



STATE OF WASHINGTON  
DEPARTMENT OF REVENUE

**Attachment to CR – 103 Proposed Rule Making Notice  
Chapter 458-57 WAC, Estate and Transfer Tax**

**Purpose:**

Chapter 458-57 WAC provides tax reporting information for the taxpayers who must file an estate tax return for a decedent's estate. The six current rules are amended to reflect the 2005 Supreme Court ruling in *Hemphill v. State of Washington, Dept. of Rev.*, 153 Wa.2d 544, 105 P.3d 391 (2005).

Seven new rules are adopted to implement the new Washington estate tax that became effective May 17, 2005. The new rules clarify the nature of the new tax, property subject to the tax, the Washington qualified terminable interest property election, the new method of estate tax apportionment, filing dates, refunds, the new farm deduction, and escheat estates and absentee distributee property. These new rules are:

WAC 458-57-105	Nature of estate tax, definitions.
WAC 458-57-115	Valuation of property, property subject to estate tax, how to calculate the tax.
WAC 458-57-125	Apportionment of tax when there are out-of-state assets.
WAC 458-57-135	Washington estate tax return to be filed -- Penalty for late filing -- Interest on late payments -- Waiver or cancellation of penalty -- Application of payment.
WAC 458-57-145	Administration of the tax -- Releases, amended returns refunds, and statute of limitations.
WAC 458-57-155	Farm deduction.
WAC 458-57-165	Escheat estates and absentee distributee (missing heir) property.

**Citation of existing rules affected by this order:**

Amended:	WAC 458-57-005	Nature of estate tax, definitions.
	WAC 458-57-015	Valuation of property, property subject to estate tax, how to calculate the tax.
	WAC 458-57-017	Property subject to generation-skipping transfer tax, how to calculate the tax, allocation of generation-skipping transfer exemption.
	WAC 458-57-025	Determining the tax liability of nonresidents.
	WAC 458-57-035	Washington estate tax return to be filed -- Penalty for late filing -- Interest on late payments -- Waiver or cancellation of penalty -- Application of payment.
	WAC 458-57-045	Administration of the tax -- Releases, amended returns refunds, heirs of escheat estates



**Describe any changes other than editing from proposed to adopted version:** Additional language is underlined with language being removed reflected in ~~strikeout~~.

**WAC 458-57-015(4)(a)(iii)**—The following changes were made to correct a formatting error in the table provided in this subsection. The resulting figures are consistent with computation examples provided in subsection (4)(b) of this rule.

Year	Percentage
2002	<del>((.75))</del> <u>75%</u>
2003	<del>((.50))</del> <u>50%</u>
2004	<del>((.25))</del> <u>25%</u>
2005	<del>((0.00))</del> <u>0 %</u>

**WAC 458-57-115(c)(iii)**—Additional language was added:

(B) Section 2056(b)(7) of the IRC states that a QTIP election is irrevocable once made. Section 2044 states that the value of any property for which a deduction was allowed under section 2056(b)(7) must be included in the gross estate of the recipient. Similarly, a QTIP election made on the Washington return is irrevocable, and a surviving spouse who receives property for which a Washington QTIP election was made must include the value of the remaining property in his or her gross estate for Washington estate tax purposes. If the value of property for which a federal QTIP election was made is different, this value is not includible in the surviving spouse's gross estate for Washington estate tax purposes; instead, the value of property for which a Washington QTIP election was made is includible.

(C) The Washington QTIP election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return or, if those assets have not been determined when the estate tax return is filed, on a statement to that effect, prepared when the assets are definitively identified. Identification of the assets is necessary when reviewing the surviving spouse's return, if a return is required to be filed. This statement may be filed with the department at that time or when the surviving spouse's estate tax return is filed.

**WAC 458-57-115(c)**—A new subsection (iv) was added:

**(iv) Washington qualified domestic trust (QDOT) election.** (A) A deduction is allowed for property passing to a surviving spouse who is not a U.S. citizen in a qualified domestic trust (a "QDOT"). An executor may elect to treat a trust as a QDOT on the Washington estate tax return even though no QDOT election is made with respect to the trust on the federal return; and also may forgo making an election on the Washington estate tax return to treat a trust as a QDOT even though a QDOT election is made with respect to the trust on the federal return. An election to treat a trust as a QDOT may not be made with respect to a specific portion of an entire trust that otherwise would qualify for the marital deduction, but if the trust is actually severed pursuant to authority granted in the governing instrument or under local law prior to the due date for the election, a QDOT election may be made for any one or more of the severed trusts.

(B) A QDOT election may be made on the Washington estate tax return with respect to property passing to the surviving spouse in a QDOT, and also with respect to property passing to the surviving spouse if the requirements of IRC Section 2056(d)(2)(B) are satisfied. Unless specifically stated otherwise herein, all provisions of Sections 2056(d) and 2056A of the IRC, and the federal regulations promulgated thereunder, are applicable to a Washington QDOT election. Section 2056A(d) of the IRC states that a QDOT election is irrevocable once made. Similarly, a QDOT election made on the Washington estate tax return is irrevocable. For purposes of this subsection, a QDOT means, with respect

to any decedent, a trust described in IRC Section 2056A(a), provided, however, that if an election is made to treat a trust as a QDOT on the Washington estate tax return but no QDOT election is made with respect to the trust on the federal return:

(I) The trust must have at least one trustee that is an individual citizen of the United States resident in Washington State, or a corporation formed under the laws of the state of Washington, or a bank as defined in IRC Section 581 that is authorized to transact business in, and is transacting business in, the state of Washington (the trustee required under this subsection is referred to herein as the “Washington Trustee”);

(II) The Washington Trustee must have the right to withhold from any distribution from the trust (other than a distribution of income) the Washington QDOT tax imposed on such distribution;

(III) The trust must be maintained and administered under the laws of the state of Washington;  
and

(IV) The trust must meet the additional requirements intended to ensure the collection of the Washington QDOT tax set forth in subsection (iv)(D) below.

(C) The QDOT election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return, or, if those assets have not been determined when the estate tax return is filed, or a statement to that effect, prepared when the assets are definitively identified. This statement may be filed with the department at that time or when the first taxable event with respect to the trust is reported to the department.

(D) In order to qualify as a QDOT, the following requirements regarding collection of the Washington QDOT tax must be satisfied.

(I) If a QDOT election is made to treat a trust as a QDOT on both the federal and Washington estate tax returns, the Washington QDOT election will be valid so long as the trust satisfies the statutory requirements of Treas. Reg. Section 20.2056A-2(d).

(II) If an election is made to treat a trust as a QDOT only on the Washington estate tax return, the following rules apply:

If the fair market value of the trust assets exceeds \$2 million as of the date of the decedent’s death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2(d)(1)(i), except that: if the bank trustee alternative is used, the bank must be a bank that is authorized to transact business in, and is transacting business in, the state of Washington, or a bond or an irrevocable letter of credit meeting the requirements of Treas. Reg. Section 20.2056A-2(d)(1)(i)(B) or (C) must be furnished to the department.

If the fair market value of the trust assets is \$2 million or less as of the date of the decedent’s death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2(d)(1)(ii), except that not more than 35 percent of the fair market value of the trust may be comprised of real estate located outside of the state of Washington.

A taxpayer may request approval of an alternate plan or arrangement to assure the collection of the Washington QDOT tax. If such plan or arrangement is approved by the department, such plan or arrangement will be deemed to meet the requirements of this subparagraph (iv)(D).

(E) The Washington estate tax will be imposed on:

(I) Any distribution before the date of the death of the surviving spouse from a QDOT (except those distributions excepted by IRC Section 2056A(b)(3)), and

(II) The value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse’s deemed date of death under IRC Section 2056A(b)(4)). The tax is computed using Table W. The tax is due on the date specified in IRC Section 2056A(b)(5). The tax shall be reported to the department in a form containing the information that would be required to be included on federal Form 706-QDT with respect to the taxable event, and any other information requested by the department, and the computation of the Washington tax shall be made on a supplemental statement. If Form 706-QDT is required to be filed with the Internal Revenue Service with respect to a taxable event, a copy of such form shall be provided to the department. Neither the residence of the surviving spouse or other QDOT beneficiary nor the situs of the QDOT assets are relevant to the

application of the Washington tax. In other words, if Washington State estate tax would have been imposed on property passing to a QDOT at the decedent's date of death but for the deduction allowed by this subsection (iv), the Washington tax will apply to the QDOT at the time of a taxable event as set forth in this subsection (iv)(E) regardless of, for example, whether the distribution is made to a beneficiary who is not a resident of Washington, or whether the surviving spouse was a nonresident of Washington at the date of the surviving spouse's death.

(F) If the surviving spouse of the decedent becomes a citizen of the United States and complies with the requirements of Section 2056A(b)(12) of the IRC, then the Washington tax will not apply to (I) any distribution before the date of the death of the surviving spouse from a QDOT, or (II) the value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC Section 2056A(b)(4)).

**WAC 458-57-135(3)(b)**—Additional language was added:

In any case where a federal return must be filed under the current Internal Revenue Code (IRC) or in the year 2009 and thereafter, if the gross estate of a decedent exceeds two million dollars, a state return must be filed with the Washington state department of revenue (department) on or before the date that the federal return is required or would have been required to be filed. (This may include a federally granted extension of time for filing. See subsection (2)(b).) Section 6075 of the IRC requires that the federal return be filed within nine months after the date of the decedent's death.

**WAC 458-57-135(3)(c)**—Two new subsections were added:

(iii) **Extensions to file for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request a one-time automatic six-month extension to file. The request must be in writing and acknowledge that interest will begin to accrue from the original due date of the state return. The written request for the extension must be made prior to the date the state return is due.

(iv) **Extension to pay tax owed for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request an extension of time for paying the tax owed when payment of the tax would cause an undue hardship upon the estate or for a payment plan for closely held businesses. The granting of an extension of time to pay the tax owed or for a payment plan for closely held business will not operate to prevent the running of interest. RCW 83.100.070.

(A) **Hardship extensions to pay.**

In any case in which the department finds that payment, on the due date prescribed, or any part of a deficiency would impose undue hardship upon the estate, the department may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the original due date of payment.

The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that a substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax owed at the date payment is due. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted if the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade the tax.

An application for such an extension must be in writing and must contain, or be supported by, information in a written statement declaring that it is made under penalties of perjury showing the undue hardship that would result to the estate if the extension were refused. The application, with the supporting information, must be filed with the department. When received, it will be examined, and, if possible, within thirty days will be denied, granted, or tentatively granted subject to certain conditions of which the

personal representative will be notified. The department will not consider an application for such an extension unless it is applied for on or before the due date for payment. If the personal representative desires to obtain an additional extension, it must be applied for on or before the date of the expiration of the previous extension.

The amount of tax owed for which an extension is granted, along with interest as determined by RCW 83.100.070, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the department.

(v) **Payment plans for closely held businesses.** The department will abide by the provisions of section 6166 of the 2005 IRC for the granting of payment plans for closely held businesses.

**WAC 458-57-155**—The term "federal taxable estate" was replaced with "an adjusted gross estate."