made by paragraph (2) [amending section 2010 of this title] shall take effect as if included in the amendments made by section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [ Pub. L. 111-312]."

**EFFECTIVE DATE OF 2010 AMENDMENT** Pub. L. 111-312 Dec. 17, 2010, 124 Stat. 3302, as amended by Pub. L. 113-295 Dec. 19, 2014, 128 Stat. 4027, provided that: "Except as otherwise provided in this section, the amendments

made by this section [amending this section and sections 2010, 2502, 2505 and 2511 of this title] shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009."

**EFFECTIVE DATE OF 2001 AMENDMENT** Pub. L. 107-162001, provided that: "(1) SUBSECTIONS (a) AND (b).-The amendments made by subsections (a) and (b) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2001." (2) SUBSECTION (c).-The amendment made by subsection (c) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2002."

**EFFECTIVE DATE OF 1998 AMENDMENTS** Amendment by Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-341997, to which such amendment relates, see section 4003(l) of Pub. L. 105-277, set out as a note under section 86 of this title. Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-341997, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT** Pub. L. 105-341997, as amended by Pub. L. 105-2061998, provided that: "The amendments made by this section [amending this section and sections 2010, 2032A, 2102, 2503, 2505, 2631, 6018, and 6601 of this title] (other than the amendment made by subsection (d) [amending section 2631 of this title]) shall apply to the estates of decedents dying, and gifts made, after December 31, 1997." Pub. L. 105-341997, as amended by Pub. L. 105-2061998, provided that: "The amendments made by subsections (a), (c), and (d) [enacting section 7477 of this title and amending this section and section 2504 of this title] shall apply to gifts made after the date of the enactment of this Act [Aug. 5, 1997]."

**EFFECTIVE DATE OF 1993 AMENDMENT** Pub. L. 103-661993, provided that: "The amendments made by this section [amending this section and section 2101 of this title] shall apply in the case of decedents dying and gifts made after December 31, 1992."

**EFFECTIVE DATE OF 1987 AMENDMENT** Pub. L. 100-203, title X, §10401(c), Dec. 22, 1987, 101 Stat. 1330-431, provided that: "The amendments made by this section [amending this section and section 2502 of this title] shall apply in the case of decedents dying, and gifts made, after December 31, 1987."

**EFFECTIVE DATE OF 1984 AMENDMENT** Pub. L. 98-369, div. A, title I, §21(b), July 18, 1984, 98 Stat. 506, provided that: "The amendments made by subsection (a) [amending this section] shall apply to the estates of decedents dying after, and gifts made after, December 31, 1983."

**EFFECTIVE DATE OF 1981 AMENDMENT** Pub. L. 97-34, title IV, §402(d), Aug. 13, 1981, 95 Stat. 301, provided that: "The amendments made by this section [amending this section] shall apply to estates of decedents dying after, and gifts made after, December 31, 1981."

**EFFECTIVE DATE OF 1978 AMENDMENT** Pub. L. 95-600 Nov. 6, 1978, 92 Stat. 2931, provided that: "The amendments made by this subsection [amending this section and section 2602 of this title] shall apply with respect to the estates of decedents dying after December 31, 1976, except that such amendments shall not apply to transfers made before January 1, 1977."

**EFFECTIVE DATE OF 1976 AMENDMENT** Pub. L. 94-455 Oct. 4, 1976, 90 Stat. 1854, provided that: "The amendments made by subsections (a) [enacting section 2010, amending this section and sections 2012 and 2035, and repealing section 2052 of this title] and (c)(1) [amending sections 2011, 2012, 2013, 2014, 2038, 2044, 2101, 2102, 2104, 2106, 2107, 2206, 2207, and 6018 of this title] shall apply to the estates of decedents dying after December 31, 1976; except that the amendments made by subsection (a)(5) [amending section 2035 of this title] and subparagraphs (K) and (L) of subsection (c)(1) [amending sections 2038 and 2104 of this title] shall not apply to transfers made before January 1, 1977."

**SHORT TITLE** Pub. L. 91-614 Dec. 31, 1970, 84 Stat. 1836, provided that: "This Act [enacting section 6905 of this title, section 1232a of Title 15, Commerce and Trade, and section 1033 of former Title 31, Money and Finance, amending sections 56, 1015, 1223, 2012, 2032, 2055, 2204, 2501, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 4061, 4063, 4216, 4251, 4491, 6019, 6040, 6075, 6091, 6161, 6212, 6214, 6324, 6412, 6416, 6501, 6504, and 6512 of this title, and enacting provisions set out as notes under sections 56, 2032, 2204, 2501, 4063, 4216, 4251, 4491, and 6905 of this title] may be cited as the 'Excise, Estate, and Gift Tax Adjustment Act of 1970'."

**SPECIAL ELECTION WITH RESPECT TO ESTATES OF DECEDENTS DYING IN 2010** Pub. L. 111-312 Dec. 17, 2010, 124 Stat. 3300, provided that: "Notwithstanding subsection (a) [amending sections 121, 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title], in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection."

**CLARIFICATION OF TREATMENT OF CERTAIN EXEMPTIONS FOR PURPOSES OF FEDERAL ESTATE AND GIFT TAXES** Pub. L. 98-369, div. A, title VI, §641, July 18, 1984, 98 Stat. 939, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "(a) GENERAL RULE.-Nothing in any provision of law exempting any property (or interest therein) from taxation shall exempt the transfer of such property (or interest therein) from Federal estate, gift, and generation-skipping transfer taxes. In the case of any provision of law enacted after the date of the enactment of this Act [July 18, 1984], such provision shall not be treated as exempting the transfer of property from Federal estate, gift, and generation-skipping transfer taxes unless it refers to the appropriate provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."(b) EFFECTIVE DATE.-"(1) IN GENERAL.-The provisions of subsection (a) shall apply to the estates of decedents dying, gifts made, and transfers made on or after June 19, 1984."(2) TREATMENT OF CERTAIN TRANSFERS TREATED AS TAXABLE.-The provisions of subsection (a) shall also apply in the case of any transfer of property (or interest therein) if at any time there was filed an estate or gift tax return showing such transfer as subject to Federal estate or gift tax."(3) NO INFERENCE.-No inference shall arise from paragraphs (1) and (2) that any transfer of property (or interest therein) before June 19, 1984, is exempt from

Federal estate and gift taxes."

**REPORTS WITH TRANSFERS OF PUBLIC HOUSING BONDS** Pub. L. 98-369, div. A, title VI, §642, July 18, 1984, 98 Stat. 939, provided that: "(a) GENERAL RULE.-With respect to transfers of public housing bonds occurring after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax." (b) PENALTY FOR FAILURE TO REPORT.-Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift, or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject."

# **APPENDIX 2**

§ 2031. Definition of gross estate.

**United States Statutes**

**Title 26. INTERNAL REVENUE CODE**

**Subtitle B. Estate and Gift Taxes**

**Chapter 11. ESTATE TAX**

**Subchapter A. Estates of Citizens or Residents**

**Part III. GROSS ESTATE**

*Current through P. L. 113-186, 113-201 and 113-234*

**§ 2031. Definition of gross estate**

**(a) General**

The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

**(b) Valuation of unlisted stock and securities**

In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

**(c) Estate tax with respect to land subject to a qualified conservation easement**

**(1) In general**

If the executor makes the election described in paragraph (6), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the lesser of-

(A) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or

(B) the exclusion limitation.

**(2) Applicable percentage**

For purposes of paragraph (1), the term "applicable percentage" means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land <sup>1</sup> (determined without regard to the value of such easement and reduced by the value of any retained development right (as defined in paragraph (5)). The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).

(3) **Exclusion limitation**

For purposes of paragraph (1), the exclusion limitation is the limitation determined in accordance with the following table:

<b>In the case of estates of decedents dying during:</b>	<b>The exclusion limitation is:</b>
1998	\$100,000
1999	\$200,000
2000	\$300,000
2001	\$400,000
2002 or thereafter	\$500,000.

(4) **Treatment of certain indebtedness**

(A) **In general**

The exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

(B) **Definitions**

For purposes of this paragraph-

(i) **Debt-financed property**

The term "debt-financed property" means any property with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent's death.

(ii) **Acquisition indebtedness**

The term "acquisition indebtedness" means, with respect to debt-financed property, the unpaid amount of-

- (I) the indebtedness incurred by the donor in acquiring such property,

- (II) the indebtedness incurred before the acquisition of such property if such indebtedness would not have been incurred but for such acquisition,
- (III) the indebtedness incurred after the acquisition of such property ) if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, and
- (IV) the extension, renewal, or refinancing of an acquisition ) indebtedness.

(5) **Treatment of retained development right**

(A) **In general**

Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

(B) **Termination of retained development right**

If every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of the tax imposed by section 2001, then any tax imposed by section 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

(C) **Additional tax**

Any failure to implement the agreement described in subparagraph (B) not later than the earlier of-

- (i) the date which is 2 years after the date of the decedent's death, or
  - (ii) the date of the sale of such land subject to the qualified conservation easement,
- shall result in the imposition of an additional tax in the amount of the tax which would have been due on the retained development rights subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following such date.

(D) **Development right defined**

For purposes of this paragraph, the term "development right" means any right to use the land subject to the qualified conservation easement in which such right is retained for any commercial purpose which is not subordinate

to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 2032A(e)(5)).

(6) **Election**

The election under this subsection shall be made on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return. Such an election, once made, shall be irrevocable.

(7) **Calculation of estate tax due**

An executor making the election described in paragraph (6) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (5)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall be done in such manner and on such forms as the Secretary shall prescribe.

(8) **Definitions**

For purposes of this subsection-

(A) **Land subject to a qualified conservation easement**

The term "land subject to a qualified conservation easement" means land-

- (i) which is located in the United States or any possession of the United States,
- (ii) which was owned by the decedent or a member of the decedent's family at all times during the 3-year period ending on the date of the decedent's death, and
- (iii) with respect to which a qualified conservation easement has been made by an individual described in subparagraph (C), as of the date of the election described in paragraph (6).

(B) **Qualified conservation easement**

The term "qualified conservation easement" means a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that clause (iv) of section 170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on more than a de minimis use for a commercial recreational activity.

(C) **Individual described**

An individual is described in this subparagraph if such individual is-

- (i) the decedent,

- (ii) a member of the decedent's family,
- (iii) the executor of the decedent's estate, or
- (iv) the trustee of a trust the corpus of which includes the land to be subject to the qualified conservation easement.

(D) **Member of family**

The term "member of the decedent's family" means any member of the family (as defined in section 2032A(e)(2)) of the decedent.

(9) **Treatment of easements granted after death**

In any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.

(10) **Application of this section to interests in partnerships, corporations, and trusts**

This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in section 2057(e)(3).

(d) **Cross reference**

**For executor's right to be furnished on request a statement regarding any valuation made by the Secretary within the gross estate, see section 7517.**

<sup>1</sup> So in original. No closing parenthesis was enacted.

Source: Aug. 16, 1954, ch. 736, 68A Stat. 380; Pub. L. 87-834 Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455 Oct. 4, 1976, 90 Stat. 1891; Pub. L. 105-34 1997; Pub. L. 105-206 1998; Pub. L. 105-277 1998; Pub. L. 107-16 2001.

**Notes from the Office of Law Revision Counsel**

current through 12/24/2014

**AMENDMENTS** 2001-Subsec. (c)(2). Pub. L. 107-16 inserted at end "The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B)." Subsec. (c)(8)(A)(i). Pub. L. 107-16 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "which is located-" (I) in or within 25 miles of an area which, on the date of the decedent's death, is a metropolitan area (as defined by the Office of Management and Budget)," (II) in or within 25 miles of an area which, on the date of the decedent's death, is

a national park or wilderness area designated as part of the National Wilderness Preservation System (unless it is determined by the Secretary that land in or within 25 miles of such a park or wilderness area is not under significant development pressure), or"(III) in or within 10 miles of an area which, on the date of the decedent's death, is an Urban National Forest (as designated by the Forest Service),"1998-Subsec. (c)(6). Pub. L. 105-206substituted "on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return." for "on the return of the tax imposed by section 2001."Subsec. (c)(9). Pub. L. 105-206added par. (9). Former par. (9) redesignated (10).Subsec. (c)(10). Pub. L. 105-277substituted "section 2057(e)(3)" for "section 2033A(e)(3)". Pub. L. 105-206redesignated par. (9) as (10).1997-Subsecs. (c), (d). Pub. L. 105-34 added subsec. (c) and redesignated former subsec. (c) as (d).1976-Subsec. (c). Pub. L. 94-455 added subsec. (c).1962-Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside the United States.

**EFFECTIVE DATE OF 2001 AMENDMENT** Pub. L. 107-162001, provided that: "The amendments made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2000."

**EFFECTIVE DATE OF 1998 AMENDMENT**Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-341997, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**Amendment by Pub. L. 105-34 applicable to estates of decedents dying after Dec. 31, 1997, see section 508(e)(1) of Pub. L. 105-34, set out as a note under section 1014 of this title.

**EFFECTIVE DATE OF 1962 AMENDMENT**Pub. L. 87-834Oct. 16, 1962, 76 Stat. 1052, provided that:"(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section and sections 2033 , 2034 , 2035 , 2036 , 2037 , 2038 , 2040 , and 2041 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Oct. 16, 1962]."(2) In the case of a decedent dying after the date of the enactment of this Act [Oct. 16, 1962] and before July 1, 1964, the value of real property situated outside of the United States shall not be included in the gross estate (as defined in section 2031(a)) of the decedent-"(A) under section 2033, 2034, 2035(a), 2036(a), 2037(a), or 2038(a) to the extent the real property, or the decedent's interest in it, was acquired by the decedent before February 1, 1962;"(B) under section 2040 to the extent such property or interest was acquired by the decedent before February 1, 1962, or was held by the decedent and the survivor in a joint tenancy or tenancy by the entirety before February 1, 1962; or"(C) under section 2041(a) to the extent that before February 1, 1962, such property or interest was subject to a general power of appointment (as defined in section 2041) possessed by the decedent.In the case of real property, or an interest therein, situated outside of the United States (including a general power of appointment in respect of such property or interest, and including property held by the decedent and the survivor in a joint tenancy or tenancy by the entirety) which was acquired by the decedent after January 31, 1962, by gift within the meaning of section 2511, or from a prior decedent by devise or inheritance, or by reason of death, form of ownership, or other conditions (including the exercise or nonexercise of a power of appointment), for purposes of this paragraph such property or interest therein shall be deemed to have been acquired by the decedent before February 1, 1962, if before that date the donor or prior decedent had acquired the property or his interest therein or had possessed a power of appointment in respect of the property or interest."

# **APPENDIX 3**

2035. Adjustments for certain gifts made within 3 years of decedent's death.

## **United States Statutes**

### **Title 26. INTERNAL REVENUE CODE**

#### **Subtitle B. Estate and Gift Taxes**

#### **Chapter 11. ESTATE TAX**

##### **Subchapter A. Estates of Citizens or Residents**

##### **Part III. GROSS ESTATE**

*Current Through P. L. 113-65*

#### **2035. Adjustments for certain gifts made within 3 years of decedent's death**

**(a) Inclusion of certain property in gross estate**

If-

- (1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and
- (2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,  
the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

**(b) Inclusion of gift tax on gifts made during 3 years before decedent's death**

The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

**(c) Other rules relating to transfers within 3 years of death**

**(1) In general**

For purposes of-

- (A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

- (B) section 2032A (relating to special valuation of certain farms, etc., real property), and
- (C) subchapter C of chapter 64 (relating to lien for taxes),  
the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

(2) **Coordination with section 6166**

An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of subsection (a).

(3) **Marital and small transfers**

Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life insurance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(2)) to file any gift tax return for such year with respect to transfers to such donee.

(d) **Exception**

Subsection (a) and paragraph (1) of subsection (c) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

(e) **Treatment of certain transfers from revocable trusts**

For purposes of this section and section 2038, any transfer from any portion of a trust during any period that such portion was treated under section 676 as owned by the decedent by reason of a power in the grantor (determined without regard to section 672(e)) shall be treated as a transfer made directly by the decedent.

Cite as 26 U.S.C. 2035

Source: Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87-834, 18(a)(2)(C), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, 2001(a)(5), Oct. 4, 1976, 90 Stat. 1848; Pub. L. 95-600, title VII, 702(f)(1), Nov. 6, 1978, 92 Stat. 2930; Pub. L. 97-34, title IV, 403(b)(3)(B), 424(a), Aug. 13, 1981, 95 Stat. 301, 317; Pub. L. 97-448, title I, 104(a)(9), (d)(1)(A), (C), (2), Jan. 12, 1983, 96 Stat. 2381, 2383; Pub. L. 105-34, title XIII, 1310(a), Aug. 5, 1997, 111 Stat. 1043; Pub. L. 106-554, 1(a)(7) [title III, 319(14)], Dec. 21, 2000, 114 Stat. 2763, 2763A-646.

Notes from the Office of Law Revision Counsel

current through 1/13/2014

AMENDMENTS2000-Subsec. (c)(2). Pub. L. 106-554, 1(a)(7) [title III, 319(14)(A)], substituted "subsection (a)" for

"paragraph (1)". Subsec. (d). Pub. L. 106-554, 1(a)(7) [title III, 319(14)(B)], inserted "and paragraph (1) of subsection (c)" after "Subsection (a)". 1997- Pub. L. 105-34 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to adjustments for gifts made within 3 years of decedent's death. 1983- Subsec. (b)(2). Pub. L. 97-448, 104(a)(9), substituted "section 6019(2)" for "section 6019(a)(2)". Subsec. (d)(2). Pub. L. 97-448, 104(d)(2), inserted "of this subsection and paragraph (2) of subsection (b)" after "Paragraph (1)", and struck out "2041," after "2038.". Subsec. (d)(3)(C), (D). Pub. L. 97-448, 104(d)(1)(C), redesignated subpar. (D) as (C). Former subpar. (C), which referred to section 6166 (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business), was struck out. Subsec. (d)(4). Pub. L. 97-448, 104(d)(1)(A), added par. (4). 1981- Subsec. (b)(2). Pub. L. 97-34, 403(b)(3)(B), inserted "(other than by reason of section 6019(a)(2))" after "section 6019". Subsec. (d). Pub. L. 97-34, 424(a), added subsec. (d). 1978- Subsec. (b). Pub. L. 95-600 substituted in par. (2) provisions relating to gifts for which donee was not required by section 6019 to file gift tax returns for provisions relating to gifts excludable in computing taxable gifts by reason of section 2503(b) and inserted provisions following par. (2) relating to inapplicability of par. (2) to transfers respecting life insurance policies. 1976- Pub. L. 94-455 substituted provisions covering adjustments for gifts made within 3 years of decedent's death for provisions under which transfers by the decedent within 3 years of the decedent's death were deemed to have been made in contemplation of death and included in the value of the gross estate. 1962- Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

**EFFECTIVE DATE OF 1997 AMENDMENT** Pub. L. 105-34, title XIII, 1310(c), Aug. 5, 1997, 111 Stat. 1044, provided that: "The amendments made by this section [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

**EFFECTIVE DATE OF 1983 AMENDMENT** Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34 1981, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1981 AMENDMENT** Amendment by section 403(b)(3)(B) of Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97-34, set out as a note under section 2056 of this title. Pub. L. 97-34, title IV, 424(b), Aug. 13, 1981, 95 Stat. 317, provided that: "The amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after December 31, 1981."

**EFFECTIVE DATE OF 1978 AMENDMENT** Pub. L. 95-600, title VII, 702(f)(2), Nov. 6, 1978, 92 Stat. 2930, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to the estates of decedents dying after December 31, 1976, except that it shall not apply to transfers made before January 1, 1977."

**EFFECTIVE DATE OF 1976 AMENDMENT** Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, but not to transfers made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

**EFFECTIVE DATE OF 1962 AMENDMENT** Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

**TRANSFERS MADE BY DECEDENT DURING 1977; ELECTION AVAILABLE TO EXECUTOR ON OR BEFORE DUE DATE FOR FILING ESTATE TAX RETURN** Pub. L. 96-222; title I, 107(a)(2)(F), Apr. 1, 1980, 94 Stat. 223, as amended by Pub. L. 99-514, 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "(i) If the executor elects the benefits of this subparagraph with respect to any estate, section 2035(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to adjustments for gifts made within 3 years of decedent's death) shall be applied with respect to transfers made by the decedent during 1977 as if paragraph (2) of such section 2035(b) read as follows: "(2) to any gift to a donee made during 1977 to the extent of the amount of such gift which was excludable in computing taxable gifts by reason of section 2503(b) (relating to \$3,000 annual exclusion for purposes of the gift tax) determined without regard to section 2513(a)." (ii) The election under clause (i) with respect to any estate shall be made on or before the later of: (I) the due date for filing the estate tax return, or (II) the day which is 120 days after the date of the enactment of this Act [Apr. 1, 1980]."

# **APPENDIX 4**

**RCW 83.100.020****Definitions.**

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 1, 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) "Decedent" means a deceased individual.

(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.

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

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

(6) "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.

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

(8) "Internal revenue code" means the United States internal revenue code of 1986, as amended or renumbered as of January 1, 2005.

(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.

(10) "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.

(11) "Property" means property included in the gross estate.

(12) "Resident" means a decedent who was domiciled in Washington at time of death.

(13) "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.

(14) "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.

(15) "Washington taxable estate" means the federal taxable estate 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 RCW 83.100.048.

[2013 2nd sp.s. c 2 § 2; 2013 c 23 § 341; 2005 c 516 § 2; 2001 c 320 § 15; 1999 c 358 § 19; 1998 c 292 § 401; 1994 c 221 § 70; 1993 c 73 § 9; 1990 c 224 § 1; 1988 c 64 § 2; 1981 2nd ex.s. c 7 § 83.100.020 (Initiative Measure No. 402, approved November 3, 1981).]

#### **Notes:**

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015 (2)(k).

**Application -- Prospective and retroactive -- 2013 2nd sp.s. c 2 §§ 2 and 5:** See note following RCW 83.100.047.

**Findings -- Intent -- Final judgment -- Affect -- Effective dates -- 2013 2nd sp.s. c 2:** See notes following RCW 83.100.048.

**Finding--Intent--Application--Severability -- Effective date -- 2005 c 516:** See notes following RCW 83.100.040.

**Effective date -- 2001 c 320:** See note following RCW 11.02.005.

**Effective date -- 1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Part headings and section captions not law -- Effective dates -- 1998 c 292:** See RCW 11.11.902 and 11.11.903.

**Effective dates -- 1994 c 221:** See note following RCW 11.94.070.

# **APPENDIX 5**

**RCW 83.100.040****Estate tax imposed — Amount of tax.**

(1) A tax in an amount computed as provided in this section is imposed on every transfer of property located in Washington. For the purposes of this section, any intangible property owned by a resident is located in Washington.

(2)(a) Except as provided in (b) of this subsection, the amount of tax is the amount provided in the following table:

If Washington Taxable Estate is at least		But Less Than	The amount of Tax Equals		Of Washington Taxable Estate Value Greater than
			Initial Tax Amount	Plus Tax Rate %	
\$0		\$1,000,000	\$0	10.00%	\$0
\$1,000,000		\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000		\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000		\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000		\$6,000,000	\$550,000	18.00%	\$4,000,000
\$6,000,000		\$7,000,000	\$910,000	19.00%	\$6,000,000
\$7,000,000		\$9,000,000	\$1,100,000	19.50%	\$7,000,000
\$9,000,000			\$1,490,000	20.00%	\$9,000,000

(b) If any property in the decedent's estate is located outside of Washington, the amount of tax is the amount determined in (a) of this subsection multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Property qualifying for a deduction under RCW 83.100.046 must be excluded from the numerator and denominator of the fraction.

(3) The tax imposed under this section is a stand-alone estate tax that incorporates only those provisions of the internal revenue code as amended or renumbered as of January 1, 2005, that do not conflict with the provisions of this chapter. The tax imposed under this chapter is independent of any federal estate tax obligation and is not affected by termination of the federal estate tax.

[2013 2nd sp.s. c 2 § 4; 2010 c 106 § 234; 2005 c 516 § 3; 1988 c 64 § 4; 1981 2nd ex.s. c 7 § 83.100.040 (Initiative Measure No. 402, approved November 3, 1981).]

**Notes:**

**Application -- 2013 2nd sp.s. c 2 § 4:** "Section 4 of this act applies to estates of decedents dying on or after January 1, 2014." [2013 2nd sp.s. c 2 § 11.]

**Findings -- Intent -- Final judgment -- Affect -- Effective dates -- 2013 2nd sp.s. c 2:** See notes following RCW 83.100.048.

**Retroactive application -- 2010 c 106 §§ 234 and 235:** "Sections 234 and 235 of this act apply both retroactively and prospectively to estates of decedents dying on or after May 17, 2005." [2010 c

**Effective date -- 2010 c 106:** See note following RCW 35.102.145.

**Finding -- Intent--2005 c 516:** "The legislature recognizes that on February 3, 2005, the Washington state supreme court decided in *Estate of Hemphill v. Dep't of Rev.*, Docket No. 74974-4, that Washington's estate tax is tied to the current federal Internal Revenue Code. The legislature finds that the revenue loss resulting from the *Hemphill* decision will severely affect the legislature's ability to fund programs vital to the peace, health, safety, and support of the citizens of this state. The legislature intends to address the adverse fiscal impact of the *Hemphill* decision and provide funding for education by creating a stand-alone state estate tax." [2005 c 516 § 1.]

**Application -- 2005 c 516:** "This act applies prospectively only and not retroactively. Sections 2 through 17 of this act apply only to estates of decedents dying on or after May 17, 2005." [2005 c 516 § 20.]

**Severability -- 2005 c 516:** "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." [2005 c 516 § 21.]

**Effective date -- 2005 c 516:** "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 [May 17, 2005]." [2005 c 516 § 22.]

**WASHINGTON STATE ATTORNEY GENERAL**

**September 25, 2015 - 2:14 PM**

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