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LEGISLATIVE MEMO

HB 1465, to increase the death tax rate in Washington State to 40%

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Key Findings

1. **HB 1465 would increase the rate for Washington's death tax to as high as 40%.**

2. **It would give Washington the highest death tax rate in the country, and one of the highest in the world.**

3. **Only 18 states impose the tax; most states impose no tax on people at the moment of death.**

4. **The death tax is especially hard on low-income and immigrant families trying to build a business.**

5. **Sections 7 and 8 of the bill appear designed to target certain racial and ethnic groups in a way that likely violates the Washington Civil Rights Act.**

6. **The state has no need for a new tax; the current budget is balanced and lawmakers estimate they will receive 7% more revenue in the next budget.**

7. **Repeal would end the unfair impact of the tax while bringing tax policy in Washington into line with the best practices of other states.**

Introduction

Recently the House Finance Committee held a public hearing on HB 1465, a bill to increase the rate for Washington's death tax to as high as 40%, depending on the size of the estate being taxed.[1] This Legislative Memo presents a brief summary of the bill, reviews concerns regarding the protection of equal rights, and describes the overall negative effect the bill would have on the public interest in Washington State.

Text of HB 1465

HB 1465 would slightly increase the exemption on which families pay no death tax from $2.2 million to $2.5 million, and would tie the exemption to the rise in yearly inflation as measured in the Seattle metropolitan area. On their own, these changes would provide important tax relief for some families, though repealing the tax entirely would provide tax relief for all affected families.

At the same time, the bill would increase the death tax levied on larger estates to as much as 40%. This would give Washington the highest death tax rate in the country, and one of the highest rates in the world.

For reference, the highest death tax rate in Washington now is 20% which, along with Hawaii's, is already the highest in the country.[2] Seventeen other states impose either an estate tax or an inheritance tax, while Maryland imposes both. The remaining states impose no tax on people at the moment of death.

1 HB 1465, Bill Analysis," Finance Committee, Washington state House of Representatives, Office of Program Research, February 1, 2021, at https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/House/1465%20HBA%20FIN%2021.pdf?q=20210209164143.

2 "Does your state have an estate or inheritance tax?" by Janelle Cammenga, Tax Foundation, September 2, 2020, at https://taxfoundation.org/state-estate-tax-state-inheritance-tax-2020/.

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New Jersey recently repealed its estate tax on a person who has died, though it still imposes a tax on family members and others who inherit money.

States that have fully repealed their estate taxes include Indiana, Kansas, Ohio, Oklahoma, New Jersey, North Carolina, and Tennessee.

Policy analysis

The Washington death tax has less impact than state policymakers might expect on billionaires and other very high wealth individuals. It does little to make Washington's tax system "fairer" or more "progressive," as advocates claim, because routine estate planning shelters most assets from being hit by the tax.

The death tax is more targeted, however, at family-owned businesses that exceed the $2.5 million gross-value threshold. As any economist knows, $2.5 million represents a very low level for the annual value of a farm or business, meaning that even modest family enterprises are hit by the tax when the owner dies.

The result is that, far from reigning in billionaires, the death tax primarily hurts family efforts to build inter-generational wealth. The death tax is especially hard on low-income and immigrant families that have few economic assets today but are working to build a business that will one day be affected by it.

Further, a death tax is seen as unfair because lawmakers impose a new financial liability on the value of a business or other family asset that has already been taxed during the lifetime of the owner. Families find that they pay decades of yearly state sales, B&O and property taxes, only to find they must pay an extra tax when the younger generation takes on a farm or business.

Together these effects create a public policy that punishes success, discourages investment and business formation and, in some cases, encourages high-wealth individuals to establish residency in other states.

Concern for protecting equal rights

Sections 7 and 8 of the bill would create two new state programs, an Equity Housing Account and a Foreclosure Fairness Account. The text of the bill provides that agency managers must give selected Washington residents priority access to these benefits in ways that "...address current and historical racial inequities."

The text of these sections appears designed to exclude participation by members of racial and ethnic groups that state managers decide do not meet the "racial inequities" requirement. The result would be denial of access to a public benefit in a way that likely violates the Washington Civil Rights Act.[3] The equal rights protection specifically prohibits state and local officials from granting or denying access to any public benefit on the basis of race, ethnicity or national origin.

The bill's provisions are also likely contrary to the equal protection clause of the 14th Amendment and other federal civil rights laws.

No need to increase taxes

The state budget is balanced and lawmakers will spend $54 billion in the current two-year period, the highest level in the history of the state. In addition, the latest forecast shows that revenues are rising and the state is due to pick up an additional 7% in tax collections.

At the same time, the state economy was placed in lockdown on March 25, 2020 and restrictions on private enterprise and employment are only now being slowly eased. Many family-owned businesses and farms are struggling with lost revenue, and with the need to meet the burden of high property tax and Business and Occupation tax rates imposed by lawmakers. The increase in the

3 Revised Code of Washington 46.60.400, "Discrimination, preferential treatment prohibited," enacted November 3, 1998, at https://app.leg.wa.gov/rcw/default.aspx?cite=49.60.400. The Act provides that, "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

death tax rate proposed by HB 1465 would only add to that burden.

Conclusion

Many supporters of HB 1465 and of increasing the death tax say that they would have to pay the higher tax themselves and that, as high-wealth individuals, they should pay more to support what they consider worthy government programs. There is no objection to their having a personal opinion, but many people feel that it should not be forced on everyone through the tax code.

The solution to the desire of some wealthy people to pay more is simple: make the death tax voluntary. Those who wish to give more of their own money to the state should do so, without trying to impose a higher burden on others.

In fact, supporters of HB 1465 could make those payments now, without waiting for passage of the bill.

Instead of raising the state death tax, however, lawmakers should consider repealing it. The state does not need the money, and this commonsense change would bring real financial relief to the owners of small family enterprises and farms who are trying to help the younger generation succeed. Repeal would end the unfair impact of the tax while bringing tax policy in Washington into line with the best practices of other states.

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