

House Bill 2817

Sponsored by Representative THATCHER (Pre-session filed.)

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**.

Eliminates Oregon inheritance tax on transfers of property occurring as result of decedents who die on or after January 1, 2012.

A BILL FOR AN ACT

1
2 Relating to repeal of Oregon inheritance tax; creating new provisions; amending ORS 114.075,
3 114.630, 116.083, 116.173, 116.303, 238.445, 305.270, 305.280, 305.380, 305.385, 305.490, 305.565,
4 305.850, 305.992 and 314.430; and repealing ORS 111.025, 118.005, 118.007, 118.009, 118.010,
5 118.013, 118.016, 118.019, 118.100, 118.120, 118.140, 118.160, 118.171, 118.210, 118.220, 118.225,
6 118.227, 118.230, 118.240, 118.250, 118.260, 118.265, 118.270, 118.280, 118.290, 118.300, 118.310,
7 118.350, 118.410, 118.470, 118.510, 118.525, 118.535, 118.810, 118.820, 118.830, 118.840 and 118.990.

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

9 **SECTION 1. A tax may not be imposed under ORS 118.005 to 118.840 on the transfer of**
10 **property that occurs as the result of a decedent who dies on or after January 1, 2012.**

11 **SECTION 2. ORS 111.025, 118.005, 118.007, 118.009, 118.010, 118.013, 118.016, 118.019, 118.100,**
12 **118.120, 118.140, 118.160, 118.171, 118.210, 118.220, 118.225, 118.227, 118.230, 118.240, 118.250,**
13 **118.260, 118.265, 118.270, 118.280, 118.290, 118.300, 118.310, 118.350, 118.410, 118.470, 118.510,**
14 **118.525, 118.535, 118.810, 118.820, 118.830, 118.840 and 118.990 are repealed on January 2, 2016.**

15 **SECTION 3. The repeal of ORS 111.025, 118.005, 118.007, 118.009, 118.010, 118.013, 118.016,**
16 **118.019, 118.100, 118.120, 118.140, 118.160, 118.171, 118.210, 118.220, 118.225, 118.227, 118.230,**
17 **118.240, 118.250, 118.260, 118.265, 118.270, 118.280, 118.290, 118.300, 118.310, 118.350, 118.410,**
18 **118.470, 118.510, 118.525, 118.535, 118.810, 118.820, 118.830, 118.840 and 118.990 by section 2 of**
19 **this 2011 Act does not affect the administration of inheritance tax laws or the collection of**
20 **inheritance taxes that are related to the estates of decedents who died before January 1,**
21 **2012.**

22 **SECTION 4. ORS 114.075 is amended to read:**

23 114.075. Subject to the limitations imposed by ORS 114.065, provision for support under ORS
24 114.015 ordered by the court has priority over claims and expenses of administration. The provision
25 shall not be charged against the distributive share of the person receiving support. The provision
26 shall be treated as an expense of administration[, *but shall not be a deduction for inheritance tax*
27 *purposes*].

28 **SECTION 5. ORS 116.083 is amended to read:**

29 116.083. (1) A personal representative shall make and file in the estate proceeding an account
30 of the personal representative's administration:

31 (a) Unless the court orders otherwise, annually within 60 days after the anniversary date of the

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 personal representative's appointment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (a) A statement that all Oregon income[, *inheritance*] and personal property taxes, if any, have
31 been paid, or if not so paid, that payment of those taxes has been secured by bond, deposit or oth-
32 erwise, and that all required tax returns have been filed.

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

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

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

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

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

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

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

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

3 **SECTION 6.** ORS 116.173 is amended to read:

4 116.173. (1) Upon application to the court a personal representative is entitled to receive com-
 5 pensation for services as provided in this section. If there is more than one personal representative
 6 acting concurrently, the compensation shall not be increased, but may be divided among them as
 7 they agree or as the court may order. The compensation is a commission upon the whole estate, as
 8 follows:

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

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

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

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

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

15 (b) One percent of the property, exclusive of life insurance proceeds, not subject to the juris-
 16 diction of the court but reportable for [*Oregon inheritance tax or*] federal estate tax purposes.

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

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

24 **SECTION 7.** ORS 116.303 is amended to read:

25 116.303. As used in ORS 116.303 to 116.383:

26 (1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate
 27 tax [*and the inheritance tax payable to this state under ORS 118.005 to 118.840*].

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

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

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

35 (5) "Tax" means the federal estate tax [*and the inheritance tax payable to this state under ORS*
 36 *118.005 to 118.840,*] and interest and penalties imposed in addition to the tax.

37 **SECTION 8.** ORS 238.445 is amended to read:

38 238.445. (1) Except as provided in this section, the right of a person to a pension, an annuity
 39 or a retirement allowance, to the return of contribution, the pension, annuity or retirement allow-
 40 ance itself, any optional benefit or death benefit, or any other right accrued or accruing to any
 41 person under the provisions of this chapter or ORS chapter 238A, and the money in the various
 42 funds created by ORS 238.660 and 238.670, shall be exempt from garnishment and all state, county
 43 and municipal taxes heretofore or hereafter imposed, [*except as provided under ORS chapter 118,*]
 44 shall not be subject to execution, garnishment, attachment or any other process or to the operation
 45 of any bankruptcy or insolvency law heretofore or hereafter existing or enacted, and shall be un-

1 assignable.

2 (2) Subsection (1) of this section does not apply to state personal income taxation of amounts
3 paid under this chapter and ORS chapter 238A.

4 (3) Unless otherwise ordered by a court under ORS 25.387, the exemption from execution or
5 other process granted under this section applies to 75 percent of amounts paid under this chapter
6 and ORS chapter 238A if the execution or other process is issued for a support obligation or an
7 order or notice entered or issued under ORS chapter 25, 107, 108, 109, 110, 416, 419B or 419C.

8 **SECTION 9.** ORS 305.270 is amended to read:

9 305.270. (1) If the amount of the tax shown as due on a report or return originally filed with the
10 Department of Revenue with respect to a tax imposed under ORS chapter [118,] 308, 308A, 310, 314,
11 316, 317, 318 or 321, or collected pursuant to ORS 305.620, or as corrected by the department, is less
12 than the amount theretofore paid, or if a person files a claim for refund of any tax paid to the de-
13 partment under such laws within the period specified in subsection (2) of this section, any excess
14 tax paid shall be refunded by the department with interest as provided in this section and ORS
15 314.415.

16 (2) The claim shall be made on a form prescribed by the department, except that an amended
17 report or return showing a refund due and filed within the time allowed by this subsection for the
18 filing of a claim for refund, shall constitute a claim for refund. The claim shall be filed within the
19 period specified in ORS 314.415 (2) for taxes imposed under ORS chapters 310, 314, 316, 317 and 318,
20 or collected pursuant to ORS 305.620 (except where any applicable ordinance specifies another
21 period)[, *within the period specified in ORS 118.100 (2) for taxes imposed under ORS chapter 118*] and
22 within two years of the payment of any tax under ORS chapter 308, 308A or 321.

23 (3) Upon receipt of a claim for refund, or original report or return claiming a refund, the de-
24 partment shall either refund the amount requested or send to the claimant a notice of any proposed
25 adjustment to the refund claim, stating the basis upon which the adjustment is made. A proposed
26 adjustment may either increase or decrease the amount of the refund claim or result in the finding
27 of a deficiency. If the proposed adjustment results in a determination by the department that some
28 amount is refundable, the department may send the claimant the adjusted amount with the notice.

29 (4)(a) The notice of proposed adjustment shall be accompanied by a statement explaining the
30 claimant's right to make written objections to the refund adjustment, the claimant's right to request
31 a conference and the procedure for requesting a conference. The statement, and an accompanying
32 form, shall also explain that conference determinations are routinely transmitted via regular mail
33 and that a claimant desiring to have conference determinations transmitted by certified mail may
34 do so by indicating on the form the claimant's preference for certified mail and by returning the
35 form with the claimant's written objections as described in paragraph (b) of this subsection.

36 (b) The claimant may, within 30 days of the date of the notice of proposed adjustment, advise
37 the department in writing of objections to the refund adjustment and may request a conference with
38 the department, which shall be held within one year of the date of the notice. The department shall
39 notify the claimant of a time and place for the conference, and appoint a conference officer to meet
40 with the claimant for an informal discussion of the claim. After the conference, the conference offi-
41 cer shall send a determination of the matter to the claimant. The determination letter shall be sent
42 by regular mail, or by certified mail if the claimant has indicated a preference for transmission of
43 the determination by certified mail. The department shall issue either a notice of refund denial or
44 payment of any amount found to be refundable, together with any applicable interest provided by
45 this section. If the conference officer determines that a deficiency exists, the department shall issue

1 a notice of assessment.

2 (5) If no conference is requested, and the adjustments have not resulted in the finding of a de-
 3 ficiency, the following shall apply:

4 (a) If written objections have been made by the claimant, the department shall consider the ob-
 5 jections, determine any issues raised and send the claimant a notice of refund denial or payment of
 6 any amount found to be refundable, together with any interest provided by this section.

7 (b) If no written objections are made, the notice of any proposed adjustment shall be final after
 8 the period for requesting a conference or filing written objections has expired.

9 (6) If no conference is requested, and the notice of proposed adjustment has asserted a defi-
 10 ciency, the department shall consider any objections made by the person denied the refund, make
 11 a determination of any issues raised, pay any refunds found due, with applicable interest, or assess
 12 any deficiency and mail a notice thereof within one year from the date of the notice of deficiency,
 13 unless an extension of time is agreed upon as described in subsection (7) of this section.

14 (7) If, prior to the expiration of any period of time prescribed in subsection (6) of this section
 15 for giving of notice of assessment, the department and the person consent in writing to the defi-
 16 ciency being assessed after the expiration of such prescribed period, such deficiency may be assessed
 17 at any time prior to the expiration of the period agreed upon. The period so agreed upon may be
 18 extended by subsequent agreements in writing made before the expiration of the period agreed upon.

19 (8) If the department refunds the amount requested as provided in subsection (3) of this section,
 20 without examination or audit of the refund claim, the department shall give notice of this to the
 21 claimant at the time of making the refund. Thereafter, the department shall have one year in which
 22 to examine or audit the refund claim, and send the notice of proposed adjustment provided for in
 23 subsection (3) of this section, in addition to any time permitted in ORS 314.410 or 314.415.

24 (9) The failure to hold a requested conference within the one-year period prescribed in sub-
 25 section (4) of this section shall not invalidate any assessment of deficiency made within the one-year
 26 period pursuant to subsection (8) of this section or within any extension of time made pursuant to
 27 subsection (7) of this section, but shall invalidate any assessment of interest or penalties attributable
 28 to the deficiency. After an assessment has been made, the department and the person assessed may
 29 still hold a conference within 90 days from the date of assessment. If a conference is held, the 90-day
 30 period under ORS 305.280 (2) shall run from the date of the conference officer's written determi-
 31 nation of the issues.

32 (10) The claimant may appeal any notice of proposed adjustment, refund denial or notice of as-
 33 sessment in the manner provided in ORS 305.404 to 305.560. The failure to file written objections
 34 or to request or have a conference shall not affect the rights of appeal so provided. All notices and
 35 determinations shall set forth rights of appeal.

36 **SECTION 10.** ORS 305.280 is amended to read:

37 305.280. (1) Except as otherwise provided in this section, an appeal under ORS 305.275 (1) or (2)
 38 shall be filed within 90 days after the act, omission, order or determination becomes actually known
 39 to the person, but in no event later than one year after the act or omission has occurred, or the
 40 order or determination has been made. An appeal under ORS 308.505 to 308.665 shall be filed within
 41 90 days after the date the order is issued under ORS 308.584 (3). An appeal from a supervisory order
 42 or other order or determination of the Department of Revenue shall be filed within 90 days after the
 43 date a copy of the order or determination or notice of the order or determination has been served
 44 upon the appealing party by mail as provided in ORS 306.805.

45 (2) An appeal under ORS 323.416 or 323.623 or from any notice of assessment or refund denial

1 issued by the Department of Revenue with respect to a tax imposed under ORS chapter [118,] 308,
 2 308A, 310, 314, 316, 317, 318, 321 or this chapter, or collected pursuant to ORS 305.620, shall be filed
 3 within 90 days after the date of the notice. An appeal from a proposed adjustment under ORS
 4 305.270 shall be filed within 90 days after the date the notice of adjustment is final.

5 (3) Notwithstanding subsection (2) of this section, an appeal from a notice of assessment of taxes
 6 imposed under ORS chapter 314, 316, 317 or 318 may be filed within two years after the date the
 7 amount of tax, as shown on the notice and including appropriate penalties and interest, is paid.

8 (4) Except as provided in subsection (2) of this section or as specifically provided in ORS chapter
 9 321, an appeal to the tax court under ORS chapter 321 or from an order of a county board of
 10 property tax appeals shall be filed within 30 days after the date of the notice of the determination
 11 made by the department or date of mailing of the order, date of publication of notice of the order,
 12 date the order is personally delivered to the taxpayer or date of mailing of the notice of the order
 13 to the taxpayer, whichever is applicable.

14 (5) If the tax court denies an appeal made pursuant to this section on the grounds that it does
 15 not meet the requirements of this section or ORS 305.275 or 305.560, the tax court shall issue a
 16 written decision rejecting the petition and shall set forth in the decision the reasons the tax court
 17 considered the appeal to be defective.

18 **SECTION 11.** ORS 305.385 is amended to read:

19 305.385. (1) Upon request of the Department of Revenue, an agency issuing or renewing a license
 20 to conduct a business, trade or profession shall annually, on or before March 1, supply the depart-
 21 ment with a list of specified licenses issued or renewed by the agency during the preceding calendar
 22 year.

23 (2) Upon request of the department, an agency shall annually, on or before March 1, supply the
 24 department with a list of specified persons contracting with the agency to provide goods, services
 25 or real estate space to the agency during the preceding calendar year.

26 (3) The lists required by subsections (1) and (2) of this section shall contain the name, address,
 27 Social Security or federal employer identification number of each licensee or provider or such other
 28 information as the department may by rule require.

29 (4)(a) If the department determines that any licensee or provider has neglected or refused to file
 30 any return or to pay any tax and that such person has not filed in good faith a petition before the
 31 department contesting the tax, and the department has been unable to obtain payment of the tax
 32 through other methods of collection, the Director of the Department of Revenue may,
 33 notwithstanding ORS [118.525,] 314.835 or 314.840 or any similar provision of law, notify the agency
 34 and the person in writing.

35 (b) Upon receipt of such notice, the agency shall refuse to reissue, renew or extend any license,
 36 contract or agreement until the agency receives a certificate issued by the department that the
 37 person is in good standing with respect to any returns due and taxes payable to the department as
 38 of the date of the certificate.

39 (c) Upon the written request of the director and after a hearing and notice to the licensee as
 40 required under any applicable provision of law, the agency shall suspend the person's license if the
 41 agency finds that the returns and taxes have not been filed or paid and that the licensee has not
 42 filed in good faith a petition before the department contesting the tax and the department has been
 43 unable to obtain payment of the tax through other methods of collection. For the purpose of the
 44 agency's findings, the written representation to that effect by the department to the agency shall
 45 constitute prima facie evidence of the person's failure to file returns or pay the tax. The department

1 shall have the right to intervene in any license suspension proceeding.

2 (d) Any license suspended under this subsection shall not be reissued or renewed until the
 3 agency receives a certificate issued by the department that the licensee is in good standing with
 4 respect to any returns due and taxes payable to the department as of the date of the certificate.

5 (5) The department may enter into an installment payment agreement with a licensee or pro-
 6 vider with respect to any unpaid tax, penalty and interest. The agreement shall provide for interest
 7 on the outstanding amount at the rate prescribed by ORS 305.220. The department may issue a
 8 provisional certificate of good standing pursuant to subsection (4)(b) and (d) of this section which
 9 shall remain in effect so long as the licensee or provider fully complies with the terms of the in-
 10 stallment agreement. Failure by the licensee or provider to fully comply with the terms of the in-
 11 stallment agreement shall render the agreement and the provisional certificate of good standing null
 12 and void, unless the department determines that the failure was due to reasonable cause. If the de-
 13 partment determines that the failure was not due to reasonable cause, the total amount of the tax,
 14 penalty and interest shall be immediately due and payable, and the department shall notify any af-
 15 fected agency that the licensee or provider is not in good standing. The agency shall then take ap-
 16 propriate action under subsection (4)(b) and (d) of this section.

17 (6) No contract or other agreement for the purpose of providing goods, services or real estate
 18 space to any agency shall be entered into, renewed or extended with any person, unless the person
 19 certifies in writing, under penalty of perjury, that the person is, to the best of the person's knowl-
 20 edge, not in violation of any tax laws described in ORS 305.380 (4).

21 (7) The certification under subsection (6) of this section shall be required for each contract and
 22 renewal or extension of a contract or may be provided on an annual basis. A certification shall not
 23 be required for a contract if the consideration for the goods, services or real estate space provided
 24 under the contract is no more than \$1,000.

25 (8)(a) The requirements of the certification under subsection (6) of this section shall be subject
 26 to the rules adopted by the department in accordance with this section.

27 (b) The department may by rule exempt certain contracts from the requirements of subsection
 28 (6) of this section.

29 **SECTION 12.** ORS 305.490 is amended to read:

30 305.490. (1) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay a
 31 filing fee at the time of filing for each complaint or petition as follows:

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

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

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

36 (2) Neither the State of Oregon, nor any county, school district, municipal corporation or other
 37 public corporation therein, nor any officer of any such public political division or corporation, ap-
 38 pearing in the representative capacity of the officer of any public political division or corporation,
 39 shall be required to pay the fee prescribed under this section. The party entitled to costs and dis-
 40 bursements on such appeal shall recover from the opponent of the party the amount so paid upon
 41 order of the court, as in equity suits in the circuit court.

42 (3)(a) If, in any proceeding before the tax court judge involving taxes upon or measured by net
 43 income in which an individual taxpayer is a party, [*or involving inheritance taxes,*] the court grants
 44 a refund claimed by the [*executor or*] taxpayer or denies in part or wholly an additional assessment
 45 of taxes claimed by the Department of Revenue to be due from the [*estate or*] taxpayer, the court

1 may allow the taxpayer, in addition to costs and disbursements, the following:

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

4 (B) Reasonable expenses as determined by the court. Expenses include accountant fees and fees
 5 of other experts incurred by the [executor or] individual taxpayer in preparing for and conducting
 6 the proceeding before the tax court judge and the prior proceeding in the matter, if any, before the
 7 magistrate.

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

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

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

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

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

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

23 **SECTION 13.** ORS 305.565 is amended to read:

24 305.565. (1) Except as provided in subsection (2) of this section, proceedings for the collection
 25 of any taxes, interest or penalties resulting from an assessment of additional taxes imposed by ORS
 26 chapter [118,] 310, 314, 316, 317, 318, 321 or this chapter shall be stayed by the taking or pendency
 27 of any appeal to the tax court.

28 (2) Notwithstanding subsection (1) of this section, the Department of Revenue may proceed to
 29 collect any taxes, interest or penalties described in subsection (1) of this section if the department
 30 determines that collection will be jeopardized if collection is delayed or that the taxpayer has taken
 31 a frivolous position in the appeal. For purposes of this subsection:

32 (a) Collection of taxes, interest or penalties will be jeopardized if the taxpayer designs quickly
 33 to depart from the state or to remove the taxpayer's property from the state, or to do any other act
 34 tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax.

35 (b) A taxpayer's position in an appeal is frivolous if that position is of the kind described in ORS
 36 316.992 (5).

37 (3) No proceeding for the apportionment, levy or collection of taxes on any property shall be
 38 stayed by the taking or pendency of any appeal to the tax court, or from an order of the county
 39 board of property tax appeals or the Oregon Tax Court, unless the assessor or tax collector either
 40 as a party to the suit or an intervenor, requests a stay and it appears to the satisfaction of the court
 41 that a substantial public interest requires the issuance of a stay.

42 (4) The tax court may, as a condition of a stay, require the posting of a bond sufficient to
 43 guarantee payment of the tax. Payment of taxes while appeal is pending shall not operate as a
 44 waiver of the appeal or of a right to refund of taxes found to be excessively charged or assessed.

45 **SECTION 14.** ORS 305.992 is amended to read:

1 305.992. (1) If any returns required to be filed under ORS chapter [118,] 314, 316, 317, 318, 321
 2 or 323 or under a local tax administered by the Department of Revenue under ORS 305.620 are not
 3 filed for three consecutive years by the due date (including extensions) of the return required for
 4 the third consecutive year, there shall be a penalty for each year of 100 percent of the tax liability
 5 determined after credits and prepayments for each such year.

6 (2) The penalty imposed under this section is in addition to any other penalty imposed by law.
 7 However, the total amount of penalties imposed for any taxable year under this section, ORS 305.265
 8 (13), 314.400, 323.403 or 323.585 shall not exceed 100 percent of the tax liability.

9 **SECTION 15.** ORS 314.430 is amended to read:

10 314.430. (1) If any tax imposed under ORS chapter [118,] 316, 317 or 318 or any portion of the
 11 tax is not paid within 30 days after the date that the written notice and demand for payment re-
 12 quired under ORS 305.895 is mailed (or within five days after the tax becomes due, in the case of
 13 the termination of the tax year by the Department of Revenue under the provisions of ORS 314.440)
 14 and no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to
 15 regulations promulgated by the department, the department may issue a warrant directed to the
 16 sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal
 17 property of the taxpayer found within that county, for the payment of the amount of the tax, with
 18 the added penalties, interest, collection charge and the sheriff's cost of executing the warrant, and
 19 to return such warrant to the department and pay to it the money collected by virtue thereof by a
 20 time to be therein specified, not less than 60 days from the date of the warrant. A copy of the
 21 warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known
 22 address.

23 (2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of
 24 the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the
 25 name of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and
 26 penalties for which the warrant is issued and the date when such copy is recorded. Thereupon the
 27 amount of the warrant so recorded shall become a lien upon the title to and interest in property
 28 of the taxpayer against whom it is issued in the same manner as a judgment duly recorded. The
 29 sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same
 30 manner prescribed by law in respect to executions issued against property upon judgment of a court
 31 of record, and shall be entitled to the same fees for services in executing the warrant, to be added
 32 to and collected as a part of the warrant liability.

33 (3) In the discretion of the department a warrant of like terms, force and effect may be issued
 34 and directed to any agent authorized to collect taxes, and in the execution thereof the agent shall
 35 have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in ex-
 36 cess of actual expenses paid in the performance of such duty.

37 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies
 38 to enforce the claim for taxes against the taxpayer as if the people of the state had recovered
 39 judgment against the taxpayer for the amount of the tax, and shall balance the assessment record
 40 of the taxpayer by transferring the unpaid deficiency to the taxpayer's delinquent record.

41 **SECTION 16.** ORS 305.380 is amended to read:

42 305.380. As used in ORS 305.385:

43 (1) "Agency" means any department, board, commission, division or authority of the State of
 44 Oregon, or any political subdivision of this state which imposes a local tax administered by the
 45 Department of Revenue under ORS 305.620.

1 (2) "License" means any written authority required by law or ordinance as a prerequisite to the
 2 conduct of a business, trade or profession.

3 (3) "Provider" means any person who contracts to supply goods, services or real estate space
 4 to an agency.

5 (4) "Tax" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS
 6 chapters [118,] 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS
 7 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

8 **SECTION 17.** ORS 305.850 is amended to read:

9 305.850. (1) Notwithstanding any provision to the contrary in ORS 9.320 and 305.610, the Direc-
 10 tor of the Department of Revenue may engage the services of a collection agency to collect any
 11 taxes, interest and penalties resulting from an assessment of taxes or additional taxes imposed by
 12 ORS chapter [118,] 310, 314, 316, 317, 318, 321 or 323 or ORS 320.005 to 320.150 and any other tax
 13 laws administered by the Department of Revenue. The director may engage the services of a col-
 14 lection agency by entering into an agreement to pay reasonable charges on a contingent fee or other
 15 basis.

16 (2) The director shall cause to be collected, in the same manner as provided in subsection (1)
 17 of this section, assessments, taxes and penalties due under ORS chapter 656. All amounts collected
 18 pursuant to this subsection shall be credited as provided in ORS 293.250.

19 (3) The director may assign to the collection agency, for collection purposes only, any of the
 20 taxes, penalties, interest and moneys due the state.

21 (4) The collection agency may bring such action or take such proceedings, including but not
 22 limited to attachment and garnishment proceedings, as may be necessary.

23 **SECTION 18.** ORS 114.630 is amended to read:

24 114.630. (1) Except as otherwise provided in ORS 114.600 to 114.725, the augmented estate con-
 25 sists of all of the following property, whether real or personal, movable or immovable, or tangible
 26 or intangible, wherever situated:

- 27 (a) The decedent's probate estate as described in ORS 114.650.
- 28 (b) The decedent's nonprobate estate as described in ORS 114.660 and 114.665.
- 29 (c) The surviving spouse's estate, as described in ORS 114.675.
- 30 (d) The decedent's probate transfers to the surviving spouse, as described in ORS 114.685.
- 31 (e) The decedent's nonprobate transfers to the surviving spouse, as described in ORS 114.690.

32 (2) The value attributable to any property included in the augmented estate under ORS 114.600
 33 to 114.725 must be reduced by the amount of all enforceable claims against the property and all
 34 encumbrances on the property. Any exemption or deduction that is allowed for the purpose of de-
 35 termining estate [or inheritance] taxes on the augmented estate and that is attributable to the mar-
 36 riage of the decedent and the surviving spouse inures to the benefit of the surviving spouse as
 37 provided in ORS 116.343 (2).

38 (3) The value attributable to any property included in the augmented estate includes the present
 39 value of any present or future interest and the present value of amounts payable under any trust,
 40 life insurance settlement option, annuity contract, public or private pension, disability compensation,
 41 death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security
 42 Act.

43 (4) The value attributable to property included in the augmented estate is equal to the value
 44 that would be used for purposes of federal estate and gift tax laws if the property had passed with-
 45 out consideration to an unrelated person on the date that the value of the property is determined

1 for the purposes of ORS 114.600 to 114.725.

2 (5) In no event may the value of property be included in the augmented estate more than once.

3 **SECTION 19. The amendments to ORS 114.075, 114.630, 116.083, 116.173, 116.303, 238.445,**
4 **305.270, 305.280, 305.380, 305.385, 305.490, 305.565, 305.850, 305.992 and 314.430 by sections 4 to**
5 **18 of this 2011 Act become operative on January 2, 2016.**

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