

B-Engrossed
House Bill 2541

Ordered by the Senate June 9
Including House Amendments dated May 5 and Senate Amendments dated
June 9

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue for Oregon Law Commission)

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.

Replaces inheritance tax imposed on basis of former federal credit for state death tax with estate tax imposed as percentage of Oregon taxable estate and modifies related provisions. Establishes schedule of rates for values above [*deduction*] **\$1 million**. [*Provides deduction of \$1.5 million for all estates.*] Updates connection date to federal Internal Revenue Code for Oregon estate tax purposes. Creates procedures related to collection of estate taxes. Clarifies provisions relating to elections made for state inheritance tax purposes. Modifies provisions related to tax credit for natural resource property. Removes references to "death tax."

Repeals certain provisions, including obsolete provisions related to enforcement of nondomiciliary death taxes.

Applies to estates of decedents who die on or after January 1, [2011] **2012**.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to inheritance tax; creating new provisions; amending ORS 105.645, 111.025, 114.075,
3 116.083, 116.173, 116.303, 116.343, 118.005, 118.007, 118.010, 118.013, 118.016, 118.100, 118.140,
4 118.160, 118.171, 118.225, 118.260, 118.280, 118.300, 118.350, 118.525, 129.250, 305.490 and 314.415;
5 repealing ORS 118.009, 118.019, 118.220, 118.240, 118.470, 118.810, 118.820, 118.830, 118.840,
6 118.855, 118.860, 118.865, 118.870, 118.875 and 118.880 and section 3, chapter 806, Oregon Laws
7 2003; and prescribing an effective date.

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

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

10 118.005. As used in ORS 118.005 to 118.840, unless the context requires otherwise:

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

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

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

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

20 (5) "**Federal taxable estate**" means the taxable estate as determined under subtitle B,
21 **chapter 11 of the Internal Revenue Code.**

22 [(5)] (6) "Gross estate" has the meaning given that term in section 2031 of the Internal Revenue

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 Code.

2 [(6) "Nonresident decedent" means an individual who is domiciled outside of Oregon at the time
3 of death.]

4 (7) "Oregon taxable estate" means the federal taxable estate with the adjustments pro-
5 vided by ORS 118.010 (3).

6 [(7)] (8) "Passes" includes any case where for the purposes of ORS 118.005 to 118.840 a taxable
7 transfer takes place or is deemed to take place.

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

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

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

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

13 118.007. Any term used in ORS 118.005 to 118.840 has the same meaning as when used in a
14 comparable context in the laws of the federal Internal Revenue Code relating to federal estate taxes,
15 unless a different meaning is clearly required or the term is specifically defined in ORS 118.005 to
16 118.840. Any reference in ORS 118.005 to 118.840 to the Internal Revenue Code means the federal
17 Internal Revenue Code as amended and in effect on December 31, [2000] **2010**, except where the
18 Legislative Assembly has specifically provided otherwise.

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

20 118.010. [(1) A tax is imposed upon a transfer of property and any interest therein, within the ju-
21 risdiction of the state, whether belonging to the inhabitants of this state or not, which passes to or vests
22 in any person or persons, or any body or bodies politic or corporate, in trust or otherwise, or by reason
23 whereof any person or body politic or corporate shall become beneficially entitled, in possession or ex-
24 pectation, to any property or interest therein or income thereof.]

25 [(2) The tax imposed under this section shall equal the maximum amount of the state death tax
26 credit allowable against the federal estate tax under section 2011 of the Internal Revenue Code.]

27 (1) **As used in this section:**

28 (a) "Nonresident decedent" means an individual who is domiciled outside of Oregon on
29 the date the individual dies.

30 (b) "Resident decedent" means an individual who is domiciled in Oregon on the date the
31 individual dies.

32 (2) **A tax is imposed upon a transfer of the property of each:**

33 (a) **Resident decedent; and**

34 (b) **Nonresident decedent whose estate includes any interest in:**

35 (A) **Real property located in Oregon; or**

36 (B) **Tangible personal property located in Oregon.**

37 (3) **The Oregon taxable estate to be used for purposes of computing the tax imposed un-
38 der this section shall be the federal taxable estate:**

39 (a) **Increased by:**

40 (A) **The deduction for state estate, inheritance, legacy or succession taxes allowable un-
41 der section 2058 of the Internal Revenue Code; and**

42 (B) **If the decedent is a surviving spouse owning the property at death, the value of the
43 following property unless included in the federal taxable estate:**

44 (i) **Property for which a deduction for Oregon special marital property under ORS 118.016
45 was previously allowed; or**

(ii) Property for which a separate Oregon election under section 2056 or 2056A of the Internal Revenue Code was previously allowed; and

(b) Reduced by:

(A) The value on the date of the decedent's death of all Oregon special marital property under ORS 118.013; and

(B) Any other applicable exclusions or deductions.

(4) The tax imposed under this section shall be calculated by applying the rates in the following table. If the Oregon taxable estate is at least the amount in column 1, but less than the amount in column 2, the tax is the amount in column 3, increased by the excess above the amount in column 1 multiplied by the percentage in column 4:

1	2	3	4
\$1,000,000	\$1,500,000	0	10.0%
1,500,000	2,500,000	50,000	10.25%
2,500,000	3,500,000	152,500	10.5%
3,500,000	4,500,000	257,500	11.0%
4,500,000	5,500,000	367,500	11.5%
5,500,000	6,500,000	482,500	12.0%
6,500,000	7,500,000	602,500	13.0%
7,500,000	8,500,000	732,500	14.0%
8,500,000	9,500,000	872,500	15.0%
9,500,000		1,022,500	16.0%

[(3)] (5) In the case of a resident decedent owning *[property outside of the jurisdiction of this state at the time of death]*, **on the date of the decedent's death, real property located outside Oregon or tangible personal property located outside Oregon**, the tax imposed under this section shall be the amount determined under subsection [(2)] (4) of this section multiplied by a ratio. The numerator of the ratio shall be the sum of the *[appraised]* value of the decedent's real property located in Oregon, tangible personal property located in Oregon and intangible personal property *[located both in and outside of Oregon]*. **The numerator may not include any intangible personal property subject to a tax imposed, as a result of the death of the decedent, by another state or country.** The denominator of the ratio shall be the total *[appraised]* value of the decedent's gross estate.

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

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

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

3 [(6)] (7) Payment, in whole or in part, of [*inheritance and*] estate taxes from funds of an estate
4 or trust on any benefit subject to tax under ORS 118.005 to 118.840 is not to be considered [*as*] a
5 further taxable benefit, when such payment is directed by **the** decedent's will or by a trust agree-
6 ment.

7 [(7)] (8)(a) If the federal taxable estate is determined by making an election under section [2032
8 or 2056] **2031(c), 2032, 2032A, 2056 or 2056A** of the Internal Revenue Code or another provision of
9 the Internal Revenue Code, or if a federal estate tax return is not required under the Internal Re-
10 venue Code, [*the Department of Revenue may adopt rules providing for a separate election for state*
11 *inheritance tax purposes.*] **an executor may make separate elections for state estate tax pur-**
12 **poses under that same provision.**

13 **(b) An executor may make elections under ORS 118.013 and 118.140 and section 2056 of**
14 **the Internal Revenue Code for state estate tax purposes.**

15 **(c) Elections described in this subsection are irrevocable.**

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

17 118.013. [(1) *For purposes of computing the tax imposed under ORS 118.010, the taxable estate to*
18 *be used for computing the maximum amount of the state death tax credit allowable under section 2011*
19 *of the Internal Revenue Code shall be the taxable estate determined for federal estate tax purposes,*
20 *reduced by the value on the date of death of the decedent of all Oregon special marital property in the*
21 *estate.*]

22 **(1) As used in this section and ORS 118.016, "permissible distributee" has the meaning**
23 **given that term in ORS 130.010.**

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 a*
40 *distribution from the share during the lifetime of the surviving spouse*] **permissible distributee** makes
41 the election described in ORS 118.016 (2);

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

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

SECTION 5. ORS 118.016 is amended to read:

118.016. (1) The executor of an estate containing property that the executor seeks to qualify as Oregon special marital property under ORS 118.013 shall make an election under this subsection in order for the property to be Oregon special marital property. The election shall be made:

(a) By attaching a statement to the *[inheritance]* **estate** tax return for the estate of the decedent that identifies the trust or other property interest that constitutes Oregon special marital property and that affirms that the identified property meets the requirements of Oregon special marital property under ORS 118.013 and will be administered as required under ORS 118.013; or

(b) In such other manner as the Department of Revenue prescribes by rule.

(2) For a trust or other property interest described in ORS 118.013 (3), in order for any portion of the trust or other property interest to be Oregon special marital property, in addition to the election of the executor described in subsection (1) of this section, the surviving spouse and each *[beneficiary who is living at the time of the election and]* **permissible distributee** who may be eligible for a distribution from the trust or other property interest *[during the lifetime of the surviving spouse]* shall make an election and **provide** written consent that is in substantially the following form:

CONSENT TO ESTABLISHMENT OF
OREGON SPECIAL MARITAL PROPERTY

(a) **ELECTION TO BE SIGNED BY ALL *[BENEFICIARIES]* PERMISSIBLE DISTRIBUTEES EXCEPT THE SURVIVING SPOUSE:** Each of the undersigned acknowledge and consent to a portion of the _____ (name of trust or other property interest) being set aside as a separate share or trust in order to qualify for the Oregon special marital property election in accordance with ORS 118.013, for the primary purpose of reducing or eliminating the Oregon *[inheritance]* **estate** tax due on the estate of _____ (name of decedent). The undersigned together with the surviving spouse constitute all of the persons living on the date of this election who may be entitled to a distribution during the lifetime of the surviving spouse from the _____ (name of trust or other property interest). Each of the undersigned, both on behalf of the undersigned and on behalf of the unborn lineal descendants of the undersigned, irrevocably agrees to release all rights to *[distributions from]* **any current interest in** the Oregon special marital property during the lifetime of the surviving spouse. Each of the undersigned agrees that all other provisions of the _____ (name of trust or other property interest) shall remain in effect and that, upon the death of the surviving spouse, any remaining Oregon special marital property shall be distributed as otherwise provided in the trust or other property interest.

Signature of: _____ (*[beneficiary]* **permissible distributee**)

Signature of: _____ (*[beneficiary]* **permissible distributee**)

(b) **ELECTION TO BE SIGNED BY THE SURVIVING SPOUSE:** I am the surviving spouse of _____ (name of decedent). I acknowledge and consent to a portion of the _____ (name of trust or other property interest) being set aside as a separate share or trust in order to qualify as Oregon special marital property under ORS 118.013, for the primary purpose of reducing or eliminating the Oregon *[inheritance]* **estate** tax due on the estate of

1 _____ (name of decedent). I, together with all of the other individuals executing the
2 election in accordance with ORS 118.013, constitute all of the persons living on the date of this
3 election who **are permissible distributees or who** may be entitled to a distribution from the
4 Oregon special marital property to which this election applies [*and who might be entitled to a dis-*
5 *tribution during my lifetime*]. I agree that all other terms, conditions and provisions that apply to
6 the _____ (name of trust or other property interest) shall apply to the Oregon spe-
7 cial marital property to which this election applies, and that upon my death, any remaining Oregon
8 special marital property shall be distributed as otherwise provided in the trust or other property
9 interest.

10
11 Signature of: _____
12 (surviving spouse)

13
14 SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2____.

15 _____
16 Notary Public of Oregon
17 My commission expires: _____
18 _____

19
20 (3) Elections made under this section are irrevocable.

21 (4) The custodial parent or court appointed guardian of a [*minor beneficiary*] **permissible**
22 **distributee who is a minor, or any person who is authorized under ORS 130.110**, may sign the
23 election on behalf of the [*minor beneficiary*] **permissible distributee** and the unborn lineal de-
24 scendants of the [*minor beneficiary*] **permissible distributee**.

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

26 118.100. (1) The tax provided for in ORS 118.010 shall **take effect at and accrue upon the**
27 **death of the decedent. A return shall be filed and the tax shall** be paid to the Department of
28 Revenue on the date the federal estate tax is payable **or, if no federal estate tax return is re-**
29 **quired, no later than nine months following the date of death of the decedent.** If [*interest is*
30 *paid on federal estate tax installments resulting in a reduction of the federal estate tax, and*] the de-
31 partment determines, pursuant to an amended return or refund claim, that the amount of tax im-
32 posed by ORS 118.010 is less than the amount theretofore paid, the excess tax shall be refunded by
33 the department with interest at the rate established by ORS 305.220 for each month or fraction
34 thereof during a period beginning **45 days after the due date of the return or** on the date the
35 amended return or refund claim is filed, **whichever is later, and ending at [to]** the time the refund
36 is made.

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

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

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

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*] **federal** estate tax
23 return is 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*]
25 **federal** estate tax return which the executor has filed or may file with the federal government, or
26 a copy of any federal agent's report upon any audit or adjustment of the [*United States*] **federal**
27 estate tax return.

28 **(6) The executor shall explain, on the return, how the reported values were determined**
29 **and attach copies of any appraisals.**

30 **SECTION 7.** ORS 118.140 is amended to read:

31 118.140. [(1) *As used in this section, "natural resource property" means real property as defined*
32 *in ORS 307.010 that at the decedent's death:*]

33 [(a) *Is in farm use, as defined in ORS 308A.056, or is used as one or more farm use homesites,*
34 *as defined in ORS 308A.250, related to that real property; or]*

35 [(b) *Is used as forestland, as defined in ORS 321.201, or is used as one or more forestland*
36 *homesites, as defined in ORS 308A.250, related to that real property, not to exceed 5,000 acres.]*

37 [(2)(a) *A credit against the taxes otherwise due under ORS 118.005 to 118.840 shall be allowed*
38 *based upon the value of the following property:*]

39 [(A) *Natural resource property.*]

40 [(B) *If the decedent or a person described in subsection (3)(c) of this section was licensed under*
41 *ORS chapter 508, property that is:*]

42 [(i) *Used in the conduct of a fishing business as defined in section 1301(b)(4) of the Internal Re-*
43 *venue Code, including boats, gear, equipment, vessel licenses and permits and commercial fishing li-*
44 *censes and permits; or]*

45 [(ii) *Used to process and sell the catch of a commercial fishing business in fresh, canned or smoked*

1 *form directly to consumers, including a restaurant with seating capacity of less than 15 seats at which*
 2 *catch from the fishing business is prepared and sold.]*

3 *[(C) Tangible and intangible personal property devoted to use as a farm or used for farm or*
 4 *forestry purposes, including:]*

5 *[(i) Timber, trees and improvements;]*

6 *[(ii) Crops, both growing and stored; and]*

7 *[(iii) Forestry and farming equipment.]*

8 *[(D) Working capital of a farm, natural resource-based business or fishing business owned by the*
 9 *decedent at the decedent's death.]*

10 *[(b) A taxpayer may:]*

11 *[(A) Elect not to claim the credit allowed under this section;]*

12 *[(B) Elect to claim less than the full amount of the credit allowed under this section; or]*

13 *[(C) Elect to claim the credit only for the value of certain assets.]*

14 *[(c) If the value of property for which the credit allowed under this section is claimed is at least*
 15 *the amount in column 1, but less than the amount in column 2, the credit is the amount in column 3,*
 16 *increased by the excess above the amount in column 1 multiplied by the percentage in column 4:]*

17 [_____]

	1	2	3	4
	\$0	\$100,000	\$0	
	100,000	150,000	0	0.8%
	150,000	200,000	400	1.6%
	200,000	300,000	1,200	2.4%
	300,000	500,000	3,600	3.2%
	500,000	700,000	10,000	4.0%
	700,000	900,000	18,000	4.8%
	900,000	1,100,000	27,600	5.6%
	1,100,000	1,600,000	38,800	6.4%
	1,600,000	2,100,000	70,800	7.2%
	2,100,000	2,600,000	106,800	8.0%
	2,600,000	3,100,000	146,800	8.8%
	3,100,000	3,600,000	190,800	9.6%
	3,600,000	4,100,000	238,800	10.4%
	4,100,000	5,100,000	290,800	11.2%
	5,100,000	6,100,000	402,800	12.0%
	6,100,000	7,100,000	522,800	12.8%
	7,100,000	7,500,000	650,800	13.6%
	7,500,000	8,100,000	402,800	13.0%
	8,100,000	9,100,000	253,344	12.5%
	9,100,000	10,100,000	146,800	12.0%
	10,100,000	11,100,000	35,400	11.2%
	11,100,000	12,100,000	15,520	7.7%
	12,100,000	13,100,000	8,000	5.7%
	13,100,000	14,100,000	0	3.7%
	14,100,000	15,100,000	0	1.7%

1 15,100,000

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(1) As used in this section:

(a) "Adjusted gross estate" means the value of the gross estate reduced by the sum of the amounts allowable under sections 2053 and 2054 of the Internal Revenue Code.

(b) "Family member" means a member of the family, as defined in section 2032A of the Internal Revenue Code, of the decedent.

(c) "Farm business" means a business operated for the primary purpose of obtaining a profit in money by:

- (A) Raising, harvesting or selling fruit or crops;
- (B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or bees, or the produce thereof;
- (C) Dairying and selling dairy products;
- (D) Breeding, stabling or training equines;
- (E) Propagating, cultivating, maintaining or harvesting aquatic species, birds or animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;
- (F) Raising nursery stock;
- (G) Practicing animal husbandry; or
- (H) Raising other agricultural or horticultural products.

(d) "Farm use" has the meaning given that term in ORS 308A.056.

(e) "Fishing business" has the meaning given that term in section 1301(b)(4) of the Internal Revenue Code.

(f) "Forestland" has the meaning given that term in ORS 321.201.

(g) "Forestry business" means a business operated for the primary purpose of obtaining a profit in money by the planting, cultivating, caring for, preparing, harvesting or cutting of timber or trees for market.

(h) "Homesite" has the meaning given that term in ORS 308A.250.

(i) "Natural resource property" means the following property, if on the date of the decedent's death the property is owned by the decedent and used in the operation of a farm business, forestry business or fishing business owned by the decedent:

- (A) Real property used as forestland or as forestland homesites, not to exceed 5,000 acres, or that is in farm use.
- (B) Timber or trees.
- (C) Crops, fruit or other horticultural products, both growing and stored.
- (D) Forestry business or farm business equipment.
- (E) Livestock, poultry, fur-bearing animals, bees, dairying animals, equines, aquatic species, birds or other animal species, including stored products or by-products.
- (F) Nursery stock as defined in ORS 571.005.
- (G) Boats, gear, equipment, vessel licenses or permits, commercial fishing licenses or permits and other real or personal property used in the operation of a fishing business.
- (H) Real or personal property used to process and sell the catch of a fishing business in fresh, canned or smoked form directly to consumers, including a restaurant with seating capacity of fewer than 15 seats at which catch from the fishing business is prepared and sold.
- (I) An operating allowance.

1 **(J) Any other tangible and intangible personal property used in the operation of a farm**
2 **business, forestry business or fishing business.**

3 **(j) “Operating allowance” means cash or a cash equivalent that is spent, maintained, used**
4 **or available for the operation of a farm business, forestry business or fishing business and**
5 **not spent or used for any other purpose.**

6 **(k) “Qualified beneficiary” has the meaning given that term in ORS 130.010.**

7 **(L) “Real property” means real property, as defined in ORS 307.010, that is in this state.**

8 **(2)(a) An estate shall be allowed a credit for the value of natural resource property**
9 **claimed. Any operating allowance claimed under this section may not exceed the lesser of**
10 **\$1 million or 15 percent of the total value of natural resource property claimed, not including**
11 **the operating allowance.**

12 **(b) The credit allowed under this section shall be computed by multiplying the tax that**
13 **would be payable under this chapter absent the credit by a ratio, the numerator of which is**
14 **an amount equal to the lesser of the amount of natural resource property claimed under this**
15 **section or \$7.5 million, and the denominator of which is an amount equal to the total ad-**
16 **justed gross estate.**

17 **(c) An executor may:**

18 **(A) Elect not to claim the credit allowed under this section;**

19 **(B) Elect to claim less than the full amount of the credit allowed under this section; or**

20 **(C) Elect to claim the credit only for the value of certain assets.**

21 **(3) Except as provided in subsections [(4) and (5)] (4), (7) and (8) of this section, a credit is al-**
22 **lowed under this section only if:**

23 **(a) The total adjusted gross estate does not exceed \$15 million;**

24 **(b) The total value of [property for which the credit established under this section is allowable]**
25 **natural resource property in the estate is at least 50 percent of the total adjusted gross estate;**

26 **(c) The natural resource property is transferred to a [member of the family, as that term is de-**
27 **finied in section 2032A of the Internal Revenue Code, or the registered domestic partner, of the**
28 **decedent] family member; and**

29 **(d) During an aggregate period of five out of the eight years ending on the date of the decedent’s**
30 **death, the decedent[, a member of the decedent’s family or the decedent’s registered domestic partner**
31 **owned the property and the property was devoted to use as a farm or used for farm or forest**
32 **purposes] or a family member operated a farm business, forestry business or fishing business**
33 **and the property for which a credit is claimed under this section is part of the business.**

34 **(4) Property that otherwise meets the requirements of this section shall be allowed a credit un-**
35 **der this section if:**

36 **(a) The property is the subject of a net cash lease to or from the decedent or a [transferee de-**
37 **scribed in subsection (3)(c) of this section] qualified beneficiary who is a family member; [or]**

38 **(b) The property is held in trust for a [person described in subsection (3)(c) of this section.]**
39 **qualified beneficiary who is a family member; or**

40 **(c) The property replaces natural resource property, and the replacement property would**
41 **otherwise meet the definition of natural resource property except that it was acquired after**
42 **the date of the decedent’s death but before the estate tax return is filed. In order to qualify**
43 **under this paragraph, real property must be replaced with real property.**

44 **(5) A credit is allowed under this section for the following real property only if the real**
45 **property was owned by the decedent or a family member during an aggregate period of five**

1 out of the eight years ending on the date of the decedent's death and used in a business de-
2 scribed in subsection (3)(d) of this section:

3 (a) Real property used as forestland or as forestland homesites, not to exceed 5,000 acres.

4 (b) Real property used in farm use.

5 (6) A credit is allowed under this section for property used in the operation of a fishing
6 business only if the decedent or a family member, during an aggregate period of five out of
7 the eight years ending on the date of the decedent's death:

8 (a) Owned a vessel used in taking food fish or shellfish for commercial purposes as de-
9 fined in ORS 506.006;

10 (b) Held a boat license as provided in ORS 508.260;

11 (c) Held a commercial fishing license under ORS 508.235; and

12 (d) Held one or more restricted fisheries permits as provided in ORS chapter 508 or an
13 equivalent restricted vessel permit system under the laws of another state.

14 (7) For the purpose of meeting the requirements of subsection (5) of this section, in de-
15 termining the period of time during which the decedent or a family member owned real
16 property received in exchange under section 1031 of the Internal Revenue Code or acquired
17 in an involuntary conversion under section 1033 of the Internal Revenue Code, the period
18 during which the decedent or a family member owned the exchanged or acquired real prop-
19 erty, if the exchanged or acquired real property was used in the farm business or forestry
20 business, may be included.

21 [(5)] (8) Property that otherwise meets the requirements of this section and that is owned indi-
22 rectly by the decedent or a [*member of the family described in subsection (3)(c) of this section, or the*
23 *registered domestic partner, of the decedent shall qualify for a credit*] **family member qualifies for**
24 **a credit** under this section if the property is owned through an interest in a limited liability com-
25 pany or in a corporation, partnership or trust as the terms corporation, partnership or trust are
26 used in section 2032A(g) of the Internal Revenue Code. In order to qualify [*for a credit*] under this
27 subsection, at least one [*member of the family, or the registered domestic partner, of the decedent*]
28 **family member** must materially participate in the business after the transfer. For purposes of this
29 subsection, "materially participate" means to engage in active management, as defined in section
30 2032A of the Internal Revenue Code, of [*natural resource property or a*] **the farm business, forestry**
31 **business or** fishing business. The Department of Revenue may adopt rules to administer this sub-
32 section consistent with this definition.

33 [(6)] *Property that otherwise meets the requirements of this section and is involuntarily converted,*
34 *as that term is used in section 1033 of the Internal Revenue Code, shall qualify for a credit under this*
35 *section if the proceeds of conversion are used to acquire replacement property, the cost of which equals*
36 *or exceeds the amount realized on the conversion. The replacement property must also meet the re-*
37 *quirements of this section.]*

38 [(7)(a)] *An additional tax under ORS 118.005 to 118.840 shall be imposed if property for which a*
39 *credit is allowed under this section is not used in commercial fishing operations or as natural resource*
40 *property for at least five out of the eight calendar years following the decedent's death or is disposed*
41 *of by the transferee other than by disposition to another member of the family, or the registered do-*
42 *mestic partner, of the decedent or to another entity eligible for the credit allowed under this section.*
43 *Property that otherwise meets the requirements of this section and is conveyed after the decedent's*
44 *death as a qualified conservation contribution, as that term is defined in section 170(h) of the Internal*
45 *Revenue Code, shall continue to qualify for a credit under this section.]*

1 **(9)(a) A disposition shall occur and an additional tax under ORS 118.005 to 118.840 shall**
2 **be imposed if the natural resource property for which a credit is allowed under this section**
3 **is not used in the operation of a farm business, forestry business or fishing business for at**
4 **least five out of the eight calendar years following the decedent's death or is transferred to**
5 **a person other than a family member or another entity eligible for the credit allowed under**
6 **this section.**

7 **(b) The use of cash or other assets for which a credit is claimed under this section for**
8 **the payment of federal estate taxes or state inheritance or estate taxes shall be a disposition**
9 **and an additional tax shall be imposed under this subsection.**

10 **(c) The conveyance after the decedent's death of property that otherwise meets the re-**
11 **quirements of this section and is conveyed as a qualified conservation contribution, as de-**
12 **defined in section 170(h) of the Internal Revenue Code, is not a disposition requiring payment**
13 **of additional tax under this subsection.**

14 **(d) Natural resource property may be replaced with real property or personal property**
15 **after the credit is claimed and not result in a disposition subject to an additional tax if the**
16 **replacement property is used in the operation of the farm business, forestry business or**
17 **fishing business. Real property for which a credit is claimed under this section may be re-**
18 **placed only with real property that would otherwise qualify as natural resource property and**
19 **that replacement must be made within one year to avoid a disposition and additional tax,**
20 **except that a replacement of property that is involuntarily converted under section 1033 of**
21 **the Internal Revenue Code must occur within two years.**

22 **[(b)] (e) The additional tax liability shall be the amount of [the credit allowed on] additional tax**
23 **that would have been imposed, had the disqualified property not been included in the numer-**
24 **ator of the ratio in subsection (2)(b) of this section, multiplied by ((five minus the number of**
25 **years the property was used as natural resource property) divided by five). The additional tax li-**
26 **ability [shall be] is the responsibility of the owner of the property at the time of the disposition or**
27 **disqualifying event and is due within six months after the date on which the disposition or**
28 **event occurs. The Department of Revenue may establish by rule procedures for reporting the**
29 **additional tax due, consistent with ORS chapter 305.**

30 **[(c)] (f) Prior to the [transfer of property under this section] executor's identification of prop-**
31 **erty for which a credit under this section is claimed, the executor shall notify the transferee**
32 **of the potential for tax consequences to the transferee if the transferee fails to meet the conditions**
33 **of paragraph (a) of this subsection. The transferee's written acknowledgment of this notice shall be**
34 **attached to the [inheritance] estate tax return.**

35 **[(8) The department shall adopt rules consistent with those adopted under the Internal Revenue**
36 **Code to administer this section.]**

37 **(10) The executor shall identify property for which a credit under this section is claimed,**
38 **by asset, on a form prescribed by the department and filed with the estate tax return.**
39 **Transferees of property for which a credit under this section has been claimed shall file a**
40 **report with the department on a form prescribed by the department. This report shall be**
41 **filed annually until the requirements of subsection (9)(a) of this section are met and shall**
42 **require tracking of each asset for which the credit has been claimed, with confirmation that**
43 **each asset falls into one of the following categories:**

44 **(a) The asset is still used in the operation of a farm business, forestry business or fishing**
45 **business;**

1 **(b) The asset has been replaced with property that meets the requirements of subsection**
2 **(9)(d) of this section; or**

3 **(c) The asset has been subject to a disposition under subsection (9) of this section, re-**
4 **sulting in additional tax.**

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

6 118.160. (1) Except as provided in subsection (2) of this section:

7 (a) An inheritance tax return is not required with respect to the estates of decedents [*dying*]
8 **who die** on or after January 1, 1987, and before January 1, 2003, unless a federal estate tax return
9 is required to be filed; [*and*]

10 (b) An inheritance tax return is not required with respect to the estates of decedents [*dying*]
11 **who die** on or after:

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

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

16 (C) January 1, 2005, and before January 1, 2006, unless the value of the gross estate is \$950,000
17 or more; or

18 (D) January 1, 2006, **and before January 1, 2012**, unless the value of the gross estate is \$1
19 million or more[.]; **and**

20 **(c) An estate tax return is not required with respect to the estates of decedents who die**
21 **on or after January 1, 2012, unless the value of the gross estate is \$1 million or more.**

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

30 **SECTION 9.** ORS 118.171 is amended to read:

31 118.171. The provisions of ORS chapter 305 as to the audit and examination of reports and re-
32 turns, determination of deficiencies, assessments, claims for refund, conferences and appeals to the
33 Oregon Tax Court, and the procedures relating thereto, shall apply to the determination of
34 [*inheritance*] **estate** taxes under this chapter, except where the context requires otherwise.

35 **SECTION 10.** ORS 118.225 is amended to read:

36 118.225. (1) Upon application of the executor and the securing of all taxes that are payable by
37 bond, deposit or other good collateral acceptable to the Department of Revenue, the department may
38 extend the time for payment of any part of the amount imposed by ORS 118.005 to 118.840.

39 (2) The extension under this section shall be for a period not in excess of 14 years from the date
40 prescribed by ORS [*118.220*] **118.100** for payment of the tax.

41 (3) Under rules prescribed by the department, the department may extend the time for the pay-
42 ment of any deficiency of a tax imposed by ORS 118.005 to 118.840 for a reasonable period not to
43 exceed four years from the date otherwise fixed for the payment of the deficiency.

44 **SECTION 11.** ORS 118.260 is amended to read:

45 118.260. (1) If no return has been filed as required by this chapter, there shall be added to the

1 amount of tax required to be shown on the return a delinquency penalty of five percent of the
2 amount of such tax.

3 (2) If the failure to file a return continues for a period in excess of three months after the due
4 date, there shall be added to the amount of tax required to be shown as tax on the return a failure
5 to file penalty of 20 percent of the amount of such tax. This penalty is in addition to the delin-
6 quency penalty imposed by subsection (1) of this section.

7 (3) If any part of any deficiency is due to fraud with intent to evade tax, then 100 percent of the
8 total amount of the deficiency shall be assessed and collected.

9 (4) Except for a deferral of payment pursuant to an extension granted under ORS 118.225 or a
10 timely election made under ORS 118.300, if the taxes imposed by ORS 118.005 to 118.840 are not paid
11 on or before the date on which payment of the tax is required to be made under ORS [118.220]
12 **118.100**, there shall be added to the amount of tax required to be shown on the return a delinquency
13 penalty of five percent of the amount of such tax.

14 (5)(a) Except as provided in subsection (6) of this section and paragraph (b) of this subsection,
15 if the tax imposed by ORS 118.005 to 118.840 is not paid on or before the date on which payment
16 of the tax is required to be made under ORS [118.220] **118.100**, interest shall be charged and col-
17 lected thereon at the rate established under ORS 305.220 for each month or fraction thereof from
18 the time when the tax became due and payable.

19 (b) If payment of the tax or deficiency is extended under ORS 118.225, interest shall be charged
20 and collected on any amount for which extension is granted from the date the tax or deficiency is
21 otherwise due and payable to the date of payment at the rate established under ORS 305.220,
22 **without regard to ORS 305.222**, for each month or fraction thereof.

23 (6) In all cases in which a bond is given, under the provisions of ORS 118.300, interest shall be
24 charged at the rate established under ORS 305.220, **without regard to ORS 305.222**, for each month
25 or fraction thereof from the time when the tax became due and payable, until the date of payment.

26 (7) If the tax has not been determined, a deposit may be made to avoid interest. Should the
27 amount of such payment exceed the sum subsequently determined to be due, the Department of Re-
28 venue shall refund the excess **with interest at the rate established under ORS 305.220, for each**
29 **month or fraction of a month during a period beginning 45 days after the due date of the**
30 **return or the date that the return is filed, whichever is later, and ending at the time the**
31 **refund is made.**

32 (8) Payments made on the tax shall be applied first to penalty and interest and then to the
33 principal.

34 (9) For purposes of this section, the amount of tax required to be shown on the return shall be
35 reduced by the amount of any part of the tax which is paid on or before the date prescribed for
36 payment of the tax and by the amount of any credit against the tax which may be lawfully claimed
37 upon the return.

38 **SECTION 12.** ORS 118.280 is amended to read:

39 118.280. (1) Every executor, administrator or trustee has power to sell as much of the property
40 embraced in any inheritance, devise, bequest or legacy, as will enable the executor, administrator
41 or trustee to pay the tax imposed by ORS 118.005 to 118.840, in the same manner as the executor,
42 administrator or trustee is authorized to do for the payment of the debts of a decedent.

43 (2) Any part of the gross estate sold for the payment of claims against the estate and expenses
44 of administration, for the payment of the tax imposed by ORS 118.005 to 118.840, or for purposes of
45 distribution, shall be divested of the lien of such tax, and such lien shall be transferred to the pro-

ceeds of such sale. A mortgage on property executed for payment of claims against the estate and expenses of administration and for payment of the tax imposed by ORS 118.005 to 118.840 shall constitute a lien upon said property prior and superior to the *[inheritance]* **estate** tax lien, which *[inheritance]* **estate** tax lien shall attach to the proceeds of such mortgage.

SECTION 13. ORS 118.300 is amended to read:

118.300. Any *[person or corporation beneficially interested in]* **beneficiary of** any property chargeable with a tax under this chapter and personal representatives and trustees, may elect, on or before the date on which the *[inheritance]* **estate** tax is due and payable under ORS *[118.220]* **118.100**, not to pay the tax until the person or persons beneficially interested therein shall come into actual possession or enjoyment thereof. If it is personal property, the person or persons so electing shall give a bond or irrevocable letter of credit to the state in double the amount of the tax, with such sureties or issued by such insured institution as defined in ORS 706.008 as the Director of the Department of Revenue may approve, conditioned for the payment of the tax and interest thereon, at such time and period as the person or persons beneficially interested therein may come into actual possession or enjoyment of the property, which bond shall be executed and filed, and a full return of the property made to the Director of the Department of Revenue within six months from the date of transfer thereof, as in this section provided. The bond or letter of credit must be renewed every five years.

SECTION 14. ORS 118.350 is amended to read:

118.350. (1) Whenever an estate, devise, legacy or beneficial interest therein, charged or sought to be charged with the *[inheritance]* **estate** tax is of such nature or is so disposed that the liability of the same is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the Department of Revenue may compromise with the beneficiaries or representatives of such estate, and *[compound]* **determine** the tax *[thereon]*. The payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

(2) In any suit or action involving the title to real property, in which it appears, by the pleadings or otherwise, that an *[inheritance]* **estate** tax is or might be payable to the State of Oregon by reason of the death of any person whose estate has not been administered in Oregon, *[the circuit court shall direct that]* a copy of the pleadings *[in such cause]* **shall** be served upon the Department of Revenue, such service to be made as summons is served in any cause in the circuit court of this state. Thereupon further proceedings in the cause shall be suspended until the department has had an opportunity to appear therein, such appearance to be made within the time that is required by the service of summons upon a private person or corporation. The department shall appear in the cause and present the claims of the state, if any, to an *[inheritance]* **estate** tax, and it is the duty of the Attorney General of the state to represent the state and the department in such proceedings, and the department may compromise and compound the tax claimed to be due upon the passing of such real property. Such settlement and compromise shall be entered of record in the register of such court. Thereafter the payment of the amount of taxes so agreed upon shall discharge the *[inheritance]* **estate** tax lien against the property. If a compromise is not effected, the amount of tax, if any, due upon the passing of the real property shall be determined by the court as are other questions involved in such litigation, and subject to the same right of appeal to the Court of Appeals. The judgment of the court or of the Court of Appeals, if there is an appeal, is conclusive as to the amount of taxes due upon the passing of the real property and payment thereof shall discharge the lien against the property.

SECTION 15. ORS 118.525 is amended to read:

1 118.525. (1) It shall be unlawful for the Department of Revenue or any of its officers or em-
2 ployees to divulge or make known in any manner any particulars disclosed in any return or sup-
3 porting data required under this chapter. Except for executors or beneficiaries and their authorized
4 representatives, it shall be unlawful for any person or entity who has acquired information pursuant
5 to subsections (3) and (4) of this section to divulge or make known such information for any purpose
6 other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or
7 judicial order shall be issued compelling the department, or its officers or employees, or persons
8 described in subsections (3) and (4) of this section, to divulge or make known any particulars dis-
9 closed in any such return or supporting data except where the liability for [*inheritance*] **estate** taxes
10 is to be adjudicated by the Oregon Tax Court. Nothing in this section shall prohibit the publication
11 of statistics so classified as to prevent the identification of particulars in any return or supporting
12 data covered by this section.

13 (2) As used in this section:

14 (a) "Officer," "employee" or "person" includes an authorized representative of the officer, em-
15 ployee or person, or former officer, employee or person, or an authorized representative of such
16 former officer, employee or person.

17 (b) "Particulars" includes, but is not limited to, a taxpayer's name, address, telephone number,
18 Social Security number and the amount of refund claimed by or granted to a taxpayer.

19 (3) Notwithstanding subsection (1) of this section, the department may permit, for tax purposes
20 only, the Commissioner of Internal Revenue or authorized representatives, or an officer or employee
21 of any state or the District of Columbia which has a provision of law which meets the requirements
22 of any applicable provision of the Internal Revenue Code as to confidentiality to inspect any return
23 or supporting data referred to in subsection (1) of this section. The department may disclose to the
24 executor or beneficiary of any estate, or an authorized representative thereof, any information or
25 particulars otherwise made confidential by this section, if the department determines that the exec-
26 utor or beneficiary has a material interest which will be affected by such information or particulars.

27 (4) The department may disclose a taxpayer's name, address, telephone number, Social Security
28 number, refund amount or tax due to the extent necessary in connection with collection activities
29 or the processing or mailing of returns, correspondence or forms with respect to the tax imposed
30 under this chapter.

31 (5) The department also may disclose and give access to information described in subsection (1)
32 of this section to those persons, agencies or entities, described in ORS 314.840 (2)(e), (f), (g) and (h)
33 to the extent authorized by said paragraphs; and to any agency of the State of Oregon or any per-
34 son, or any officer or employee of such agency or person to whom disclosure or access is given by
35 state law and not otherwise referred to in this section, including but not limited to the Secretary
36 of State and the officers and employees thereof, for the uses and purposes described in ORS 297.060.

37 (6) Each officer or employee of the department and each person described or referred to in
38 subsection (5) of this section to whom disclosure or access to tax information is given, prior to be-
39 ginning employment or the performance of duties involving such disclosure or access, shall be ad-
40 vised in writing of the provisions of subsection (1) of this section and ORS 118.990 (3), and shall as
41 a condition of employment or performance of duties execute a certificate for the department, stating
42 in substance that the person has read these provisions of law, that the person has had them ex-
43 plained and that the person is aware of the penalties for the violation of subsection (1) of this sec-
44 tion.

45 **SECTION 16.** ORS 105.645 is amended to read:

1 105.645. Notwithstanding any other provision of ORS 105.623 to 105.649, if as a result of a dis-
2 claimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of the
3 Internal Revenue Code and the regulations promulgated under that code, as in effect on [January
4 1, 2002,] **December 31, 2010**, as never having been transferred to the disclaimant, then the dis-
5 claimer or transfer is effective as a disclaimer under ORS 105.623 to 105.649.

6 **SECTION 17.** ORS 111.025 is amended to read:

7 111.025. For purposes of ORS chapters 111 to 116, the Oregon Tax Court is not a court having
8 probate jurisdiction and is limited to the trial of appeals on inheritance **or estate** tax matters.

9 **SECTION 18.** ORS 114.075 is amended to read:

10 114.075. Subject to the limitations imposed by ORS 114.065, provision for support under ORS
11 114.015 ordered by the court has priority over claims and expenses of administration. The provision
12 [shall] **is** not [be] charged against the distributive share of the person receiving support. The pro-
13 vision [shall be] **is** treated as an expense of administration, but [shall] not [be] **as** a deduction for
14 [inheritance] **estate** tax purposes.

15 **SECTION 19.** ORS 116.083 is amended to read:

16 116.083. (1) A personal representative shall make and file in the estate proceeding an account
17 of the personal representative's administration:

18 (a) Unless the court orders otherwise, annually within 60 days after the anniversary date of the
19 personal representative's appointment.

20 (b) Within 30 days after the date of the personal representative's removal or resignation or the
21 revocation of the personal representative's letters.

22 (c) When the estate is ready for final settlement and distribution.

23 (d) At such other times as the court may order.

24 (2) Each account must include the following information:

25 (a) The period of time covered by the account.

26 (b) The total value of the property with which the personal representative is chargeable ac-
27 cording to the inventory, or, if there was a prior account, the amount of the balance of the prior
28 account.

29 (c) All money and property received during the period covered by the account.

30 (d) All disbursements made during the period covered by the account. Vouchers for disburse-
31 ments must accompany the account, unless otherwise provided by order or rule of the court, or un-
32 less the personal representative is a trust company that has complied with ORS 709.030, but that
33 personal representative shall:

34 (A) Maintain the vouchers for a period of not less than one year following the date on which
35 the order approving the final account is entered;

36 (B) Permit interested persons to inspect the vouchers and receive copies thereof at their own
37 expense at the place of business of the personal representative during the personal representative's
38 normal business hours at any time prior to the end of the one-year period following the date on
39 which the order approving the final account is entered; and

40 (C) Include in each annual account and in the final account a statement that the vouchers are
41 not filed with the account but are maintained by the personal representative and may be inspected
42 and copied as provided in subparagraph (B) of this paragraph.

43 (e) The money and property of the estate on hand.

44 (f) Such other information as the personal representative considers necessary to show the con-
45 dition of the affairs of the estate or as the court may require.

1 (g) A declaration under penalty of perjury in the form required by ORCP 1 E.

2 (3) When the estate is ready for final settlement and distribution, the account must also include:

3 (a) A statement that all Oregon income **taxes**, inheritance **or estate taxes** and personal prop-
4 erty taxes, if any, have been paid, or if not so paid, that payment of those taxes has been secured
5 by bond, deposit or otherwise, and that all required tax returns have been filed.

6 (b) A petition for a judgment authorizing the personal representative to distribute the estate to
7 the persons and in the portions specified therein.

8 (4) If the distributees consent thereto in writing and all creditors of the estate have been paid
9 in full other than creditors owed administrative expenses that require court approval, the personal
10 representative, in lieu of the final account otherwise required by this section, may file a statement
11 that includes the following:

12 (a) The period of time covered by the statement.

13 (b) A statement that all creditors have been paid in full other than creditors owed administra-
14 tive expenses that require court approval.

15 (c) The statement and petition referred to in subsection (3) of this section.

16 (d) A declaration under penalty of perjury in the form required by ORCP 1 E.

17 (5) Notice of time for filing objections to the statement described in subsection (4) of this section
18 is not required.

19 (6) The Chief Justice of the Supreme Court may by rule specify the form and contents of ac-
20 counts that must be filed by a personal representative.

21 **SECTION 20.** ORS 116.173 is amended to read:

22 116.173. (1) Upon application to the court a personal representative is entitled to receive com-
23 pensation for services as provided in this section. If there is more than one personal representative
24 acting concurrently, the compensation shall not be increased, but may be divided among them as
25 they agree or as the court may order. The compensation is a commission upon the whole estate, as
26 follows:

27 (a) Upon the property subject to the jurisdiction of the court, including income and realized
28 gains:

29 (A) Seven percent of any sum not exceeding \$1,000.

30 (B) Four percent of all above \$1,000 and not exceeding \$10,000.

31 (C) Three percent of all above \$10,000 and not exceeding \$50,000.

32 (D) Two percent of all above \$50,000.

33 (b) One percent of the property, exclusive of life insurance proceeds, not subject to the juris-
34 diction of the court but reportable for Oregon inheritance **or estate** tax or federal estate tax pur-
35 poses.

36 (2) In all cases, further compensation as is just and reasonable may be allowed by the court for
37 any extraordinary and unusual services not ordinarily required of a personal representative in the
38 performance of duties as a personal representative.

39 (3) When a decedent by will has made special provision for the compensation of a personal
40 representative, the personal representative is not entitled to any other compensation for services
41 unless prior to appointment the personal representative signs and files with the clerk of the court
42 a written renunciation of the compensation provided by the will.

43 **SECTION 21.** ORS 116.303 is amended to read:

44 116.303. As used in ORS 116.303 to 116.383:

45 (1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate

1 tax and the [*inheritance*] **estate** tax payable to this state under ORS 118.005 to 118.840.

2 (2) "Person" means any individual, partnership, association, joint stock company, corporation,
3 government, political subdivision, governmental agency or local governmental agency.

4 (3) "Person interested in the estate" means any person entitled to receive, or who has received,
5 from a decedent or by reason of the death of a decedent any property or interest therein included
6 in the decedent's estate. It includes a personal representative, guardian, conservator or trustee.

7 (4) "State" means any state, territory or possession of the United States, the District of
8 Columbia or the Commonwealth of Puerto Rico.

9 (5) "Tax" means the federal estate tax and the [*inheritance*] **estate** tax payable to this state
10 under ORS 118.005 to 118.840, and interest and penalties imposed in addition to the tax.

11 **SECTION 22.** ORS 116.343 is amended to read:

12 116.343. (1) In making an apportionment, allowances shall be made for any exemptions granted,
13 any classification made of persons interested in the estate and any deductions and credits allowed
14 by the law imposing the tax.

15 (2) Any exemption or deduction allowed by reason of the relationship of any person to the
16 decedent or by reason of the purpose of the gift inures to the benefit of the person bearing that
17 relationship or receiving the gift, except that when an interest is subject to a prior present interest
18 that is not allowable as a deduction, the tax apportionable against the present interest shall be paid
19 from principal.

20 (3) Any deduction for property previously taxed and any credit for gift taxes or [*death*] **estate**
21 taxes of a foreign country paid by the decedent or the estate of the decedent inures to the propor-
22 tionate benefit of all persons liable to apportionment.

23 (4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in re-
24 spect to property or interests includable in the estate inures to the benefit of the persons or inter-
25 ests chargeable with the payment thereof to the extent that, or in proportion as, the credit reduces
26 the tax.

27 (5) To the extent that property passing to or in trust for a surviving spouse or any charitable,
28 public or similar gift or bequest does not constitute an allowable deduction for purposes of the tax
29 solely by reason of an inheritance tax or other death tax imposed upon and deductible from the
30 property, the property shall not be included in the computation provided for in ORS 116.313, and to
31 that extent no apportionment shall be made against the property. This subsection does not apply to
32 any case in which the result will be to deprive the estate of a deduction otherwise allowable under
33 section 2053 (d) of the Internal Revenue Code (26 U.S.C. 2053 (d)) relating to deduction for state
34 [*death*] **estate** taxes on transfers for public, charitable or religious uses.

35 **SECTION 23.** ORS 129.250 is amended to read:

36 129.250. After a decedent dies, in the case of an estate, or after an income interest in a trust
37 ends, the following rules apply:

38 (1) A fiduciary of an estate or of a terminating income interest shall determine the amount of
39 net income and net principal receipts received from property specifically given to a beneficiary un-
40 der the rules in ORS 129.270 to 129.425 that apply to trustees and the rules in subsection (5) of this
41 section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary
42 who is to receive the specific property.

43 (2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating
44 income interest under the rules in ORS 129.270 to 129.425 that apply to trustees and by:

45 (a) Including in net income all income from property used to discharge liabilities;

1 (b) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants
2 and fiduciaries, court costs and other expenses of administration and interest on [death] estate
3 taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which
4 the fiduciary claims an estate tax marital or charitable deduction only to the extent that the pay-
5 ment of those expenses from income will not cause the reduction or loss of the deduction; and

6 (c) Paying from principal all other disbursements made or incurred in connection with the
7 settlement of a decedent's estate or the winding up of a terminating income interest, including debts,
8 funeral expenses, disposition of remains, family allowances, and [death] estate taxes and related
9 penalties that are apportioned to the estate or terminating income interest by the will, the terms
10 of the trust or applicable law.

11 (3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the
12 interest or any other amount provided by the will, the terms of the trust or applicable law from net
13 income determined under subsection (2) of this section or from principal to the extent that net in-
14 come is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an
15 income interest ends and no interest or other amount is provided for by the terms of the trust or
16 applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary
17 would be entitled under applicable law if the pecuniary amount were required to be paid under a
18 will.

19 (4) A fiduciary shall distribute the net income remaining after distributions required by sub-
20 section (3) of this section in the manner described in ORS 129.255 to all other beneficiaries, includ-
21 ing a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an
22 unqualified power to withdraw assets from the trust or other presently exercisable general power
23 of appointment over the trust.

24 (5) A fiduciary may not reduce principal or income receipts from property described in sub-
25 section (1) of this section because of a payment described in ORS 129.400 or 129.405 to the extent
26 that the will, the terms of the trust or applicable law requires the fiduciary to make the payment
27 from assets other than the property or to the extent that the fiduciary recovers or expects to re-
28 cover the payment from a third party. The net income and principal receipts from the property are
29 determined by including all of the amounts the fiduciary receives or pays with respect to the prop-
30 erty, whether those amounts accrued or became due before, on or after the date of a decedent's
31 death or an income interest's terminating event, and by making a reasonable provision for amounts
32 that the fiduciary believes the estate or terminating income interest may become obligated to pay
33 after the property is distributed.

34 **SECTION 24.** ORS 305.490 is amended to read:

35 305.490. (1) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay a
36 filing fee at the time of filing for each complaint or petition as follows:

37 (a) For a complaint or petition in the magistrate division, \$25.

38 (b) For a complaint or petition in the regular division, \$50.

39 (c) If a complaint or petition is specially designated under ORS 305.501 for hearing in the reg-
40 ular division, a fee of \$50.

41 (2) Neither the State of Oregon, nor any county, school district, municipal corporation or other
42 public corporation therein, nor any officer of any such public political division or corporation, ap-
43 pearing in the representative capacity of the officer of any public political division or corporation,
44 shall be required to pay the fee prescribed under this section. The party entitled to costs and dis-
45 bursements on such appeal shall recover from the opponent of the party the amount so paid upon

1 order of the court, as in equity suits in the circuit court.

2 (3)(a) If, in any proceeding before the tax court judge involving taxes upon or measured by net
3 income in which an individual taxpayer is a party, or involving inheritance **or estate** taxes, the
4 court grants a refund claimed by the executor or taxpayer or denies in part or wholly an additional
5 assessment of taxes claimed by the Department of Revenue to be due from the estate or taxpayer,
6 the court may allow the taxpayer, in addition to costs and disbursements, the following:

7 (A) Reasonable attorney fees for the proceeding under this subsection and for the prior pro-
8 ceeding in the matter, if any, before the magistrate; and

9 (B) Reasonable expenses as determined by the court. Expenses include accountant fees and fees
10 of other experts incurred by the executor or individual taxpayer in preparing for and conducting the
11 proceeding before the tax court judge and the prior proceeding in the matter, if any, before the
12 magistrate.

13 (b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the
14 Department of Revenue in the manner provided by ORS 305.790.

15 (4)(a) If, in any proceeding before the tax court judge involving ad valorem property taxation,
16 exemptions, special assessments or omitted property, the court finds in favor of the taxpayer, the
17 court may allow the taxpayer, in addition to costs and disbursements, the following:

18 (A) Reasonable attorney fees for the proceeding under this subsection and for the prior pro-
19 ceeding in the matter, if any, before the magistrate; and

20 (B) Reasonable expenses as determined by the court. Expenses include fees of experts incurred
21 by the individual taxpayer in preparing for and conducting the proceeding before the tax court judge
22 and the prior proceeding in the matter, if any, before the magistrate.

23 (b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the
24 Department of Revenue in the manner provided by ORS 305.790.

25 (5) All fees and other moneys received or collected by the clerk by virtue of the office of the
26 clerk shall be paid over to the State Treasurer and shall be held by the clerk in the General Fund
27 as miscellaneous receipts.

28 **SECTION 25.** ORS 314.415 is amended to read:

29 314.415. (1) If the Department of Revenue determines pursuant to ORS 305.270 that the amount
30 of the tax due is less than the amount theretofore paid, the excess shall be refunded by the depart-
31 ment with interest at the rate established under ORS 305.220, for each month or fraction of a month
32 during a period beginning 45 days after the due date of the return or the date the tax was paid, **or,**
33 **in the case of a return filed under ORS 118.100, the date that the return is filed,** whichever
34 is the later, to the time the refund is made.

35 (2)(a) The department may not allow or make a refund after three years from the time the return
36 was filed, or two years from the time the tax (or a portion of the tax) was paid, whichever period
37 expires later, unless before the expiration of this period a claim for refund is filed by the taxpayer
38 in compliance with ORS 305.270. In any case, if the original return is not filed within three years
39 of the due date, excluding extensions, of the return, the department may allow or make a refund only
40 of amounts paid within two years from the date of the filing of the claim for refund. If a refund is
41 disallowed for the tax year during which excess tax was paid for any reason set forth in this sub-
42 section, the department may not allow the excess as a credit against any tax occurring on a return
43 filed for a subsequent year.

44 (b) The department may not make a refund if the tax owed after offsets for all amounts owed
45 the state, or a county pursuant to a judgment obtained under ORS 169.151, is less than \$1.

1 (c) If a taxpayer would qualify under section 6511(h) of the Internal Revenue Code for a sus-
2 pension of the running of the periods specified for filing a claim for refund of federal income tax,
3 the period specified in paragraph (a) of this subsection shall also be suspended.

4 (d) The department may not pay an employee interest on a refund of a tax withheld by an em-
5 ployer if the interest would be for any period prior to the time the employee files a personal income
6 tax return for the tax year involved or for any period prior to the day that is 45 days after the date
7 when the employee's annual return for that year was filed or was due, whichever is later.

8 (e) The department may not pay interest on a refund of estimated tax paid under ORS 314.505
9 to 314.525 or 316.557 to 316.589 if the interest would be for any period prior to the time the taxpayer
10 files a tax return for the tax year involved or for any period prior to the day that is 45 days after
11 the date when the tax return for that year was filed or was due, whichever is later.

12 (f) The amount of the refund, exclusive of interest on the refund, may not exceed the portion
13 of the tax paid during the period preceding the filing of the claim or, if no claim is filed, then during
14 the period preceding the allowance of the refund during which a claim might have been filed. Where
15 there has been an overpayment of any tax imposed, the amount of the overpayment and interest on
16 the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer,
17 and only the balance shall be refunded.

18 (g) Except as provided in ORS 305.265 (12), if, pursuant to a notice of deficiency or assessment,
19 the taxpayer pays the amount specified in the notice, or any part thereof, and if, upon appeal, the
20 Oregon Tax Court or the Oregon Supreme Court orders that all or any part of the deficiency amount
21 specified in the notice and paid by the taxpayer be refunded, the amount so ordered to be refunded
22 shall bear interest at the rate established for refunds in ORS 305.220. Interest shall be computed
23 from the date of payment to the department. Nothing in this subsection shall require that interest
24 be paid upon any amount for any period for which interest upon the same amount for the same pe-
25 riod is required to be paid under ORS 305.419.

26 (3)(a) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or subsection (1)
27 or (2) of this section, if, prior to the expiration of the period prescribed in subsection (2) of this
28 section, the department and the taxpayer consent in writing to the refund of tax after the expiration
29 of the period prescribed:

30 (A) The department shall make the refund prior to the expiration of the period agreed upon; and

31 (B) The department may not make or allow a refund after the expiration of the period agreed
32 upon unless a claim for refund is filed by the taxpayer before the expiration of the period agreed
33 upon in compliance with the manner prescribed by the department. The period so agreed upon may
34 be extended by subsequent agreements in writing made before the expiration of the period previ-
35 ously agreed upon.

36 (b) The department may consent to extend the period during which a refund may be made only
37 if the taxpayer has consented to the assessment of additional tax, if additional taxes are determined
38 upon audit, after the expiration of the applicable period prescribed in ORS 314.410 (1) to (3).

39 (4)(a) If the claim for credit or refund relates to an overpayment on account of the deductibility
40 by the taxpayer, or by a partnership, of the worthlessness of a share of stock in a corporation, of
41 the right to subscribe for or to receive a share of stock in a corporation, or of a debt, in lieu of the
42 three-year period of limitation prescribed in subsection (2) of this section, the period shall be seven
43 years from the date prescribed by law for the filing of the return for the year with respect to which
44 the claim is made.

45 (b) If the claim described in paragraph (a) of this subsection is made after the expiration of the

1 three-year period prescribed in subsection (2) of this section, the department may not allow interest
2 with respect to any credit or refund determined to be due upon the claim for the period beginning
3 at the close of the three-year period prescribed in subsection (2) of this section and ending at the
4 expiration of six months after the date on which the claim is filed.

5 (5)(a) If the claim for credit or refund relates to an overpayment attributable to a net operating
6 loss carryback or a net capital loss carryback, in lieu of the three-year period of limitation pre-
7 scribed in subsection (2) of this section, the period shall be the period that ends three years after
8 the time prescribed by law for filing the return (including extensions) for the taxable year of the
9 net operating loss or net capital loss that results in such carryback. In the case of such a claim, the
10 amount of the credit or refund may exceed the portion of the tax paid within the period provided
11 in subsection (1), (2) or (3) of this section, whichever is applicable, to the extent of the amount of
12 the overpayment attributable to the carryback. If the allowance of a credit or refund of an over-
13 payment of tax attributable to a net operating loss carryback or a net capital loss carryback is
14 otherwise prevented by the operation of any law or rule of law other than ORS 305.150, relating to
15 closing agreements, the credit or refund may be allowed or made if the claim for credit or refund
16 is filed within the period provided in this subsection. To the extent that the carryback was not an
17 issue in any proceeding in which the determination of a court, including the Oregon Tax Court, has
18 become final, the claimed credit or refund applicable to that carryback may be allowed or made
19 under this subsection.

20 (b) For purposes of subsection (1) or (2) of this section, if any overpayment of tax results from
21 a carryback of a net operating loss or net capital loss, the overpayment shall be deemed not to have
22 been made prior to the later of:

23 (A) The due date of the return for the taxable year in which such net operating loss or net
24 capital loss arises;

25 (B) The date the return for the year in which the net operating loss or net capital loss arises
26 is filed; or

27 (C) The date of filing of the return for the year to which the net operating loss or net capital
28 loss is carried back.

29 (6) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or this section, if
30 the taxpayer has agreed with the United States Commissioner of Internal Revenue for an extension,
31 or a renewal of an extension, of the period for proposing and assessing deficiencies in federal income
32 tax for any year, the period within which a claim for credit or refund may be filed or credit or re-
33 fund allowed or made if no claim is filed shall be the period provided within subsections (1) to (5)
34 of this section or six months after the date of the expiration of the agreed period for assessing de-
35 ficiency in federal income tax, whichever period expires later.

36 (7) If a joint return is filed, the department may make separate refunds at the request of either
37 spouse. The separate refunds shall bear the same proportion to the total refund as the adjusted gross
38 income of each spouse bears to the adjusted gross income of both spouses, or as otherwise deter-
39 mined by the department.

40 (8) If a taxpayer entitled to a refund under subsection (1) of this section dies, the department
41 may issue a draft for payment of such refund under the terms and conditions set out in ORS 293.490
42 to 293.500 exercising the same powers and subject to the same restrictions pursuant to which the
43 State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes.

44 **SECTION 26. Sections 27 and 28 of this 2011 Act are added to and made a part of ORS**
45 **118.005 to 118.840.**

1 **SECTION 27.** When the Department of Revenue and the taxing official of one or more
2 other states each claims that the state of that official respectively was the domicile of the
3 decedent for the purpose of estate taxes or claims taxing authority over the same property
4 in an estate, the department may negotiate, and enter into an agreement, with the taxing
5 official of the other state and with the executor to accept payment of estate tax, together
6 with any interest and penalties. The department may enter into binding arbitration or into
7 a compromise agreement with respect to disputed liability for estate taxes with each taxing
8 official and with the executor.

9 **SECTION 28.** (1) At any time within three years after the date that an estate tax return
10 is filed, the Department of Revenue may give notice of deficiency as prescribed in ORS
11 305.265.

12 (2) If the department finds that the value of the gross estate has been undervalued on
13 the estate tax return by an amount greater than 25 percent, notice of deficiency may given
14 at any time within five years after the date that the return is filed.

15 (3) The limitations to the giving of notice of a deficiency provided in this section do not
16 apply to a deficiency resulting from a false or fraudulent estate tax return or in a case where
17 no return has been filed.

18 **SECTION 29.** ORS 118.009, 118.019, 118.220, 118.240, 118.470, 118.810, 118.820, 118.830,
19 118.840, 118.855, 118.860, 118.865, 118.870, 118.875 and 118.880 and section 3, chapter 806, Oregon
20 Laws 2003, are repealed.

21 **SECTION 30.** (1) Sections 27 and 28 of this 2011 Act, the amendments to ORS 111.025,
22 114.075, 116.083, 116.173, 116.303, 116.343, 118.005, 118.007, 118.010, 118.013, 118.016, 118.100,
23 118.140, 118.160, 118.171, 118.225, 118.260, 118.280, 118.300, 118.350, 118.525, 129.250, 305.490 and
24 314.415 by sections 1 to 15 and 17 to 25 of this 2011 Act and the repeal of ORS 118.009, 118.019,
25 118.220, 118.240, 118.470, 118.810, 118.820, 118.830, 118.840, 118.855, 118.860, 118.865, 118.870,
26 118.875 and 118.880 and section 3, chapter 806, Oregon Laws 2003, by section 29 of this 2011
27 Act apply to estates of decedents who die on or after January 1, 2012.

28 (2) The amendments to ORS 105.645 by section 16 of this 2011 Act apply to estates of
29 decedents who die on or after January 1, 2010.

30 **SECTION 31.** This 2011 Act takes effect on the 91st day after the date on which the 2011
31 regular session of the Seventy-sixth Legislative Assembly adjourns sine die.

32