HOUSE BILL 1465

State of Washington 67th Legislature 2021 Regular Session

By Representatives Orwall and Ramel

AN ACT Relating to making the estate tax more progressive by exempting small estates, reducing estate taxes on medium estates, increasing the estate tax on larger estates, and addressing equity in homeownership and homelessness; amending RCW 83.100.040, 83.100.047, 83.100.048, 83.100.220, and 61.24.172; reenacting and amending RCW 83.100.020; adding a new section to chapter 83.100 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that the COVID-19 recession has threatened the housing security of Washingtonians across our state. The legislature intends to provide foreclosure prevention and homelessness prevention assistance to Washington residents throughout the state with increased funding for the foreclosure fairness account and the funding of a new equity in housing account to enable foreclosure prevention, rental assistance, and housing services.

(2) The legislature finds that the racial wealth gap negatively affects Black and African-American families across the United States at an astonishing rate. According to a 2016 brookings institute report, the median net worth of white households was nearly 10 times that of Black families. The legislature finds that Black families and

families of color throughout Washington experience deep wealth and income disparities.

(3) The legislature further finds that homeownership is critical to the accumulation of wealth, and Black family homeownership rates are half of those of white families. Affordable homeownership can be a powerful way to strengthen housing and economic stability for future generations. In 2018, 31.8 percent of Black homeowners, 31.4 percent of Asian homeowners, 34 percent of Latino homeowners, and 39.1 percent of indigenous homeowners experienced a cost burden or paid more than 30 percent of total income on their home.

(4) The legislature further finds that many Washingtonians, mainly Black and indigenous individuals and families, face systemic barriers to affordable homeownership and to building generational wealth. Nationally, Black family homeownership dropped five percent compared to one percent for white families between 2001 and 2016. Within the same years, homeownership among single Black men and Black women declined at nearly the same rate, according to the urban institute. The legislature finds that this significantly impacts Black and indigenous families and their ability to pass a home or home equity on to the next generation, ultimately contributing to intergenerational poverty. Black and indigenous families experience reduced access to this wealth-building tool, ultimately perpetuating lower rates of intergenerational mobility. The legislature finds that while nine and eight-tenths percent of Washingtonians live under the federal poverty threshold, 16.9 percent are Black, 15.7 percent are Latino, and 18.6 percent are native.

(5) The legislature finds that the historical impacts of systemic housing discrimination like redlining continue to maintain the racial wealth gap between white families and families of color, racial disparities in poverty, incarceration rates, and access to health care, which perpetuates racial disparities in homelessness. The legislature also finds that Black people are overrepresented by three-fold among those experiencing homelessness largely due to historical and structural racism that has led to deep poverty through many generations. According to a 2020 report by the national alliance to end homelessness, Black individuals represent 13 percent of the total United States population, but account for 40 percent of people experiencing homelessness and over 50 percent of families with children experiencing homelessness. The legislature finds that incarceration rates among Black individuals tripled between 1968 and

2016, ultimately preventing many from passing background checks for housing and employment. Moreover, the legislature finds that people of color are more likely to be without health insurance than white individuals and are less likely to seek treatment when needed due to the historical mistrust of the medical community.

(6) Further, the legislature finds that the COVID-19 pandemic has further disproportionately affected both the physical and financial health of Black families and families of color, inhibiting progress in upward mobility. Black, Latino, and other families of color have been the hardest hit by efforts to slow the spread of COVID-19 due to occupational segregation, overrepresentation in low-wage jobs, and jobs that cannot be worked remotely. In April, the Black unemployment rate reached 16.7 percent while the Latino unemployment rate reached 18.9 percent. Further, Black and Latino individuals are more likely to experience an increase in housing instability related to COVID-19 layoffs due to higher rates of financial insecurity and less relative wealth.

(7) Therefore, it is the intent of the legislature to restructure the estate tax which taxes the benefits of accumulated wealth and direct some of the proceeds to programs that directly address foreclosure prevention and services and homelessness prevention and services, with priority for agencies, programs, and services that address current and historical racial inequities.

Sec. 2. RCW 83.100.020 and 2013 2nd sp.s. c 2 s 2 are each reenacted and amended to read as follows:

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~~)) $1,500,000 for decedents dying before January 1, 2006;

(ii) ((~~Two million dollars~~)) $2,000,000 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~~)) on or after January 1, 2014, and before August 1, 2021, 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~~)) $2,000,000 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~~)) <u>$1,000</u>. 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<u>;</u>

<u>(iv) $2,500,000 for estates of decedents dying on or after August 1, 2021; and</u>

<u>(v) For estates of decedents dying on or after January 1, 2023, the amount in (a)(iv) of this subsection must be adjusted annually, except as otherwise provided in this subsection (1)(a)(v). The annual adjustment is determined by multiplying $2,500,000 by one plus the percentage by which the most recent October consumer price index exceeds the consumer price index for October 2021, and rounding the result to the nearest $1,000. 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)(v) for the decedent's estate is the applicable exclusion amount in effect as of the date of the decedent's death</u>.

(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. <u>For purposes of this subsection (1)(b), "Seattle area" means the geographic area sample that includes Seattle and surrounding areas.</u>

(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.

Sec. 3. RCW 83.100.040 and 2013 2nd sp.s. c 2 s 4 are each amended to read as follows:

(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		The amount of Tax Equals		Of Washington Taxable Estate Value Greater than
Estate is at least	But Less 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~~)) $400,000	((~~16.00%~~)) 18.00%	$3,000,000
$4,000,000	$6,000,000	((~~$550,000~~)) $580,000	((~~18.00%~~)) 22.00%	$4,000,000
$6,000,000	$7,000,000	((~~$910,000~~)) $1,020,000	((~~19.00%~~)) 24.00%	$6,000,000
$7,000,000	$9,000,000	((~~$1,100,000~~)) $1,260,000	((~~19.50%~~)) 26.00%	$7,000,000
$9,000,000	$12,500,000	((~~$1,490,000~~)) $1,780,000	((~~20.00%~~)) 28.00%	$9,000,000
$12,500,000	$22,500,000	$2,760,000	29.00%	$12,500,000
$22,500,000	$100,000,000	$5,660,000	30.00%	$22,500,000
$100,000,000	$1,000,000,000	$28,910,000	35.00%	$100,000,000
$1,000,000,000		$343,910,000	40.00%	$1,000,000,000

(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.

Sec. 4. RCW 83.100.047 and 2013 2nd sp.s. c 2 s 6 are each amended to read as follows:

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

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

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

(b) The following amounts deducted under section 2055 of the internal revenue code for bequests, legacies, devises, or other transfers are disallowed as a deduction in computing the amount of tax under this chapter:

(i) Twenty-five percent of the first $100,000,000 deducted under section 2055 of the internal revenue code; and

(ii) Seventy-five percent of any amount in excess of $100,000,000 deducted under section 2055 of the internal revenue code.

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

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

(b) For the estate of the surviving spouse, the amount included in the estate's 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 an election under this section was previously made is added to, the Washington taxable estate.

Sec. 5. RCW 83.100.048 and 2013 2nd sp.s. c 2 s 3 are each amended to read as follows:

(1) For the purposes of determining the tax due under this chapter, a deduction is allowed for the value of the decedent's qualified family-owned business interests((~~, not to~~)). With the exception of qualified family-owned business interests in a newspaper business, the deduction under this section may not exceed ((~~two million five hundred thousand dollars, if~~)) $2,500,000. A deduction not to exceed $5,000,000 is allowed for the value of the decedent's qualified family-owned business interest in a newspaper business. No deduction is allowed under this section unless:

(a) The value of the decedent's qualified family-owned business interests exceed ((~~fifty~~)) 50 percent of the decedent's Washington taxable estate determined without regard to the deduction for the applicable exclusion amount. This subsection (1)(a) does not apply to qualified family-owned business interest in a newspaper business;

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

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

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

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

(d) The value of the decedent's qualified family-owned business interests is not more than ((~~six million dollars~~)) $6,000,000. This subsection (1)(d) does not apply to qualified family-owned business interest in a newspaper business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The department may also require any qualified heir to submit to the department on an ongoing basis such information as the department determines necessary or useful in determining whether the qualified heir is subject to the additional tax imposed in subsection (3) of this section. The department may not require such information more frequently than twice per year. The department may impose a penalty on a qualified heir who fails to provide the information requested within thirty days of the date the department's written request for the information was sent to the qualified heir. The amount of the penalty under this subsection is ((~~five hundred dollars~~)) $500 and may be collected in the same manner as the tax imposed under subsection (3) of this section.

(5) For purposes of this section, references to section 2057 of the internal revenue code refer to section 2057 of the internal revenue code, as existing on December 31, 2003.

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

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

(b) "Newspaper business" means a business, or that portion of a business consisting of a newspaper as defined in RCW 82.04.214, that is distributed primarily to paying customers, including subscribers and persons reselling the newspaper.

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

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

(7) This section applies to the estates of decedents dying on or after January 1, 2014. However, amendments to this section apply to the estates of decedents dying on or after the effective date of such amendments.

Sec. 6. RCW 83.100.220 and 2005 c 516 s 16 are each amended to read as follows:

((~~All~~)) (1) Except as provided in subsection (2) of this section, all receipts from taxes, penalties, interest, and fees collected under this chapter must be deposited into the education legacy trust account.

(2) Ten percent of all receipts from taxes, receipts from taxes, penalties, interest, and fees collected under this chapter must be deposited into the equity in housing account created in section 7 of this act.

NEW SECTION. **Sec. 7.** A new section is added to chapter 83.100 RCW to read as follows:

The equity in housing account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may only be used to address homelessness, including foreclosure prevention, rental assistance, outreach engagement services, housing services, and behavioral health, with priority for agencies, programs, and services which address current and historical racial inequities. Of the amounts deposited into the account, the legislature shall appropriate at least $6,000,000 biennially to the foreclosure fairness account created in RCW 61.24.172.

Sec. 8. RCW 61.24.172 and 2016 c 196 s 1 are each amended to read as follows:

(1) The foreclosure fairness account is created in the custody of the state treasurer. All receipts received under RCW 61.24.174, as it existed prior to July 1, 2016, and RCW 61.24.173 must be deposited into the account. Only the director of the department of commerce or the director's designee may authorize expenditures from the account. Funding to agencies and organizations under this section must be provided by the department through an interagency agreement or other applicable contract instrument. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. ((~~Biennial~~))

(2) Except as provided in subsection (3) of this section, biennial expenditures from the account must be used as follows: ((~~Four hundred thousand dollars~~)) $400,000 to fund the counselor referral hotline. The remaining funds shall be distributed as follows:

((~~(1)~~)) (a) Sixty-nine percent for the purposes of providing housing counseling activities to benefit borrowers;

((~~(2) eight~~)) (b) Eight percent to the office of the attorney general to be used by the consumer protection division to enforce this chapter;

((~~(3) six~~)) (c) Six percent to the office of civil legal aid to be used for the purpose of contracting with qualified legal aid programs for legal representation of homeowners in matters relating to foreclosure. Funds provided under this subsection ((~~(3)~~)) (2)(c) must be used to supplement, not supplant, other federal, state, and local funds; and

((~~(4) seventeen~~)) (d) Seventeen percent to the department to be used for implementation and operation of the foreclosure fairness act.

(3) The department shall spend the money deposited into the foreclosure fairness account from the equity in housing account only for foreclosure prevention, with priority to agencies, programs, and services that address current and historical racial inequities.

(4) The department shall enter into interagency agreements to contract with the Washington state housing finance commission and other appropriate entities to implement the foreclosure fairness act.

NEW SECTION. **Sec. 9.** This act applies to decedents dying on or after August 1, 2021.

NEW SECTION. **Sec. 10.** This act takes effect August 1, 2021.

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