

House Bill 2817

Sponsored by Representative BOQUIST

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies Oregon inheritance tax. Imposes tax as percentage of taxable estate. Establishes tax rate table for taxable estates of decedents who die on or after January 1, 2008, and before January 1, 2009. Establishes threshold level of value of taxable estate for decedents who die on or after January 1, 2009.

A BILL FOR AN ACT

1
2 Relating to inheritance taxes; creating new provisions; amending ORS 118.005, 118.007, 118.010,
3 118.013, 118.100, 118.120 and 118.160; and repealing ORS 118.009.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 118.005 is amended to read:

6 118.005. As used in ORS 118.005 to 118.840, unless the context requires otherwise:

7 (1) "Beneficiary" means the recipient of a beneficial interest in property or the income there-
8 from transferred in a manner taxable under ORS 118.005 to 118.840.

9 (2) "Department" means the Department of Revenue.

10 (3) "Director" means the Director of the Department of Revenue.

11 (4) "Executor" means the executor, administrator, personal representative, fiduciary, or custo-
12 dian of property of the decedent, or, if there is no executor, administrator, fiduciary or custodian
13 appointed, qualified and acting, then any person who is in the actual or constructive possession of
14 any property includable in the estate of the decedent for inheritance tax purposes whether or not
15 such estate is subject to administration.

16 (5) "Gross estate" has the meaning given that term in section 2031 of the Internal Revenue
17 Code.

18 (6) "Nonresident decedent" means an individual who is domiciled outside of Oregon at the time
19 of death.

20 [(7) "*Passes*" includes any case where for the purposes of ORS 118.005 to 118.840 a taxable
21 transfer takes place or is deemed to take place.]

22 [(8)] (7) "Personal representative" means personal representative as defined in ORS 111.005.

23 [(9)] (8) "Resident decedent" means an individual who is domiciled in Oregon at the time of
24 death.

25 (9) "**Taxable estate**" has the meaning given that term in section 2051 of the Internal Re-
26 venue Code.

27 (10) "Transfer" or "transfer of property" means a transfer that is subject to the federal estate
28 tax imposed under subtitle B, chapter 11 of the Internal Revenue Code.

29 **SECTION 2.** ORS 118.007 is amended to read:

30 118.007. Any term used in ORS 118.005 to 118.840 has the same meaning as when used in a

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 comparable context in the laws of the federal Internal Revenue Code relating to federal estate taxes,
 2 unless a different meaning is clearly required or the term is specifically defined in ORS 118.005 to
 3 118.840. Any reference in ORS 118.005 to 118.840 to the Internal Revenue Code means the federal
 4 Internal Revenue Code as amended and in effect on December 31, [2000] **2006**, except where the
 5 Legislative Assembly has specifically provided otherwise.

6 **SECTION 3.** ORS 118.010 is amended to read:

7 118.010. (1) A tax is imposed upon [*a transfer of property and any interest therein, within the ju-*
 8 *risdiction of the state, whether belonging to the inhabitants of this state or not, which passes to or vests*
 9 *in any person or persons, or any body or bodies politic or corporate, in trust or otherwise, or by reason*
 10 *whereof any person or body politic or corporate shall become beneficially entitled, in possession or ex-*
 11 *pectation, to any property or interest therein or income thereof*] **the transfer of the taxable estate**
 12 **of a decedent that is within the jurisdiction of this state, as provided for in this section.**

13 (2) The tax imposed under this section [*shall equal the maximum amount of the state death tax*
 14 *credit allowable against the federal estate tax under section 2011 of the Internal Revenue Code.*] **for**
 15 **decedents who die on or after January 1, 2008, and before January 1, 2009, shall be deter-**
 16 **mined in accordance with the following table:**

If Taxable Estate		The Amount of Tax Equals		Of Estate Value
Is at Least	But Less Than	Initial Tax Amt	Plus Tax Rate %	Greater Than
\$ 0	\$ 2,000,000	0	0.0%	\$ -
\$ 2,000,000	\$ 2,100,000	\$ 0	4.00%	\$ 2,000,000
\$ 2,100,000	\$ 2,200,000	\$ 4,000	4.00%	\$ 2,100,000
\$ 2,200,000	\$ 2,300,000	\$ 8,000	4.00%	\$ 2,200,000
\$ 2,300,000	\$ 2,400,000	\$ 12,000	8.00%	\$ 2,300,000
\$ 2,400,000	\$ 2,500,000	\$ 20,000	8.00%	\$ 2,400,000
\$ 2,500,000	\$ 2,600,000	\$ 28,000	8.00%	\$ 2,500,000
\$ 2,600,000	\$ 2,700,000	\$ 36,000	12.00%	\$ 2,600,000
\$ 2,700,000	\$ 2,800,000	\$ 48,000	12.00%	\$ 2,700,000
\$ 2,800,000	\$ 2,900,000	\$ 60,000	12.00%	\$ 2,800,000
\$ 2,900,000	\$ 3,000,000	\$ 72,000	16.00%	\$ 2,900,000
\$ 3,000,000	\$ 3,250,000	\$ 88,000	16.00%	\$ 3,000,000
\$ 3,250,000	\$ 3,500,000	\$ 128,000	16.00%	\$ 3,250,000
\$ 3,500,000	\$ 3,750,000	\$ 168,000	16.00%	\$ 3,500,000
\$ 3,750,000	\$ 4,000,000	\$ 208,000	16.00%	\$ 3,750,000
\$ 4,000,000	\$ 4,500,000	\$ 248,000	16.00%	\$ 4,000,000
\$ 4,500,000	\$ 5,000,000	\$ 328,000	16.00%	\$ 4,500,000
\$ 5,000,000	\$ 6,000,000	\$ 408,000	16.00%	\$ 5,000,000
\$ 6,000,000	\$ 7,000,000	\$ 568,000	16.00%	\$ 6,000,000
\$ 7,000,000	\$ 8,000,000	\$ 728,000	16.00%	\$ 7,000,000
\$ 8,000,000	\$ 9,000,000	\$ 888,000	16.00%	\$ 8,000,000
\$ 9,000,000	\$ 10,000,000	\$ 1,048,000	16.00%	\$ 9,000,000
Above \$10,000,000		\$ 1,208,000	16.00%	Above \$10,000,000

1 **(3) The tax imposed under this section for decedents who die on or after January 1, 2009,**
 2 **shall equal 16 percent of the taxable estate that exceeds \$3.5 million.**

3 [(3)] (4) In the case of a resident decedent owning property outside of the jurisdiction of this
 4 state at the time of death, the tax imposed under this section shall be the amount determined under
 5 subsection (2) **or (3)** of this section multiplied by a ratio. The numerator of the ratio shall be the
 6 sum of the appraised value of the decedent's real property located in Oregon, tangible personal
 7 property located in Oregon and intangible personal property located both in and outside of Oregon.
 8 The denominator of the ratio shall be the total appraised value of the decedent's gross estate.

9 [(4)(a)] (5)(a) In the case of a nonresident decedent owning property within the jurisdiction of
 10 this state at the time of death, the tax imposed under this section shall be the amount determined
 11 under subsection (2) **or (3)** of this section multiplied by a ratio. The numerator of the ratio shall be
 12 the sum of the appraised value of the decedent's real property located in Oregon, tangible personal
 13 property located in Oregon and intangible personal property located in Oregon. The denominator
 14 shall be the total appraised value of the decedent's gross estate.

15 (b) Intangible personal property of a nonresident decedent [*shall*] **may** not be included in the
 16 numerator of the ratio used to determine the tax under this subsection if a similar exemption is
 17 made by the laws of the state or country of the decedent's residence in favor of residents of this
 18 state.

19 [(5) *In the case of decedents dying before January 1, 2003, if federal estate tax credits other than*
 20 *the state death tax credit result in no federal estate tax, no tax shall be imposed under this section.*]

21 (6) Payment, in whole or in part, of inheritance and estate taxes from funds of an estate or trust
 22 on any benefit subject to tax under ORS 118.005 to 118.840 is not to be considered as a further
 23 taxable benefit, when such payment is directed by decedent's will or by a trust agreement.

24 [(7) *If the federal taxable estate is determined by making an election under section 2032 or 2056*
 25 *of the Internal Revenue Code or another provision of the Internal Revenue Code, or if a federal estate*
 26 *tax return is not required under the Internal Revenue Code, the Department of Revenue may adopt*
 27 *rules providing for a separate election for state inheritance tax purposes.*]

28 **SECTION 4.** ORS 118.100 is amended to read:

29 118.100. (1) The tax provided for in ORS 118.010 shall be paid to the Department of Revenue on
 30 the date the federal estate tax is payable. If interest is paid on federal estate tax installments re-
 31 sulting in a reduction of the federal estate tax, and the department determines, pursuant to an
 32 amended return or refund claim, that the amount of tax imposed by ORS 118.010 is less than the
 33 amount theretofore paid, the excess tax shall be refunded by the department with interest at the
 34 rate established by ORS 305.220 for each month or fraction thereof during a period beginning on the
 35 date the amended return or refund claim is filed to the time the refund is made.

36 (2) If the amount of federal estate tax reported on a United States estate tax return is changed
 37 or corrected by the Internal Revenue Service or other competent authority, resulting in a change
 38 in the [*maximum state death tax credit allowable under the federal estate tax law*] **amount of tax due**
 39 **under ORS 118.005 to 118.840**, the executor shall report the change or correction in federal estate
 40 tax to the department. If the federal change or correction results in a reduction [*of the allowable*
 41 *state death tax credit*] **in the amount of tax due**, the report of the change or correction shall be
 42 treated by the department as a claim for refund pursuant to ORS 305.270 and, notwithstanding the
 43 limitations of ORS 305.270, shall be deemed timely if filed with the department within two years af-
 44 ter the federal correction was made. If the change or correction results in an increase in the [*state*
 45 *death tax credit allowable on the federal estate tax return*] **amount of tax due**, the department may

1 issue a notice of deficiency within two years after the federal change or correction was made or
 2 within two years after receiving a report of the federal change or correction, whichever is the later.
 3 Any executor filing an amended federal estate tax return shall also file an amended return with the
 4 department within 90 days thereafter.

5 (3)(a) In the case of an estate that contains property that is valued under section 2032A of the
 6 Internal Revenue Code for federal estate tax purposes (relating to the valuation of certain farm or
 7 other property) and that ceases to qualify for valuation under section 2032A, an additional tax under
 8 ORS 118.005 to 118.840 shall be imposed. The additional tax shall equal the amount of [*any increase*
 9 *in the state death tax credit allowable under section 2011 of the Internal Revenue Code*] **the increase**
 10 **in the taxable estate of the decedent** that is attributable to the change in the value of the estate
 11 resulting from the imposition of additional federal estate tax under section 2032A, **multiplied by**
 12 **the applicable tax rate under ORS 118.010.**

13 (b) The department shall be notified of the disqualification of the property from valuation under
 14 section 2032A in the same time and manner as the federal Internal Revenue Service is notified of
 15 the disqualification.

16 (c) The period for assessment of the tax imposed under this subsection, including any penalty
 17 or interest, shall be two years from the date on which the department receives the notice described
 18 in paragraph (b) of this subsection.

19 (d) The other provisions of ORS 118.005 to 118.840 and ORS chapter 305 shall apply to the ad-
 20 ditional tax imposed under this subsection in the same manner in which those provisions apply to
 21 the tax imposed under ORS 118.010.

22 (4) For purposes of this section, a change or correction of a United States estate tax return is
 23 deemed to be made on the date of the federal audit report.

24 (5) The executor shall, upon request of the department, supply a copy of the United States estate
 25 tax return which the executor has filed or may file with the federal government, or a copy of any
 26 federal agent's report upon any audit or adjustment of the United States estate tax return.

27 **SECTION 5.** ORS 118.120 is amended to read:

28 118.120. (1) In the case of an estate that contains a qualified family-owned business interest, an
 29 additional tax shall be imposed under ORS 118.005 to 118.840 if:

30 (a) The value of the interest was originally taken as a deduction under section 2057(a) of the
 31 Internal Revenue Code in computing the value of the taxable estate for federal estate tax purposes;
 32 and

33 (b) An additional federal estate tax is imposed with respect to the qualified family-owned busi-
 34 ness interest for the reasons stated in section 2057(f) of the Internal Revenue Code.

35 [(2)(a)] (2) The additional tax imposed under this section shall equal the amount of any [*allow-*
 36 *able increase in the state death tax credit under section 2011 of the Internal Revenue Code if the ap-*
 37 *licable percentage of the family-owned business interest that is being disqualified under section 2057(f)*
 38 *of the Internal Revenue Code were added to the*] **increase in the taxable estate** for federal estate tax
 39 purposes, **multiplied by the applicable tax rate under ORS 118.010.**

40 [(b) *The applicable percentage to be used in calculating the additional tax under this subsection*
 41 *shall equal the applicable percentage used in calculating the additional federal estate tax under section*
 42 *2057(f)(2)(B) of the Internal Revenue Code.*]

43 (3) The Department of Revenue must be notified of the qualified family-owned business interest
 44 being made subject to additional federal estate tax under section 2057(f) of the Internal Revenue
 45 Code at the same time and in the same manner as the Internal Revenue Service is notified of the

1 additional federal tax.

2 (4) The period for assessment of the additional tax imposed under this section, including any
 3 penalty or interest, shall be two years from the date on which the department receives the notice
 4 described in subsection (3) of this section.

5 (5) The other provisions of ORS 118.005 to 118.840 and ORS chapter 305 shall apply to the ad-
 6 ditional tax imposed under this section in the same manner in which those provisions apply to the
 7 tax imposed under ORS 118.010.

8 **SECTION 6.** ORS 118.160 is amended to read:

9 118.160. (1) Except as provided in subsection (2) of this section:

10 (a) An inheritance tax return is not required with respect to the estates of decedents dying on
 11 or after January 1, 1987, and before January 1, 2003, unless a federal estate tax return is required
 12 to be filed; and

13 (b) An inheritance tax return is not required with respect to the estates of decedents dying on
 14 or after:

15 (A) January 1, 2003, and before January 1, 2004, unless the value of the gross estate is \$700,000
 16 or more;

17 (B) January 1, 2004, and before January 1, 2005, unless the value of the gross estate is \$850,000
 18 or more;

19 (C) January 1, 2005, and before January 1, 2006, unless the value of the gross estate is \$950,000
 20 or more; *[or]*

21 (D) January 1, 2006, **and before January 1, 2008**, unless the value of the gross estate is \$1
 22 million or more;

23 **(E) January 1, 2008, and before January 1, 2009, unless the value of the gross estate is**
 24 **\$2 million or more; or**

25 **(F) January 1, 2009, unless the value of the gross estate is \$3.5 million or more.**

26 (2) In every estate, whether or not subject to administration and whether or not a federal estate
 27 tax return is required to be filed, the executor shall at such times and in such manner as required
 28 by rules of the Department of Revenue, file with the department a return in a form provided by the
 29 department setting forth a list and description of all transfers of property, in trust or otherwise,
 30 made by the decedent in the lifetime of the decedent as a division or distribution of the estate of
 31 the decedent made within the three-year period ending on the date of death or intended to take ef-
 32 fect at or after death and any further data that the department requires to determine inheritance
 33 tax under this chapter.

34 **SECTION 7.** ORS 118.013 is amended to read:

35 118.013. (1) For purposes of computing the tax imposed under ORS 118.010, the taxable estate
 36 *[to be used for computing the maximum amount of the state death tax credit allowable under section*
 37 *2011 of the Internal Revenue Code]* shall be the taxable estate determined for federal estate tax
 38 purposes, reduced by the value on the date of death of the decedent of all Oregon special marital
 39 property in the estate.

40 (2) Oregon special marital property consists of any trust or other property interest, or a portion
 41 of a trust or property interest:

42 (a) In which principal or income may be accumulated or distributed to or for the benefit of only
 43 the surviving spouse of the decedent during the lifetime of the surviving spouse;

44 (b) In which a person may not transfer or exercise a power to appoint any part of the trust or
 45 other property interest to a person other than the surviving spouse during the lifetime of the sur-

1 living spouse; and

2 (c) For which the executor of the estate of the decedent has made the election described in ORS
3 118.016 (1).

4 (3) If a trust or other property interest would qualify as Oregon special marital property under
5 subsection (2) of this section except that the trust or other property interest allows principal or
6 income to be distributed to other persons in addition to the surviving spouse, the executor may elect
7 to set aside a share of the trust or other property interest as a separate share of the trust or
8 property interest or as a separate trust, which shall qualify as Oregon special marital property if:

9 (a) The executor makes the election described in ORS 118.016 (1);

10 (b) Each beneficiary who is living at the time the election is made and who may be entitled to
11 a distribution from the share during the lifetime of the surviving spouse makes the election de-
12 scribed in ORS 118.016 (2);

13 (c) The surviving spouse makes the election described in ORS 118.016 (2); and

14 (d) All elections are attached to the inheritance tax return filed with respect to the estate of
15 the decedent, or are filed or maintained as records as otherwise prescribed by the Department of
16 Revenue by rule.

17 **SECTION 8. The amendments to ORS 118.005, 118.007, 118.010, 118.013, 118.100, 118.120 and**
18 **118.160 by sections 1 to 7 of this 2007 Act apply to transfers of taxable estates of decedents**
19 **who die on or after January 1, 2008.**

20 **SECTION 9. ORS 118.009 is repealed.**

21