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COURT OF APPEALS DIV I
STATE OF WASHINGTON

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NO. 65948-1-I

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

In re the Matter of the:

ESTATE OF JESSIE CAMPBELL MACBRIDE,

THOMAS H. MACBRIDE III AND PHILIP C. MACBRIDE, Personal
Representatives of the Estate of Jessie Campbell Macbride,

Appellants,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

A. Procedural History.

This case involves the Washington estate tax and whether “qualified terminable interest property” (“QTIP”) included in the taxable estate of a decedent may be excluded in computing the Washington tax. When a spouse dies, his or her estate can create a QTIP trust that provides income to the surviving spouse for life. Assets used to fund the QTIP trust qualify for the marital deduction under the federal estate tax code and, therefore, are not subject to estate tax when the first spouse dies. I.R.C. § 2056(b)(7). However, upon the death of the surviving spouse, the assets remaining in the QTIP trust are treated as passing from the surviving spouse to the remainder beneficiaries of the QTIP trust. I.R.C. § 2044(c). In this way, the estate tax on QTIP is delayed until the death of the second spouse.

Jessie Macbride, who died in 2007 and whose estate is bringing this appeal, was a lifetime beneficiary of a QTIP trust established on the death of her husband, Thomas. The estate of Jessie Macbride (“Estate”) included as part of its federal taxable estate the value of the QTIP passing under Internal Revenue Code section 2044. However, the Estate argues that it is allowed to exclude the QTIP in computing its Washington tax.

The trial court disagreed and granted summary judgment to the Department. This appeal followed.

After the Estate filed its opening brief and the Department filed its respondent's brief, the Court granted the Department's motion to stay this appeal pending the decision of the Washington Supreme Court in *In re Estate of Sharon M. Bracken*, Supreme Court No. 84114-4. On October 18, 2012, the Supreme Court issued its decision in *Bracken*, holding that the Washington Legislature did not intend to impose estate tax on QTIP passing under Internal Revenue Code section 2044 at the death of the second spouse. *See Clemency v. State (In re Estate of Bracken)*, 175 Wn.2d 549, 290 P.3d 99 (2012). The Department filed a motion for reconsideration, which was denied on January 10, 2013.

On March 25, 2013, the stay of proceedings in this case was lifted. Shortly thereafter the parties were instructed to file supplemental briefs addressing the impact of the *Bracken* decision.

B. The Legislature Amended The Estate Tax Code In Response To *Bracken*.

As discussed below, the *Bracken* decision was quite controversial and would have resulted in a significant fiscal impact if applied to other estates. To combat the adverse impact of the *Bracken* decision, the Washington Legislature amended the Washington estate tax code to

clearly impose estate tax on QTIP passing under Internal Revenue Code section 2044 at the death of the second spouse. *See* Engrossed H.B. 2075, 63rd Leg., 2nd Spec. Sess. (Wash. 2013) (enacted June 14, 2013, amending the definitions of “transfer” and “Washington taxable estate” to include QTIP passing under I.R.C. § 2044) (copy attached as Appendix A). Those amendments apply retroactively to estates of decedents dying on or after May 17, 2005. *Id.* at § 9. The amended law applies to the estate of Jessie Macbride (“Estate”), who died on October 21, 2007. Consequently, as a matter of statutory law the Estate is not entitled to exclude QTIP in computing its Washington estate tax. This case should proceed only on the constitutional arguments raised by the Estate in its opening brief.

II. ARGUMENT

A. ***Bracken* Is No Longer Controlling As A Result Of The Recent Amendment To The Estate Tax Code That Applies To The Estate Of Jessie Macbride.**

In re Estate of Bracken involved the Washington estate tax and whether “qualified terminable interest property” included in the federal taxable estate of a surviving spouse must be excluded in computing the Washington estate tax owed when that surviving spouse dies. QTIP is a life estate set up to take advantage of the marital deduction allowed under federal estate tax law. When a spouse dies, his or her estate can elect to create a QTIP trust that provides income to the surviving spouse for life. Upon the

surviving spouse's death, the assets remaining in the QTIP trust are treated under federal law as passing from the surviving spouse to the remainder beneficiaries of the QTIP trust. I.R.C. § 2044(c). In this way, federal estate tax on the QTIP is delayed until the second spouse dies. *Eisenbach v. Schneider*, 140 Wn. App. 641, 652-53, 166 P.3d 858 (2007).

In *Bracken*, the Supreme Court reasoned that the “real” transfer of QTIP occurs when the first spouse dies and his or her estate elects QTIP treatment. *Bracken*, 175 Wn.2d at 572-74. The Court considered the transfer occurring at the death of the second spouse—when the spouse's life estate is extinguished and the property passes to the remainder beneficiaries—as merely a “deemed” or “fictional” transfer. *Id.* The Court then held that the Legislature intended to tax only “real” transfers when it amended the Washington estate tax in 2005. *Id.* at 574. To achieve the perceived intent of the Legislature, the Court modified the Washington estate tax code to exclude QTIP from the Washington tax when the second spouse dies. *Id.* at 570-71. Specifically, the Court ruled that the federal definition of “taxable estate,” which includes the value of QTIP passing when the second spouse dies, “cannot be used without a modification necessary to conform to the [Washington] Act: the definition must be read to exclude items that are not transfers.” *Id.*

The Court's decision in *Bracken*, which limited the Washington tax to only "real transfers," is inconsistent with established case law that has been applied by the United States Supreme Court and by the Washington Supreme Court since the late 1930's. Under that established law, Congress and state legislatures may impose estate or inheritance taxes on "deemed" or "fictional" transfers if a "shifting of economic benefit" in property occurs at death. *Fernandez v. Wiener*, 326 U.S. 340, 66 S. Ct. 178, 90 L. Ed. 116 (1945); *In re McGrath's Estate*, 191 Wash. 496, 71 P.2d 395 (1937).¹ The passing of QTIP under Internal Revenue Code section 2044 qualifies as a "transfer" under this established case law because the death of the second spouse extinguishes his or her life estate and brings about a shift in the economic benefit of the property.

There is nothing in the plain language of the former Washington estate tax code or in its legislative history to suggest that the Legislature intended the term "transfer" to be given a restrictive meaning. To the contrary, the Legislature in 2005 specifically defined "transfer" to mean a

¹ The United States Supreme Court has consistently upheld the power of Congress to impose an estate tax on the "shifting from one to another of any power or privilege incidental to the ownership or enjoyment of property" that occurs at death. *Fernandez v. Wiener*, 326 U.S. 340, 352, 66 S. Ct. 178, 90 L. Ed. 116 (1945). *See also West v. Oklahoma Tax Comm'n*, 334 U.S. 717, 727, 68 S. Ct. 1223, 92 L. Ed. 1676 (1948) ("An inheritance or estate tax is not levied on the property of which an estate is composed. Rather it is imposed upon the shifting of economic benefits and the privilege of transmitting or receiving such benefits"). Likewise, the Washington Supreme Court has upheld the Legislature's power to impose an inheritance tax on a "shifting of economic benefit" in property that occurs at death. *In re McGrath's Estate*, 191 Wash. 496, 504, 71 P.2d 395 (1937).

“‘transfer’ as used in section 2001 of the Internal Revenue Code.” RCW 83.100.020(11) (2012). As explained in *United States v. Manufacturers Nat’l Bank of Detroit*, 363 U.S. 194, 80 S. Ct. 1103, 4 L. Ed. 2d 1158 (1960), “the word ‘transfer’ in the [federal estate tax] statute, or the privilege which may constitutionally be taxed, cannot be taken in such a restricted sense as to refer only to the passing of particular items of property directly from the decedent to the transferee.” *Id.* at 199 (quoting *Chase Nat’l Bank v. United States*, 278 U.S. 327, 337, 49 S. Ct. 126, 73 L. Ed. 405 (1929)). Instead, property may be included in the taxable estate of a decedent so long as “that decedent had an interest in property at death, and that death became the generating source of definite accessions to the survivor’s property rights.” 1 Jacob Mertens, *The Law of Federal Gift and Estate Taxation* § 1.04 (1959). Under this established precedent, a “real transfer” of property owned by the decedent is not required before that property can be included in the measure of an estate or inheritance tax.

The *Bracken* decision was not well received by the Washington Legislature. Not only was the Court’s analysis at odds with well-established precedent that applied the concept of a “transfer” for estate tax purposes broadly, but the decision also imperiled the State’s ability to fulfill its constitutional obligation to provide education for all Washington

children. Taxes collected from the Washington estate tax are deposited into the Education Legacy Trust Account and are used to support K-12 public schools and institutions of higher education. *See* RCW 83.100.220, .230. The Department of Revenue estimates that the fiscal impact from the *Bracken* decision would have been approximately \$160.3 million in the 2013-2015 biennium. *See* Department of Revenue Fiscal Note for House Bill 2064 (copy attached as Appendix B).² In light of the Supreme Court’s decision in *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), the Legislature had good reason to be concerned with the holding and analysis in *Bracken*.³ By excluding QTIP from the reach of the Washington estate tax, the Supreme Court made the State’s constitutional obligation to “make ample provision for the education of all children” more difficult. Wash. Const., art. IX, § 1.

On June 13, 2013, the Washington Legislature addressed the fiscal and tax policy issues raised by the *Bracken* decision by passing legislation that amends the Washington estate tax to make clear that the Legislature *does* intend to impose Washington estate tax on QTIP passing

² House Bill 2064 was introduced during the 2013 first special session but did not pass the Senate. Engrossed House Bill 2075 was introduced during the 2013 second special session and passed the House and the Senate on June 13, 2013. The fiscal note for Engrossed House Bill 2075 should be identical to the fiscal note for House Bill 2064.

³ In *McCleary*, the Supreme Court held that the State is failing to meet its paramount constitutional duty to amply provide for the education of all children, and it ordered the Legislature to develop a basic education program that meets the constitutional standard and to “fully fund that program through regular and dependable tax sources.” *McCleary v. State*, 173 Wn.2d 477, 546-47, 269 P.3d 227 (2012).

at the death of the second spouse. *See* Engrossed House Bill 2075. The law makes clear that a “transfer” for purposes of the Washington estate tax is broadly defined and that QTIP is properly included in the “Washington taxable estate” of a Washington resident decedent and is subject to the Washington tax. *Id.* at sec. 2, ¶¶ 12 and 14 (amending the definitions of “transfer” and “Washington taxable estate”). The law also repudiates the Department’s administrative rules that had been interpreted to permit a deduction of QTIP passing under I.R.C. section 2044. *Id.* at sec. 5, ¶ 3. These key amendments to the estate tax code apply retroactively to estates of decedents dying on or after May 17, 2005. *Id.* at sec. 9. *See also, id.* at sec. 14 (emergency clause).

The Legislature has passed, and the Governor has signed into law, retroactive legislation that amends the Washington estate tax code to include in the Washington taxable estate of a resident decedent the value of QTIP passing under Internal Revenue Code section 2044. Consequently, *In re Estate of Bracken* is no longer controlling. Instead, this case should proceed under the amended law. *See Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 143-44, 744 P.2d 1032 (1987) (“the legislature may pass a law that directly impacts a case pending in Washington courts”). As succinctly pointed out by the United States Supreme Court in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 226-27,

115 S. Ct. 1447, 131 L. Ed. 2d 328 (1995), “[w]hen a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly.” Under the current law as amended by Engrossed House Bill 2075, the Estate is simply not permitted to deduct QTIP in computing its Washington estate tax liability.

B. The Appeal Can Continue On The Constitutional Arguments Raised By The Estate In Its Opening Brief.

As a matter of statutory law, the Estate is not permitted to deduct QTIP in computing its Washington estate tax liability. Consequently, the statutory arguments presented by the Estate in its opening brief should be rejected. However, the Estate also raised two constitutional arguments in its opening brief that are not forestalled by the retroactive amendments to the Washington estate tax code. First, the Estate argues that the Washington estate tax as applied to QTIP passing under I.R.C. § 2044 violates the impairment clauses of the federal and Washington Constitutions. Br. of App. at 38-41. Second, the Estate argues that the Washington tax violates Article VII, section 5 of the Washington Constitution. Br. of App. at 41-42. This appeal can proceed on those constitutional arguments, which have been briefed by the parties.

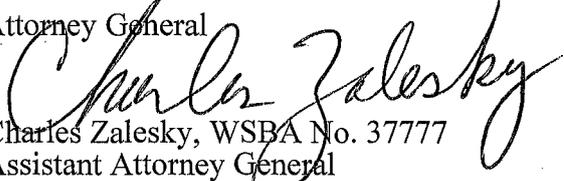
Alternatively, the Court could remand this case back to the trial court for further consideration in light of the newly enacted amendments to the Washington estate tax code. *See generally* RAP 12.2 (appellate court may take action pertaining to an appeal “as the merits of the case and the interest of justice may require”). This would permit the Estate the opportunity to raise constitutional arguments pertaining to the newly enacted legislation.

III. CONCLUSION

The decision in *In re Estate of Bracken* is not controlling in this appeal as a result of retroactive legislation passed by the Legislature and signed by the Governor that clearly provides that QTIP passing under I.R.C. § 2044 is properly included in the Washington taxable estate of a Washington resident decedent.

RESPECTFULLY SUBMITTED this 17th day of June, 2013.

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PROOF OF SERVICE

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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 17th day of June, 2013, at Tumwater, WA.



Julie Johnson, Legal Assistant

APPENDIX A

12:28 AM



CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2075

63rd Legislature
2013 2nd Special Session

Passed by the House June 13, 2013
Yeas 53 Nays 33

Frank Chopp
Speaker of the House of Representatives

Passed by the Senate June 13, 2013
Yeas 30 Nays 19

Tim Sheldon
President of the Senate

Approved JUN 14 2013

[Signature]
Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED HOUSE BILL 2075 as passed by the House of Representatives and the Senate on the dates hereon set forth.

[Signature]
Chief Clerk

FILED

Secretary of State
State of Washington

ENGROSSED HOUSE BILL 2075

Passed Legislature - 2013 2nd Special Session

State of Washington 63rd Legislature 2013 2nd Special Session

By Representatives Carlyle and Roberts

Read first time 06/12/13.

1 AN ACT Relating to preserving funding deposited into the education
2 legacy trust account used to support common schools and access to
3 higher education by restoring the application of the Washington estate
4 and transfer tax to certain property transfers while modifying the
5 estate and transfer tax to provide tax relief for certain estates;
6 amending RCW 83.100.020, 83.100.040, 83.100.047, 83.100.047,
7 83.100.120, and 83.100.210; adding a new section to chapter 83.100 RCW;
8 creating new sections; providing an effective date; providing an
9 expiration date; and declaring an emergency.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (2) "Decedent" means a deceased individual((+)).

23 ((+2)) (3) "Department" means the department of revenue, the
24 director of that department, or any employee of the department
25 exercising authority lawfully delegated to him or her by the
26 director((+)).

27 ((+3)) (4) "Federal return" means any tax return required by
28 chapter 11 of the internal revenue code((+)).

29 ((+4)) (5) "Federal tax" means a tax under chapter 11 of the
30 internal revenue code((+)).

31 ((+5)) (6) "Gross estate" means "gross estate" as defined and used
32 in section 2031 of the internal revenue code((+)).

33 ((+6)) (7) "Person" means any individual, estate, trust, receiver,
34 cooperative association, club, corporation, company, firm, partnership,
35 joint venture, syndicate, or other entity and, to the extent permitted
36 by law, any federal, state, or other governmental unit or subdivision
37 or agency, department, or instrumentality thereof((+)).

1 (~~(7)~~) (8) "Person required to file the federal return" means any
2 person required to file a return required by chapter 11 of the internal
3 revenue code, such as the personal representative of an estate(~~(7)~~).

4 (~~(8)~~) (9) "Property" means property included in the gross
5 estate(~~(7)~~).

6 (~~(9)~~) (10) "Resident" means a decedent who was domiciled in
7 Washington at time of death(~~(7)~~).

8 (~~(10)~~) (11) "Taxpayer" means a person upon whom tax is imposed
9 under this chapter, including an estate or a person liable for tax
10 under RCW 83.100.120(~~(7)~~).

11 (~~(11)~~) (12) "Transfer" means "transfer" as used in section 2001
12 of the internal revenue code and includes any shifting upon death of
13 the economic benefit in property or any power or legal privilege
14 incidental to the ownership or enjoyment of property. However,
15 "transfer" does not include a qualified heir disposing of an interest
16 in property qualifying for a deduction under RCW 83.100.046 or ceasing
17 to use the property for farming purposes(~~(7)~~).

18 (~~(12)~~) (13) "Internal revenue code" means(~~(7 for the purposes of~~
19 ~~this chapter and RCW 83.110.010,)~~) the United States internal revenue
20 code of 1986, as amended or renumbered as of January 1, 2005(~~(7)~~).

21 (~~(13)~~) (14) "Washington taxable estate" means the federal taxable
22 estate(~~(7, less: (a) One million five hundred thousand dollars for~~
23 ~~decedents dying before January 1, 2006; and (b) two million dollars for~~
24 ~~decedents dying on or after January 1, 2006; and (c) the amount of any~~
25 ~~deduction allowed under RCW 83.100.046; and)) and includes, but is not
26 limited to, the value of any property included in the gross estate
27 under section 2044 of the internal revenue code, regardless of whether
28 the decedent's interest in such property was acquired before May 17,
29 2005, (a) plus amounts required to be added to the Washington taxable
30 estate under RCW 83.100.047, (b) less: (i) The applicable exclusion
31 amount; (ii) the amount of any deduction allowed under RCW 83.100.046;
32 (iii) amounts allowed to be deducted from the Washington taxable estate
33 under RCW 83.100.047; and (iv) the amount of any deduction allowed
34 under section 3 of this act.~~

35 (~~(14)~~) (15) "Federal taxable estate" means the taxable estate as
36 determined under chapter 11 of the internal revenue code without regard
37 to: (a) The termination of the federal estate tax under section 2210

1 of the internal revenue code or any other provision of law, and (b) the
2 deduction for state estate, inheritance, legacy, or succession taxes
3 allowable under section 2058 of the internal revenue code.

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

6 (1) For the purposes of determining the tax due under this chapter,
7 a deduction is allowed for the value of the decedent's qualified
8 family-owned business interests, not to exceed two million five hundred
9 thousand dollars, if:

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

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

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

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

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

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

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

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

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

1 (i) The material participation requirements described in section
2 2032A(c)(6)(b)(ii) of the internal revenue code are not met with
3 respect to the qualified family-owned business interest which was
4 acquired or passed from the decedent;

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

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

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

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

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

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

31 (e) The qualified heir is personally liable for the additional tax
32 imposed by this subsection unless he or she has furnished a bond in
33 favor of the department for such amount and for such time as the
34 department determines necessary to secure the payment of amounts due
35 under this subsection. The qualified heir, on furnishing a bond
36 satisfactory to the department, is discharged from personal liability
37 for any additional tax and interest under this subsection and is
38 entitled to a receipt or writing showing such discharge.

1 (f) Amounts due under this subsection attributable to any qualified
2 family-owned business interest are secured by a lien in favor of the
3 state on the property in respect to which such interest relates. The
4 lien under this subsection (3)(f) arises at the time the Washington
5 return is filed on which a deduction under this section is taken and
6 continues in effect until: (i) The tax liability under this subsection
7 has been satisfied or has become unenforceable by reason of lapse of
8 time; or (ii) the department is satisfied that no further tax liability
9 will arise under this subsection.

10 (g) Security acceptable to the department may be substituted for
11 the lien imposed by (f) of this subsection.

12 (h) For purposes of the assessment or correction of an assessment
13 for additional taxes and interest imposed under this subsection, the
14 limitations period in RCW 83.100.095 begins to run on the due date of
15 the return required under (d) of this subsection.

16 (i) For purposes of this subsection, a qualified heir may not be
17 treated as disposing of an interest described in section 2057(e)(1)(A)
18 of the internal revenue code by reason of ceasing to be engaged in a
19 trade or business so long as the property to which such interest
20 relates is used in a trade or business by any member of the qualified
21 heir's family.

22 (4)(a) The department may require a taxpayer claiming a deduction
23 under this section to provide the department with the names and contact
24 information of all qualified heirs.

25 (b) The department may also require any qualified heir to submit to
26 the department on an ongoing basis such information as the department
27 determines necessary or useful in determining whether the qualified
28 heir is subject to the additional tax imposed in subsection (3) of this
29 section. The department may not require such information more
30 frequently than twice per year. The department may impose a penalty on
31 a qualified heir who fails to provide the information requested within
32 thirty days of the date the department's written request for the
33 information was sent to the qualified heir. The amount of the penalty
34 under this subsection is five hundred dollars and may be collected in
35 the same manner as the tax imposed under subsection (3) of this
36 section.

37 (5) For purposes of this section, references to section 2057 of the

1 internal revenue code refer to section 2057 of the internal revenue
2 code, as existing on December 31, 2003.

3 (6) For purposes of this section, the following definitions apply:

4 (a) "Member of the decedent's family" and "member of the qualified
5 heir's family" have the same meaning as "member of the family" in RCW
6 83.100.046(10).

7 (b) "Qualified family-owned business interest" has the same meaning
8 as provided in section 2057(e) of the internal revenue code of 1986.

9 (c) "Qualified heir" has the same meaning as provided in section
10 2057(i) of the internal revenue code of 1986.

11 (7) This section applies to the estates of decedents dying on or
12 after January 1, 2014.

13 **Sec. 4.** RCW 83.100.040 and 2010 c 106 s 234 are each amended to
14 read as follows:

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

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

If Washington Taxable		The amount of Tax Equals		Of Washington
Estate is at least	But Less Than	Initial Tax Amount	Plus Tax Rate %	Taxable Estate Value
\$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	((17.00%))	\$4,000,000
			<u>18.00%</u>	
\$6,000,000	\$7,000,000	((890,000))	((18.00%))	\$6,000,000
		<u>\$210,000</u>	<u>19.00%</u>	
\$7,000,000	\$9,000,000	((1,070,000))	((18.50%))	\$7,000,000
		<u>\$1,100,000</u>	<u>19.50%</u>	

1	\$9,000,000	(\$1,440,000)	((19.00%))	\$9,000,000
2		<u>\$1,490,000</u>	<u>20.00%</u>	

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

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

16 **Sec. 5.** RCW 83.100.047 and 2005 c 516 s 13 are each amended to
17 read as follows:

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

30 (2) Amounts deducted for federal income tax purposes under section
31 642(g) of the internal revenue code of 1986(~~(shall)~~) are not (~~(be)~~)
32 allowed as deductions in computing the amount of tax due under this
33 chapter.

34 (3) Notwithstanding any department rule, if a taxpayer makes an
35 election consistent with section 2056 of the internal revenue code as

1 permitted under this section, the taxpayer's Washington taxable estate,
2 and the surviving spouse's Washington taxable estate, must be adjusted
3 as follows:

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

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

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

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

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

35 (2) Amounts deducted for federal income tax purposes under section
36 642(g) of the internal revenue code of 1986 ~~((shall))~~ are not ~~((be))~~

1 allowed as deductions in computing the amount of tax due under this
2 chapter.

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

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

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

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

19 (1)(a) Except as otherwise provided in this subsection, any
20 personal representative who distributes any property without first
21 paying, securing another's payment of, or furnishing security for
22 payment of the taxes due under this chapter is personally liable for
23 the taxes due to the extent of the value of any property that may come
24 or may have come into the possession of the personal representative.
25 Security for payment of the taxes due under this chapter (~~shall~~). must
26 be in an amount equal to or greater than the value of all property that
27 is or has come into the possession of the personal representative, as
28 of the time the security is furnished.

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

36 (2) Any person who has the control, custody, or possession of any
37 property and who delivers any of the property to the personal

1 representative or legal representative of the decedent outside
2 Washington without first paying, securing another's payment of, or
3 furnishing security for payment of the taxes due under this chapter is
4 liable for the taxes due under this chapter to the extent of the value
5 of the property delivered. Security for payment of the taxes due under
6 this chapter (~~shall~~) must be in an amount equal to or greater than
7 the value of all property delivered to the personal representative or
8 legal representative of the decedent outside Washington by such a
9 person.

10 (3) For the purposes of this section, persons who do not have
11 possession of a decedent's property include anyone not responsible
12 primarily for paying the tax due under this section or their
13 transferees, which includes but is not limited to mortgagees or
14 pledgees, stockbrokers or stock transfer agents, banks and other
15 depositories of checking and savings accounts, safe-deposit companies,
16 and life insurance companies.

17 (4) For the purposes of this section, any person who has the
18 control, custody, or possession of any property and who delivers any of
19 the property to the personal representative or legal representative of
20 the decedent may rely upon the release certificate or the release of
21 nonliability certificate, furnished by the department to the personal
22 representative, as evidence of compliance with the requirements of this
23 chapter, and make such deliveries and transfers as the personal
24 representative may direct without being liable for any taxes due under
25 this chapter.

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

28 (1) The following provisions of chapter 82.32 RCW have full force
29 and application with respect to the taxes imposed under this chapter
30 unless the context clearly requires otherwise: RCW 82.32.110,
31 82.32.120, 82.32.130, 82.32.320, 82.32.330, and 82.32.340. The
32 definitions in this chapter have full force and application with
33 respect to the application of chapter 82.32 RCW to this chapter unless
34 the context clearly requires otherwise.

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

1 imposed under section 3 of this act: RCW 82.32.090, 82.32.117,
2 82.32.135, 82.32.210, 82.32.220, 82.32.230, 82.32.235, 82.32.237,
3 82.32.245, and 82.32.265.

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

6 NEW SECTION. Sec. 9. Sections 2 and 5 of this act apply both
7 prospectively and retroactively to all estates of decedents dying on or
8 after May 17, 2005.

9 NEW SECTION. Sec. 10. This act does not affect any final
10 judgment, no longer subject to appeal, entered by a court of competent
11 jurisdiction before the effective date of this section.

12 NEW SECTION. Sec. 11. Section 4 of this act applies to estates of
13 decedents dying on or after January 1, 2014.

14 NEW SECTION. Sec. 12. If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. Sec. 13. Section 5 of this act expires January 1,
19 2014.

20 NEW SECTION. Sec. 14. This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of the
22 state government and its existing public institutions, and takes effect
23 immediately, except for sections 3, 4, and 6 of this act which take
24 effect January 1, 2014.

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APPENDIX B

Department of Revenue Fiscal Note

Bill Number: 2064 HB	Title: Estate, transfer tx/edu acct	Agency: 140-Department of Revenue
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

Account	FY 2014	FY 2015	2013-15	2015-17	2017-19
Education Legacy Trust Account-State 01 - Taxes 55 - Inheritance Tax	110,700,000	39,200,000	149,900,000	77,200,000	82,200,000
Education Legacy Trust Account-State 01 - Taxes 75 - Penalties and Intrst	8,700,000	1,700,000	10,400,000	900,000	
Total \$	119,400,000	40,900,000	160,300,000	78,100,000	82,200,000

Estimated Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

This bill was identified as a proposal governed by the requirements of RCW 43.135.031 (Initiative 960). Therefore, this fiscal analysis includes a projection showing the ten-year cost to tax or fee payers of the proposed taxes or fees.

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Jeff Mitchell	Phone: 360-786-7139	Date: 05/28/2013
Agency Preparation: Kim Davis	Phone: 360-534-1508	Date: 05/28/2013
Agency Approval: Kathy Oline	Phone: 360-534-1534	Date: 05/28/2013
OFM Review: Cherie Berthon	Phone: 360-902-0659	Date: 05/29/2013

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Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

This legislation clarifies the meaning of the terms "transfer" and "Washington taxable estate" as used in the Washington estate tax. The Legislature enacted a stand-alone estate tax, which took effect May 17, 2005. The tax applies to the transfer of property at death. A recent Washington Supreme Court decision has effectively exempted qualified terminable interest property (QTIP) from Washington's estate tax. This legislation is intended to restore the estate tax as it existed before that recent court decision.

The definition of "transfer" is amended to clarify that a transfer includes the shifting upon death of the economic benefit in property or any power or legal privilege incidental to the ownership or enjoyment of property.

New language is also added to the definition of "Washington taxable estate" to include 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.

The bill also provides that if a taxpayer makes a separate Washington QTIP election, the Washington taxable estate of the taxpayer and his or her surviving spouse must be adjusted as follows:

- For the taxpayer, any amount deducted from the federal gross estate by reason of section 2056(b)(7) of the Internal Revenue Code is added to, and the value of property for which a Washington QTIP election is made is deducted from, the Washington taxable estate.
- Upon the surviving spouse's death, the amount included in the estate's federal gross estate pursuant to section 2044(a) and (b)(1)(A) of the Internal Revenue Code is deducted from, and the value of any property for which a Washington QTIP election was previously made is added to, the Washington taxable estate.

These provisions of the bill apply both prospectively and retroactively to all estates of decedents dying on or after May 17, 2005.

This legislation has an emergency clause and takes effect immediately upon signature, except for Section 4 which takes effect January 1, 2014.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

This estimate reflects a change in the Department's application of current law due to a recent court case. On January 10, 2013, the Washington Supreme Court denied the Department's petition for reconsideration of its consolidated Estate of Bracken and Estate of Nelson decision.

ASSUMPTIONS

- All estates that have filed a return excluding QTIP assets will file an amended return, so the state will realize all revenues.
- All payments are made timely at the nine month due date.

DATA SOURCES

- Department of Revenue (Department) Estate Tax data
- Estate Tax Forecast Model (November 2012)

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- Federal Estate Tax data

REVENUE ESTIMATES

This legislation will increase revenues to the education legacy trust account by an estimated \$119.4 million in Fiscal Year 2014. The estimated revenue increase reflects the retroactive clarifications of the definitions of "transfer" and "Washington taxable estate" to conform to the Department's interpretation, thereby eliminating any refund claims resulting from the recent court decision, other than for the Estate of Bracken. The following estimates represent the total amount of revenue that could result from passage of this legislation. If this legislation takes effect after the Department issues additional refunds, then the revenue impact will be reduced.

TOTAL REVENUE IMPACT:

State Government (cash basis, \$000):

FY 2014 -	\$119,400
FY 2015 -	\$40,900
FY 2016 -	\$40,600
FY 2017 -	\$37,500
FY 2018 -	\$37,900
FY 2019 -	\$44,300

Local Government, if applicable (cash basis, \$000): None.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing

The Department will not incur any costs with the implementation of this legislation.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

NONE

Part IV: Capital Budget Impact

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

None.

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

No rule-making required.

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