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Hon. Rep. April Berg
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Hon. Rep. Edward Orcutt
408 John L. O'Brien Building
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Dear Chair Berg and Representative Orcutt:

We are members of the Washington State Bar Association (“WSBA”), and the Executive Committee of the Real Property Probate and Trust (“RPPT”) section of the WSBA. We write this letter to you to evidence our¹ support for prompt passage and enactment of HB 1375, and to request that it expediently be moved to a hearing.²

As you know, current RCW 83.100.020 defines the amount of each estate that is exempt from the Washington state estate tax (the “applicable exclusion amount”). Current RCW 83.100.020(1)(a)(ii) and (iii) provide that the applicable exclusion amount from the estate tax means “Two million dollars for estates of decedents dying on or after January 1, 2006, and before January 1, 2014; and ... [f]or estates of decedents dying in calendar year 2014 and each calendar year thereafter, the [\$2 million dollar amount] must be adjusted annually.” The annual adjustment is determined with reference to the most recent October “consumer price index.” Current RCW 83.100.020(1)(b) then provides that “[f]or purposes of this subsection, “consumer price index” means the consumer price index for all urban consumers, all items, for the Seattle-Tacoma-Bremerton metropolitan area as calculated by the United States bureau of labor statistics.” As of January 1, 2018, the US Bureau of Labor and Statistics (“USBLS”) no longer calculates the consumer price index (“CPI”) for the Seattle-Tacoma-Bremerton metropolitan area. Instead, the

¹ In accordance with current WSBA policy with respect to lobbying for legislation, this letter is sent in the signatories’ individual capacities, and is not sent on behalf of the WSBA, the RPPT section thereof, or any other organization.

² This letter generally also supports SB 5405, which addresses similar issues as HB 1375. However, we favor HB 1375 over SB 5405 since, unlike SB 5405, HB 1375 conforms the proposed 2026 exclusion amount to the original RCW 83.100.020(1)(a)(ii) intent expressed in the phrase “must be adjusted annually.”

USBLS calculates the Seattle-Tacoma-Bellevue Core Based Statistical Area for the Puget Sound region.

The position of the Washington State Department of Revenue (the “DOR”) is that the statutory reference to the now-nonexistent “Seattle-Tacoma-Bremerton” CPI means that there can be no annual inflationary adjustment after 2018 (unless, apparently, that specific CPI is ever subsequently reinstated).³ As a result, the DOR’s position is that the applicable exclusion amount has remained \$2,193,000 since 2018.

The DOR’s position contradicts the clear RCW 83.100.020(1)(a)(ii) phrase “must be adjusted annually,” and violates the governing principle that the “fundamental objective in construing a statute is to ascertain and carry out the intent of the legislature.”⁴ The logical construction of the statute is that the RCW 83.100.020(1)(a)(ii) phrase “must be adjusted annually” means the RCW 83.100.020(1)(a)(iii) reference to the Seattle-Tacoma-Bremerton index includes, by implication, the most comparable replacement index (the Seattle-Tacoma-Bellevue CPI).⁵ HB 1375 amends RCW 83.100.020 to clarify that the applicable exclusion amount is inflation-adjusted to \$2,959,000 for deaths on or after August 1, 2025, and shall thereafter be subject to annual adjustments based upon whichever CPI applies to the Seattle metropolitan area (currently, the Seattle-Tacoma-Bellevue index). HB 1375 thus provides the legislature with the opportunity to confirm the legislature’s original intent by reinstituting the annual inflationary adjustment required by the existing statute.⁶

In originally enacting RCW 83.100.020, the Washington state legislature made a promise to Washington state taxpayers that the applicable exclusion amount would be indexed annually for inflation. The unforeseen relabeling by a federal agency of the applicable CPI should not deprive Washington taxpayers of the annual indexing protection the legislature intended them to have. The DOR position to the contrary, based on a technicality, frustrates rather than furthers that legislative intent. Restoring the indexed estate tax system with HB 1375 (1) is legally consistent with the

³ See, e.g., <https://dor.wa.gov/sites/default/files/2022-02/EstateTaxExclusionAmount.pdf>.

⁴ *Fed. Way Sch. Dist. No. 210 v. Vinson*, 172 Wash.2d 756, 765, 261 P.3d 145 (2011). “Occasionally, however, the literal expression of legislation may be inconsistent with the obvious objectives or policy behind it, and in such circumstances the spirit or intention of the law must prevail over the letter of the law.” *State v. Brasel*, 28 Wn. App. 303, 309, 623 P.2d 696 (1981).

⁵ The likely construction of the statute by the courts is that the RCW 83.100.020(1)(a)(ii) phrase “must be adjusted annually” means the RCW 83.100.020(1)(b) reference to the Seattle-Tacoma-Bremerton CPI includes, by implication, the currently published replacement index (the Seattle-Tacoma-Bellevue CPI).⁵ A factor likely to persuade the courts to do so is that the USBLS itself considers the two indexes to be essentially equivalent. The October 2018 CPI “Chart 1, Over-the-year percent change in CPI-U, Seattle-Tacoma-Bellevue, WA, October 2015 – 2018” merged the Seattle-Tacoma-Bremerton CPI and the Seattle-Tacoma-Bellevue CPI (otherwise, Chart 1 could not possibly span the time period October 2015 to October 2018). See https://www.bls.gov/regions/west/news-release/2018/consumerpriceindex_seattle_20181114.htm. The USBLS explanation is “In January 2018, BLS introduced a new geographic area sample for the Consumer Price Index (CPI). As part of the new sample, the index for this area was renamed.” (Emphasis added). Since, for purposes of RCW 83.100.020(1)(b), the “renamed” currently applicable CPI is essentially the equivalent of the formerly applicable CPI, the questionable DOR position to the contrary is a difficult-to-defend intentional failure to carry out the legislative intent of RCW 83.100.020(1)(a)(ii).

⁶ “For estates of decedents dying in calendar year 2014 and each calendar year thereafter, the [\$2 million dollar amount] *must be adjusted annually*” (emphasis added).

principle that the legislature's intent governs, (2) will halt the DOR's interpretation of the current statute, (3) will help protect Washington taxpayers from inflationary pressures that are beyond their control, and (4) will increase public respect for the integrity of state government.

For the above-described reasons, the undersigned, and all persons listed on the attached Exhibit A, support the enactment of HB 1375.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ryan Montgomery", with a large, sweeping flourish at the end.

Ryan L. Montgomery
WSBA #34224

A handwritten signature in blue ink, appearing to read "Liberty B. Upton", with a large, sweeping flourish at the end.

Liberty Upton
WSBA # 47140

A handwritten signature in blue ink, appearing to read "Brent Williams-Ruth", with a large, sweeping flourish at the end.

Brent Williams-Ruth
WSBA # 32437

EXHIBIT A

LIST NAMES OF PERSONS JOINING THE LETTER HERE