MEMORANDUM

To: Legislative Committee

From: Ben Porter, President WSBA Tax Section

Date: October 25, 2010

The Taxation Section Gift and Estate Tax Committee has proposed an amendment to the Washington Uniform Estate Tax Apportionment Act (the "Act"). To the extent that a decedent's will or revocable trust fails to provide for apportionment of the estate tax among beneficiaries, the estate tax is apportioned ratably among each person has an interest in the estate (RCW 83.110A.030). There are various exceptions to the general rule. For example, estate tax that would otherwise be apportioned to property that qualifies for a charitable or martial deduction is first apportioned to interests which do not qualify for a charitable or martial deduction.

Under the Act as it presently exists, estate tax would be apportioned to pecuniary or specific bequests of personal property of relatively small value. It was the view of the Committee decedents would generally assume that gifts of these types would pass to beneficiaries without being diminished by apportionment of estate taxes.

Gifts of tangible property are different from gifts of money. The recipient of monetary gifts has the funds that can be applied against the apportioned estate tax liability. On the other hand, recipients of tangible property will have to either sell the property or find other sources to pay the estate tax liability.

The proposed Washington statute would exonerate small gifts passing under provisions of a will or revocable trust or by right of survivorship. Gifts subject to exoneration must be specifically made to a person, so money or personal property passing under a general gift of the residue of an estate will not qualify.

The exoneration of pecuniary bequests and bequests of tangible personal property are independent. This means that a person receiving both tangible personal property and money would be exonerated at least to some extent from apportionment of estate taxes on both gifts.

The definition of "tangible personal property" incorporate the definition used in RCW 11.12.260(4) for separate writings directing disposition of tangible personal property.

The proposed amendment refers to an existing standard in the probate code to set the ceiling on the value of gifts to be exonerated. RCW Chapter 11.62, Small Estates – Disposition of Property, currently allows the disposition of property not to exceed \$100,000 by affidavit. The proposed amendment uses the value of property that may be disposed of by affidavit as the ceiling for the value for tangible personal property to be exonerated from apportionment and one-half of that amount for

gifts of money. The advantage of using the ceiling for exoneration by reference to the amounts that may pass by affidavit is that it is likely that the legislature will increase those limits from time to reflect the impact of inflation.

If the aggregate amount of the gifts of a class, either tangible personal property or money, exceeds the ceiling for that type of gift, the value of each gift to be exonerated from tax will be shared by the recipients on a prorata basis based on the relative values of the gifts within the class. For example, if a testator gave a pecuniary gift of \$40,000 to a sister and \$10,000 to each of four grandchildren, the value of all five gifts would be \$80,000. The ceiling for exoneration of cash gifts under the proposed amendment is \$50,000. The gift to the sister would be exonerated from apportionment of tax in the amount of \$25,000 (40/80 x \$50,000) and the gifts to each grandchild would be exonerated to the extent of \$6,250.

The Gift and Estate Committee's proposed amendment was submitted to the Tax Section for consideration. The Tax Section has approved the proposal for review by the WSBA Legislative Committee.

PROPOSED AMENDMENT TO WASHINGTON ESTATE TAX APPORTIONMENT ACT

A proposed amendment to the Washington act would add a new subsection (e) to RCW 83.110A.020 (2) providing as follows.

- (e) Persons receiving tangible personal property as defined in RCW 11.12.260(4) by specific gifts pursuant to the provisions of a will or revocable trust or by right of survivorship, are exonerated from apportionment of estate tax up to an aggregate value of property permitted to pass by affidavit for small estates pursuant to RCW 11.62.010(2)(c).
- (f) Persons receiving specific gifts of money pursuant to the provisions of a will or revocable trust are exonerated from apportionment of estate tax up to an aggregate amount of money equal to one-half of the value of property permitted to pass by affidavit for small estates pursuant to RCW 11.62.010(2)(c).
- (g) If persons receive an aggregate value of tangible personal property or the amount of money in excess of the ceiling allowed to be exonerated for apportionment for estate taxes for that type of property, as provided in subsections (e) and (f), the portion of each gift to be exonerated shall be the maximum amount of money or value of tangible personal that is allowed to be exonerated multiplied by the proportion of money received by each person over the amount of money received by all persons, or the value of tangible property received by each person over the value of all tangible personal property received by all persons.