



# Excise Tax Advisory

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## QTIP Elections and Washington's Estate Tax

The Department of Revenue has been asked whether a personal representative can make a different election for qualified terminable interest property (QTIP) on the Washington State estate tax return than on the federal estate tax return. Questions have also been raised as to whether a personal representative may make a QTIP election on the Washington State estate tax return when no federal return is required.

The Department will allow a "Washington-only" QTIP election and corresponding marital deduction on the Washington State Estate and Transfer Tax Return. As a result, a personal representative may choose to make a different QTIP election on the Washington return than on the federal return and a QTIP election may be made on the Washington return when no federal return is required.

### ***Background***

Under chapter 83.100 RCW, Washington State estate tax liability is based on the maximum amount of the federal credit for state death taxes, determined under the Internal Revenue Code as it existed on January 1, 2001 ("2001 IRC"). Consequently, the unified credit and filing threshold for the Washington return are now lower than for federal purposes.

A marital deduction is allowed for QTIP on both the Washington and federal returns. QTIP is defined for Washington purposes by section 2056(b)(7) of the 2001 IRC as property passing from a decedent to a surviving spouse in which the surviving spouse has a qualifying income interest for life and for which the personal representative makes an election. A qualifying income interest for life is generally an interest in property where the surviving spouse is entitled to all the income from the property payable at least annually and where no person can appoint any part of the property to any person other than the surviving spouse. The QTIP election can be made for a fractional or percentage share of the property; only the amount for which an election is made is deducted from the gross estate.

### ***Application***

Deductions available under the 2001 IRC are applied in computing Washington estate tax liability. Nothing in chapter 83.100 RCW prevents a personal representative from choosing an optional deduction for a different amount than on the federal return in order to maximize tax benefit. A personal

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representative may choose to make a larger percentage or fractional QTIP election on the Washington return than on the federal return in order to reduce Washington estate tax liability while making full use of the federal unified credit. If no federal return is required, a personal representative may make a QTIP election on the Washington return.

Section 2056(b)(7) of the 2001 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 property in his or her gross estate for Washington estate tax purposes.