

House Bill 3256

Sponsored by COMMITTEE ON REVENUE

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**.

Increases inheritance tax on transfers by reason of death of decedent. Applies increase to estates of decedents who die on or after January 1, 2008.

A BILL FOR AN ACT

Relating to inheritance taxes; creating new provisions; amending ORS 118.005, 118.013, 118.019, 118.100, 118.120, 118.210 and 118.270; repealing ORS 118.009; and providing for revenue raising that requires approval by a three-fifths majority.

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

SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 118.005 to 118.840.

SECTION 2. (1) In addition to and not in lieu of the tax imposed under ORS 118.010, there is imposed at the time of any transfer of property or any interest therein that is subject to tax under ORS 118.010, an additional tax on the adjusted taxable estate of a decedent, determined in accordance with the following table:

Adjusted Taxable Estate of Decedent is at least:	But does not exceed:	The tax is:
Zero	\$2,040,000	Zero
\$2,040,000	\$2,540,000	1.55% of adjusted taxable estate
\$2,540,000	\$3,040,000	\$7,732 plus 1.70% of adjusted taxable estate in excess of \$2,540,000
\$3,040,000	\$3,540,000	\$16,237 plus 1.86% of adjusted taxable estate in excess of \$3,040,000

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	\$3,540,000	\$4,040,000	\$25,516 plus 3.81%
2			of adjusted taxable
3			estate in excess of
4			\$3,540,000
5	\$4,040,000	\$5,040,000	\$44,553 plus 4.10%
6			of adjusted taxable
7			estate in excess of
8			\$4,040,000
9	\$5,040,000	\$6,040,000	\$85,556 plus 7.90%
10			of adjusted taxable
11			estate in excess of
12			\$5,040,000
13	\$6,040,000	\$7,040,000	\$164,540 plus 8.42%
14			of adjusted taxable
15			estate in excess of
16			\$6,040,000
17	\$7,040,000	\$8,040,000	\$248,790 plus 8.95%
18			of adjusted taxable
19			estate in excess of
20			\$7,040,000
21	\$8,040,000	\$9,040,000	\$338,305 plus 9.48%
22			of adjusted taxable
23			estate in excess of
24			\$8,040,000
25	\$9,040,000	\$10,040,000	\$433,086 plus 10.00%
26			of adjusted taxable
27			estate in excess of
28			\$9,040,000
29	\$10,040,000		\$533,132 plus 13.19%
30	or more		of adjusted taxable
31			estate in excess of
32			\$10,040,000

(2) In the case of a resident decedent owning property outside of the jurisdiction of this state at the time of death, the tax imposed under this section shall be the amount determined under subsection (1) of this section multiplied by the ratio described in ORS 118.010 (3).

SECTION 3. ORS 118.005 is amended to read:

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

(1) “Adjusted taxable estate” has the meaning given that term in section 2011(b) of the Internal Revenue Code.

[(1)] (2) “Beneficiary” means the recipient of a beneficial interest in property or the income therefrom transferred in a manner taxable under ORS 118.005 to 118.840.

[(2)] (3) “Department” means the Department of Revenue.

1 [(3)] (4) “Director” means the Director of the Department of Revenue.

2 [(4)] (5) “Executor” means the executor, administrator, personal representative, fiduciary, or
 3 custodian of property of the decedent, or, if there is no executor, administrator, fiduciary or custo-
 4 dian appointed, qualified and acting, then any person who is in the actual or constructive possession
 5 of any property includable in the estate of the decedent for inheritance tax purposes whether or not
 6 such estate is subject to administration.

7 [(5)] (6) “Gross estate” has the meaning given that term in section 2031 of the Internal Revenue
 8 Code.

9 [(6)] (7) “Nonresident decedent” means an individual who is domiciled outside of Oregon at the
 10 time of death.

11 [(7)] (8) “Passes” includes any case where for the purposes of ORS 118.005 to 118.840 a taxable
 12 transfer takes place or is deemed to take place.

13 [(8)] (9) “Personal representative” means personal representative as defined in ORS 111.005.

14 [(9)] (10) “Resident decedent” means an individual who is domiciled in Oregon at the time of
 15 death.

16 [(10)] (11) “Transfer” or “transfer of property” means a transfer that is subject to the federal
 17 estate tax imposed under subtitle B, chapter 11 of the Internal Revenue Code.

18 **SECTION 4.** ORS 118.013 is amended to read:

19 118.013. (1) For purposes of computing the *[tax]* **taxes** imposed under ORS 118.010 **and section**
 20 **2 of this 2007 Act**, the taxable estate to be used for computing the maximum amount of the state
 21 death tax credit allowable under section 2011 of the Internal Revenue Code shall be the taxable
 22 estate determined for federal estate tax purposes, reduced by the value on the date of death of the
 23 decedent of all Oregon special marital property in the estate.

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

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

28 (b) In which a person may not transfer or exercise a power to appoint any part of the trust or
 29 other property interest to a person other than the surviving spouse during the lifetime of the sur-
 30 viving spouse; and

31 (c) For which the executor of the estate of the decedent has made the election described in ORS
 32 118.016 (1).

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

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

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

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

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

1 **SECTION 5.** ORS 118.019 is amended to read:

2 118.019. For purposes of computing the [tax] **taxes** imposed under ORS 118.010 **and section 2**
3 **of this 2007 Act**, the gross estate of a decedent who was a surviving spouse with respect to prop-
4 erty that is Oregon special marital property under ORS 118.013 shall include the Oregon special
5 marital property, valued as of the date of death of the surviving spouse.

6 **SECTION 6.** ORS 118.100 is amended to read:

7 118.100. (1) The [tax] **taxes** provided for in ORS 118.010 **and section 2 of this 2007 Act** shall
8 be paid to the Department of Revenue on the date the federal estate tax is payable. If interest is
9 paid on federal estate tax installments resulting in a reduction of the federal estate tax, and the
10 department determines, pursuant to an amended return or refund claim, that the amount of tax im-
11 posed by ORS 118.010 **and section 2 of this 2007 Act** is less than the amount theretofore paid, the
12 excess tax shall be refunded by the department with interest at the rate established by ORS 305.220
13 for each month or fraction thereof during a period beginning on the date the amended return or
14 refund claim is filed to the time the refund is made.

15 (2) If the amount of federal estate tax reported on a United States estate tax return is changed
16 or corrected by the Internal Revenue Service or other competent authority, resulting in a change
17 in the maximum state death tax credit allowable under the federal estate tax law, the executor shall
18 report the change or correction in federal estate tax to the department. If the federal change or
19 correction results in a reduction of the allowable state death tax credit, the report of the change
20 or correction shall be treated by the department as a claim for refund pursuant to ORS 305.270 and,
21 notwithstanding the limitations of ORS 305.270, shall be deemed timely if filed with the department
22 within two years after the federal correction was made. If the change or correction results in an
23 increase in the state death tax credit allowable on the federal estate tax return, the department may
24 issue a notice of deficiency within two years after the federal change or correction was made or
25 within two years after receiving a report of the federal change or correction, whichever is the later.
26 Any executor filing an amended federal estate tax return shall also file an amended return with the
27 department within 90 days thereafter.

28 (3)(a) In the case of an estate that contains property that is valued under section 2032A of the
29 Internal Revenue Code for federal estate tax purposes (relating to the valuation of certain farm or
30 other property) and that ceases to qualify for valuation under section 2032A, an additional tax under
31 ORS 118.005 to 118.840 shall be imposed. The additional tax shall equal the amount of any increase
32 in the state death tax credit allowable under section 2011 of the Internal Revenue Code that is at-
33 tributable to the change in the value of the estate resulting from the imposition of additional federal
34 estate tax under section 2032A.

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

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

41 (d) The other provisions of ORS 118.005 to 118.840 and ORS chapter 305 shall apply to the ad-
42 ditional tax imposed under this subsection in the same manner in which those provisions apply to
43 the [tax] **taxes** imposed under ORS 118.010 **and section 2 of this 2007 Act**.

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

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

4 **SECTION 7.** ORS 118.120 is amended to read:

5 118.120. (1) In the case of an estate that contains a qualified family-owned business interest, an
 6 additional tax shall be imposed under ORS 118.005 to 118.840 if:

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

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

12 (2)(a) The additional tax imposed under this section shall equal the amount of any allowable
 13 increase in the state death tax credit under section 2011 of the Internal Revenue Code if the appli-
 14 cable percentage of the family-owned business interest that is being disqualified under section 2057(f)
 15 of the Internal Revenue Code were added to the taxable estate for federal estate tax purposes.

16 (b) The applicable percentage to be used in calculating the additional tax under this subsection
 17 shall equal the applicable percentage used in calculating the additional federal estate tax under
 18 section 2057(f)(2)(B) of the Internal Revenue Code.

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

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

26 (5) The other provisions of ORS 118.005 to 118.840 and ORS chapter 305 shall apply to the ad-
 27 ditional tax imposed under this section in the same manner in which those provisions apply to the
 28 [tax] taxes imposed under ORS 118.010 and section 2 of this 2007 Act.

29 **SECTION 8.** ORS 118.210 is amended to read:

30 118.210. All heirs, legatees, devisees, administrators, executors and trustees, and any grantee or
 31 donee under a conveyance or gift made during the grantor's or donor's life if the conveyance or gift
 32 is subject to tax under ORS 118.010 and section 2 of this 2007 Act, are, respectively, liable for any
 33 and all taxes mentioned in ORS 118.010 and section 2 of this 2007 Act, with interest thereon, until
 34 the same have been paid as in ORS 118.005 to 118.840 provided.

35 **SECTION 9.** ORS 118.270 is amended to read:

36 118.270. Except as to real property located outside of the state passing in fee from the decedent
 37 owner, the [tax] taxes imposed under ORS 118.010 and section 2 of this 2007 Act shall be assessed
 38 against and be collected from property of every kind, which, at the death of the decedent owner is
 39 subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes
 40 subject to the jurisdiction of the courts of this state for distributive purposes, or which was owned
 41 by any decedent domiciled within the state at the time of the death of the decedent even though the
 42 property was situated outside of the state.

43 **SECTION 10.** Section 2 of this 2007 Act and the amendments to ORS 118.005, 118.013,
 44 118.019, 118.100, 118.120, 118.210 and 118.270 by sections 3 to 9 of this 2007 Act apply to
 45 decedents who die on or after January 1, 2008.

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SECTION 11. ORS 118.009 is repealed.

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