

## Washington's Estate Tax

**Stand-alone Tax** In February 2005 Washington's old revenue sharing-based "pick up tax" was struck down by its Supreme Court; in May 2005 the Washington Legislature adopted a new "stand-alone" Washington estate tax, independent of the federal estate tax. The lifetime exemption for the Washington estate tax is \$2,000,000 and was not affected by the 2009 increase in the federal estate tax exemption to \$3,500,000.

**Prospects for Reform Overview** Due to Washington's budget crisis, it is very unlikely that in the foreseeable future Washington will conform its \$2,000,000 exemption to the current federal exemption of \$3,500,000.

Washington's "Taxable Estate". The Washington taxable estate is the federal taxable estate less its exemption amount and deduction.

Washington Deductions. Amounts passing to a spouse can qualify for a "marital deduction". After 2013, amounts passing to a registered domestic partner can qualify for a similar Washington (but not federal) deduction. Amounts passing to charity can qualify for the "charitable deduction." An unlimited "Washington only" farmland and woodland deduction also is available.

Rates. Washington's estate tax rates start at 10% and rise to 19%, for taxable estates over \$9,000,000. A federal estate tax deduction is available for Washington estate tax, however—given the current 45% federal rate, that means an effective top Washington rate of 10.45%.

No Washington Gift Tax or Generation-skipping Transfer Tax. Washington does not have a gift tax on lifetime gifts or a generation-skipping transfer tax.

**Property Taxes** Residents: Washington taxes the estates of residents both on real property and tangible personal property located in Washington and on all other assets, including their intangible personal property assets.

Nonresidents: Washington taxes nonresidents' estates on tangible personal property and real property located in Washington, with an indirect tax on intangible personal property (such as stock and most business interests) and real property and tangible personal property located outside Washington.

**Meeting the Challenges** Individuals who own any property located in Washington should review their wills or revocable trusts and their overall estate plans, to determine whether they need to make revisions to minimize or avoid the Washington estate tax. Many old married couple wills would fund the surviving spouse's credit trust or bypass trust with \$3,500,000 federal exemption, triggering \$120,000 of unexpected Washington estate tax in the estate of the first spouse.

Other planning documents also should be reviewed. For example, financial durable powers of attorney and revocable trusts can be used to make lifetime gifts—even from the deathbed—that avoid the Washington tax, because Washington has no gift tax.

Recently the Department of Revenue has begun to change Washington's estate tax rules to squeeze a few more dollars out of decedents' estates. Certain pre-2005 marital trusts that initially were not subject to the Washington estate tax now are subject to the tax. The DOR now is challenging limited liability companies that many nonresidents use to own Washington real property and tangible personal property—to convert that property into an "intangible" that avoids the tax—but has notified the public that the rules are being changed. Avoiding the Washington tax is likely to become more and more difficult.

**Planning  
Opportunities  
at least for now)**

For now there appear to be several good strategies for minimizing, even avoiding, the Washington estate tax.

Deathbed Gifts. Because Washington has no gift tax, a major lifetime gift, even made from a deathbed, avoids the Washington estate tax (it does not effectively avoid the federal tax, however). Lifetime gifts lose the beneficial “step up” in income tax basis available to inherited property, potentially increasing future capital gains taxes.

If a high net worth individual becomes incapacitated, his or her durable power of attorney or revocable trust should authorize major lifetime gifts. Some high net worth individuals use existing lines of credit to borrow cash for such gifts. Financial advisors ensure that quick transfers and such borrowing are possible.

Be Smart about Intangibles. The Washington estate tax applies to intangible personal property of Washington residents, even if it is a business interest that holds out-of-state real property or tangible personal property. It applies to Washington real property and tangible personal property of nonresidents unless those assets are held as intangibles, through a business entity (recall that the DOR apparently disagrees).

Individuals owning non-Washington assets have to be careful. Washington residents should own non-Washington real property and tangible personal property in their own names, or through revocable trusts—not through LLCs and other entities. Nonresidents should hold Washington real property and tangible personal property as intangibles, through LLCs or other business entities.

Note that this strategy only minimizes the Washington tax, because Washington indirectly taxes non-Washington assets, albeit at a lower rate.

Planning for Domestic Partners. New registered domestic partnership legislation creates, in effect, a marital deduction for registered domestic partners who die after 2013. In the meantime, high net worth domestic partners should consider leaving property to each other using trusts that can qualify for this marital deduction—subject to the surviving partner’s election—and after 2013 should consider registering the domestic partnership as an end-of-life planning strategy.

Move out of Washington. Given recent DOR policy decisions, the only certain way to avoid the Washington estate tax is to move out of Washington. Washington residents who already split time between Washington and another state which has no estate tax (for example, California and Alaska) should consider moving out. Married couples who have planned their estates to postpone estate taxes until the survivor’s estate can leave it to the survivor to make the decision. Keep in mind that, for the move to become effective immediately, attention must be paid to all the details.

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