ESTATE AND TRANSFER TAX (see note below)
RCW 83.100

Tax Base

Transfers of property belonging to persons domiciled in Washington at the time of their death, according to federal estate tax definitions contained in the Internal Revenue Code (IRC) on January 1, 2001. There are three separate statutes that impose the estate and transfer tax:

RCW 83.100.030 - transfers of property belonging to persons living in the state at the time of their death.

RCW 83.100.040 - transfers of property located in the state belonging to nonresidents at the time of their death.

RCW 83.100.045 - "generation-skipping" transfers, e.g. distributions from trusts to grandchildren of the decedent.

Tax Rate

The estate tax levied by the state of Washington is equal to the amount of credit allowed under the federal estate tax for state estate taxes. Prior to 2002 the state tax did not impose an additional tax on the estate; instead it shifted revenue from the federal government to the state. After 2001, however, with the phasing out of the federal credit for state estate taxes and the federal estate tax itself, the state tax has applied to many estates that are no longer subject to federal tax.

In 2001 Congress adopted H.R. 1836 (Public Law 107-16), known as the Economic Growth and Tax Relief Reconciliation Act of 2001. This legislation included a comprehensive phase-out and eventual elimination of the federal estate tax by the year 2010. However, that law is scheduled to expire at the end of 2010. Thus, without subsequent action by Congress, the federal estate tax as it existed under the 2001 IRC would again be effective in 2011, including the credit for state taxes.

Under PL 107-16 the federal credit for state taxes is phased out for decedents dying during 2002 (25 percent), 2003 (50 percent), and 2004 (75 percent). The intention of the federal law is that existing state taxes, consisting of the federal credit, would be entirely eliminated for deaths occurring after December 31, 2004. However, since Washington's estate tax is tied to the IRC as it existed prior to the enactment of PL 107-16, it remains in place.

The amount of credit, as defined in the Internal Revenue Code on January 1, 2001, is determined according to a graduated schedule depending upon the taxable value of the estate. Generally, the gross estate value is reduced by expenses of administering the estate (funeral costs, unpaid bills, etc.) and a further exclusion of $60,000 is allowed in determining the adjusted taxable estate. Twenty different rates ranging from 0.8 percent to 16 percent are applied to the amount of the adjusted taxable

estate in excess of $40,000 to determine the amount of federal credit for state estate taxes.

Estates are subject to the state and federal taxes according to filing thresholds which have been increasing in recent years for both the state and federal taxes. The increases for the state tax are attributable to changes enacted prior to 2001, whereas the federal increases are the result of PL 107-16. The following compares the filing thresholds for both taxes:

Year of Death	State Filing Threshold	Federal Filing Threshold
2003	$ 700,000	$1,000,000
2004	850,000	1,500,000
2005	950,000	1,500,000
2006	1,000,000	2,000,000
2007	1,000,000	2,000,000

Levied by State

Recent Collections ($000)

Fiscal Year	Collections	% Change	% of All State Taxes
2004	$139,855	14.2%	1.1%
2003	122,451	6.9	1.0
2002	114,517	6.9	1.0
2001	107,097	29.5	0.9
2000	82,705	18.9	0.7
1999	69,570	(16.8)	0.6
1998	83,607	(5.1)	0.7
1997	88,069	41.8	0.8
1996	62,067	47.2	0.6
1995	42,160	19.4	0.4

Administration Department of Revenue. Administrators or personal representatives of estates must file the Washington estate tax return with the Department within nine months following the decedent's death. Administrators must include a copy of the federal estate tax return, if applicable, with their state tax return. Delinquent returns are subject to interest based on the T-bill rate. A penalty of 5 percent of the tax due for each month the return is late up to a total maximum penalty of 25 percent of the tax due or $1,500, whichever is less, is assessed if the Department initiates contact with an estate regarding an estate tax filing. However, if the personal representative files the return voluntarily,

no penalty will be assessed. When the estate tax liability has been fully satisfied, the Department issues a release stating that the decedent's property is free of any claim by the state.

Distribution of Receipts State general fund.

Exemptions, Deductions and Credits

- credit for the lesser of: (1) amount of death tax paid in another state or (2) an apportioned amount based on the percentage of decedent's gross estate that is subject to tax in the other state.
- deduction for bequests to surviving spouses.
- deduction for transfers for public, charitable, and religious uses.
- deduction for family-owned business interests.

History

The inheritance tax was one of the first state taxes established in Washington, adopted in 1901. In upholding the tax, a court ruling found that the inheritance tax constituted an excise tax upon the privilege of inheriting property and not a tax upon the property itself. This interpretation paved the way for adoption of future excise taxes, which now comprise the majority of all state taxes in Washington. The inheritance tax was applied according to three classes of beneficiaries, depending upon their relationship with the decedent. Initial tax rates ranged from 1 to 12 percent.

A companion gift tax was enacted in 1941 at rates equal to 90 percent of the inheritance tax rates.

There was relatively little change in the inheritance and gift tax until 1979, when the Legislature enacted a comprehensive revision of the tax, including a substantial increase in the basic exemption levels, phase-out of the tax on community property, current use valuation for family farms and small businesses, and revision in the graduated rate schedule to reduce tax rates.

At the general election in November 1981, the voters approved Initiative 402, which repealed the state inheritance and gift taxes, effective on January 1, 1982. The initiative provided for the current estate tax equal to the amount of federal estate tax credit.

In May 2001 Congress adopted H.R. 1836 (PL 107-16) which phases out the federal estate tax and eliminates the federal credit for state taxes. However, Washington's estate tax was not directly impacted since it is tied to the IRC as of January 1, 2001.

Discussion/Major Issues

Prior to 2002 Washington's estate tax--commonly known as a "pick-up" tax--did not result in increased tax burden for estates but merely shifted a portion of the federal estate tax receipts to the state via the federal credit mechanism. Thus, the state tax tended not to be an unpopular tax, as was its predecessor, the inheritance tax.

However, for deaths occurring after December 31, 2001, Washington has different estate tax reporting requirements than the federal government. The current filing threshold for Washington's tax liability is $850,000, whereas the federal filing threshold has risen to $1.5 million for deaths during 2005 and will further increase to $3.5 million by 2009. As a result many more estates are currently subject to Washington's tax than the federal tax.

Twenty-five states have estate taxes equal to the amount of the current federal state credit. Fourteen states and the District of Columbia, like Washington, have a pick-up tax but are linked to a previous version of the IRC. Nine states have a pick-up tax plus an inheritance tax, and two states have a pick-up tax and an estate tax.

Approximately 2,600 estates currently file with the Department each year. Determination of the taxable estate amount can be a complex process. Determination of the amount of the credit for state tax is comparatively easy. However, with the rising federal estate tax threshold, more and more Washington estates are no longer subject to federal tax. This has resulted in an increase of the Department's administrative costs related to the reviewing of estate tax filings.

Washington's existing estate tax is tied to the Internal Revenue Code as it existed on January 1, 2001, prior to the changes in the federal tax enacted in PL 107-16. This interpretation was challenged in litigation (Hemphill) in which the plaintiffs contended that the state must automatically conform to the new IRC. A Superior Court ruling in December 2003 upheld the state's interpretation, but the case is now being considered by the Washington Supreme Court.

Note In a decision issued February 3, 2005 the Washington State Supreme Court ruled in the Hemphill case that the state's estate tax is invalid. The decision means that the Washington tax must conform to changes made to the federal tax in 2001. This will effectively phase out Washington's estate tax, pending further action by Congress.