

Senate Bill 326

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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**.

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

Applies to estates of decedents who die on or after January 1, 2011.

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

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

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 chapter 11 of
21 the Internal Revenue Code, minus the deduction for state estate, inheritance, legacy or
22 succession taxes allowable under section 2058 of the Internal Revenue Code.

23 *[(5)]* (6) "Gross estate" has the meaning given that term in section 2031 of the Internal Revenue
24 Code.

25 *[(6)]* (7) "Nonresident decedent" means an individual who is domiciled outside of Oregon at the
26 time of death.

27 (8) "**Oregon taxable estate**" means the federal taxable estate with the adjustments pro-

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 **vided by ORS 118.010 (2).**

2 [(7)] (9) "Passes" includes any case where for the purposes of ORS 118.005 to 118.840 a taxable
3 transfer takes place or is deemed to take place.

4 [(8)] (10) "Personal representative" means personal representative as defined in ORS 111.005.

5 [(9)] (11) "Resident decedent" means an individual who is domiciled in Oregon at the time of
6 death.

7 [(10)] (12) "Transfer" or "transfer of property" means a transfer that is subject to the federal
8 estate tax imposed under subtitle B, chapter 11 of the Internal Revenue Code.

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

10 118.007. Any term used in ORS 118.005 to 118.840 has the same meaning as when used in a
11 comparable context in the laws of the federal Internal Revenue Code relating to federal estate taxes,
12 unless a different meaning is clearly required or the term is specifically defined in ORS 118.005 to
13 118.840. Any reference in ORS 118.005 to 118.840 to the Internal Revenue Code means the federal
14 Internal Revenue Code as [*amended and in effect on December 31, 2000*] **applicable to decedents**
15 **who died on or after January 1, 2009, and before January 1, 2010**, except where the Legislative
16 Assembly has specifically provided otherwise.

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

18 118.010. (1) A tax is imposed upon a transfer of **the Oregon taxable estate of each decedent**
19 **who, at the time of death, was:**

20 (a) **A resident of Oregon; or**

21 (b) **A nonresident of Oregon whose estate includes any interest in:**

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

23 (B) **Tangible personal property located in Oregon.** [*property and any interest therein, within*
24 *the jurisdiction of the state, whether belonging to the inhabitants of this state or not, which passes to*
25 *or vests in any person or persons, or any body or bodies politic or corporate, in trust or otherwise, or*
26 *by reason whereof any person or body politic or corporate shall become beneficially entitled, in pos-*
27 *session or expectation, to any property or interest therein or income thereof.*]

28 [(2)] (2) *The tax imposed under this section shall equal the maximum amount of the state death tax*
29 *credit allowable against the federal estate tax under section 2011 of the Internal Revenue Code.*]

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

32 (a) **Reduced by:**

33 (A) **\$1.5 million;**

34 (B) **The value on the date of death of the decedent of all Oregon special marital property**
35 **in the estate;**

36 (C) **The deduction provided in ORS 118.140, reduced by any amount allowed as a deduction**
37 **on the federal return under section 2053 of the Internal Revenue Code for the same property;**
38 **and**

39 (D) **Any other applicable exclusions or deductions; and**

40 (b) **Increased by:**

41 (A) **Any deduction previously claimed for Oregon special marital property under ORS**
42 **118.016, not to exceed the value of the property on the date of death of the decedent, if the**
43 **decedent is a surviving spouse owning the property at death.**

44 (B) **The amount allowed as a separate Oregon election under section 2056 or 2056A of the**
45 **Internal Revenue Code for Oregon estate tax purposes, not to exceed the value of the prop-**

erty on the date of death of the decedent.

(3) 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
\$0	\$1,000,000	\$0	8.6%
1,000,000	2,000,000	86,000	9.3%
2,000,000	3,000,000	179,000	11.5%
3,000,000	4,000,000	294,000	14.3%
4,000,000	5,000,000	437,000	15.4%
5,000,000	6,000,000	591,000	16.6%
6,000,000	8,000,000	757,000	17.7%
8,000,000	11,000,000	1,111,000	18.6%
11,000,000	15,000,000	1,669,000	19.5%
15,000,000		2,449,000	19.6%

(4) In the case of a resident decedent owning *[property outside of the jurisdiction of this state]*, at the time of death, **real property located outside of Oregon or tangible personal property located outside of Oregon**, the tax imposed under this section shall be the amount determined under subsection (2) (3) 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 denominator of the ratio shall be the total appraised value of the decedent’s gross estate.

(4)(a) (5) In the case of a nonresident decedent owning *[property within the jurisdiction of this state]*, at the time of 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) (3) 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.*

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

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

(7) (8)(a) If the federal taxable estate is determined by making an election under *[section 2032*

1 or 2056] **section 2031(c), 2032, 2032A, 2056 or 2056A** of the Internal Revenue Code or another
 2 provision of the Internal Revenue Code, or if a federal estate tax return is not required under the
 3 Internal Revenue Code, **an executor may make separate elections for state estate tax purposes**
 4 **under that same provision.**

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

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

8 **(d)** The Department of Revenue may adopt rules providing for [a] separate [election] **elections**
 9 for state [inheritance] **estate** tax purposes.

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

11 118.013. (1) *[For purposes of computing the tax imposed under ORS 118.010, the taxable estate to*
 12 *be used for computing the maximum amount of the state death tax credit allowable under section 2011*
 13 *of the Internal Revenue Code shall be the taxable estate determined for federal estate tax purposes,*
 14 *reduced by the value on the date of death of the decedent of all Oregon special marital property in the*
 15 *estate.]* **A deduction from the federal taxable estate is allowed for the value of Oregon special**
 16 **marital property in the estate.**

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

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

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

24 (c) For which the executor of the estate of the decedent has made the election described in ORS
 25 118.016 (1).

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

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

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

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

36 (d) All elections are attached to the [inheritance] **estate** tax return filed with respect to the
 37 estate of the decedent, or are filed or maintained as records as otherwise prescribed by the De-
 38 partment of Revenue by rule.

39 **SECTION 5.** ORS 118.016 is amended to read:

40 118.016. (1) The executor of an estate containing property that the executor seeks to qualify as
 41 Oregon special marital property under ORS 118.013 shall make an election under this subsection in
 42 order for the property to be Oregon special marital property. The election shall be made:

43 (a) By attaching a statement to the [inheritance] **estate** tax return for the estate of the decedent
 44 that identifies the trust or other property interest that constitutes Oregon special marital property
 45 and that affirms that the identified property meets the requirements of Oregon special marital

1 property under ORS 118.013 and will be administered as required under ORS 118.013; or

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

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

9 _____

10
 11 CONSENT TO ESTABLISHMENT OF
 12 OREGON SPECIAL MARITAL PROPERTY
 13

14 (a) ELECTION TO BE SIGNED BY ALL BENEFICIARIES EXCEPT THE SURVIVING
 15 SPOUSE: Each of the undersigned acknowledge and consent to a portion of the
 16 _____ (name of trust or other property interest) being set aside as a separate share
 17 or trust in order to qualify for the Oregon special marital property election in accordance with ORS
 18 118.013, for the primary purpose of reducing or eliminating the Oregon [*inheritance*] **estate** tax due
 19 on the estate of _____ (name of decedent). The undersigned together with the sur-
 20 viving spouse constitute all of the persons living on the date of this election who may be entitled
 21 to a distribution during the lifetime of the surviving spouse from the _____ (name of
 22 trust or other property interest). Each of the undersigned, both on behalf of the undersigned and
 23 on behalf of the unborn lineal descendants of the undersigned, irrevocably agrees to release all
 24 rights to [*distributions from*] **any current interest in** the Oregon special marital property during
 25 the lifetime of the surviving spouse. Each of the undersigned agrees that all other provisions of the
 26 _____ (name of trust or other property interest) shall remain in effect and that, upon the
 27 death of the surviving spouse, any remaining Oregon special marital property shall be distributed
 28 as otherwise provided in the trust or other property interest.

29
 30 Signature of: _____ (beneficiary)

31 Signature of: _____ (beneficiary)

32
 33 (b) ELECTION TO BE SIGNED BY THE SURVIVING SPOUSE: I am the surviving spouse of
 34 _____ (name of decedent). I acknowledge and consent to a portion of the
 35 _____ (name of trust or other property interest) being set aside as a separate share
 36 or trust in order to qualify as Oregon special marital property under ORS 118.013, for the primary
 37 purpose of reducing or eliminating the Oregon [*inheritance*] **estate** tax due on the estate of
 38 _____ (name of decedent). I, together with all of the other individuals executing the
 39 election in accordance with ORS 118.013, constitute all of the persons living on the date of this
 40 election who may be entitled to a distribution from the Oregon special marital property to which
 41 this election applies and who might be entitled to a distribution during my lifetime. I agree that all
 42 other terms, conditions and provisions that apply to the _____ (name of trust or
 43 other property interest) shall apply to the Oregon special marital property to which this election
 44 applies, and that upon my death, any remaining Oregon special marital property shall be distributed
 45 as otherwise provided in the trust or other property interest.

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Signature of: _____
(surviving spouse)

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

Notary Public of Oregon
My commission expires: _____

(3) Elections made under this section are irrevocable.

(4) The custodial parent or court appointed guardian of a minor beneficiary may sign the election on behalf of the minor beneficiary and the unborn lineal descendants of the minor beneficiary.

SECTION 6. ORS 118.100 is amended to read:

118.100. (1) The tax provided for in ORS 118.010 shall be paid to the Department of Revenue on the date the federal estate tax is payable **or, if no federal estate tax return is required, no later than nine months following the date of death of the decedent.** If [*interest is paid on federal estate tax installments resulting in a reduction of the federal estate tax, and*] the department determines, pursuant to an amended return or refund claim, that the amount of tax imposed by ORS 118.010 is less than the amount theretofore paid, the excess tax shall be refunded by the department with interest at the rate established by ORS 305.220 for each month or fraction thereof during a period beginning on the date the amended return or refund claim is filed to the time the refund is made.

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

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

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

1 the disqualification.

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

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

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

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

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

14 118.140. [(1) As used in this section, "natural resource property" means real property as defined
15 in ORS 307.010 that at the decedent's death:]

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

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

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

22 [(A) Natural resource property.]

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

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

28 [(ii) Used to process and sell the catch of a commercial fishing business in fresh, canned or smoked
29 form directly to consumers, including a restaurant with seating capacity of less than 15 seats at which
30 catch from the fishing business is prepared and sold.]

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

33 [(i) Timber, trees and improvements;]

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

35 [(iii) Forestry and farming equipment.]

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

38 [(b) A taxpayer may:]

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

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

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

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

45 [_____]

	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
3	\$0	\$100,000	\$0	
4	100,000	150,000	0	0.8%
5	150,000	200,000	400	1.6%
6	200,000	300,000	1,200	2.4%
7	300,000	500,000	3,600	3.2%
8	500,000	700,000	10,000	4.0%
9	700,000	900,000	18,000	4.8%
10	900,000	1,100,000	27,600	5.6%
11	1,100,000	1,600,000	38,800	6.4%
12	1,600,000	2,100,000	70,800	7.2%
13	2,100,000	2,600,000	106,800	8.0%
14	2,600,000	3,100,000	146,800	8.8%
15	3,100,000	3,600,000	190,800	9.6%
16	3,600,000	4,100,000	238,800	10.4%
17	4,100,000	5,100,000	290,800	11.2%
18	5,100,000	6,100,000	402,800	12.0%
19	6,100,000	7,100,000	522,800	12.8%
20	7,100,000	7,500,000	650,800	13.6%
21	7,500,000	8,100,000	402,800	13.0%
22	8,100,000	9,100,000	253,344	12.5%
23	9,100,000	10,100,000	146,800	12.0%
24	10,100,000	11,100,000	35,400	11.2%
25	11,100,000	12,100,000	15,520	7.7%
26	12,100,000	13,100,000	8,000	5.7%
27	13,100,000	14,100,000	0	3.7%
28	14,100,000	15,100,000	0	1.7%
29	15,100,000		0	0%

[_____]

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(1) As used in this section:

(a) “Family member” means a member of the family, as that term is defined in section 2032A of the Internal Revenue Code, of the decedent.

(b) “Farm use” has the meaning given that term in ORS 308A.056.

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

(d) “Forestland” has the meaning given that term in ORS 321.201.

(e) “Homesite” has the meaning given that term in ORS 308A.250.

(f) “Natural resource property” means:

(A) Real property that on the date of the decedent’s death is used as forestland or as forestland homesites, not to exceed 5,000 acres, or that is in farm use.

(B) Timber, trees and improvements to real property.

(C) Crops, both growing and stored.

(D) Forestry and farming equipment.

1 (E) If the decedent or a family member was licensed under ORS chapter 508, property
2 that on the date of the decedent's death is:

3 (i) Used in the conduct of a fishing business, including boats, gear, equipment, vessel li-
4 censes and permits and commercial fishing licenses and permits; or

5 (ii) Used to process and sell the catch of a fishing business in fresh, canned or smoked
6 form directly to consumers, including a restaurant with seating capacity of less than 15 seats
7 at which catch from the fishing business is prepared and sold.

8 (F) Any other tangible and intangible personal property used in the operation of a quali-
9 fying use.

10 (g) "Operating allowance" means cash or a cash equivalent that is spent, maintained,
11 used or available for the operation of a qualifying use and not spent or used for any other
12 purpose.

13 (h) "Qualifying use" means a farm business, forestry business or fishing business that
14 uses natural resource property and was owned by the decedent on the date of the decedent's
15 death.

16 (i) "Real property" means real property in this state as defined in ORS 307.010.

17 (2)(a) An estate shall be allowed a deduction for the value of the following, if used in a
18 qualifying use:

19 (A) Natural resource property;

20 (B) An operating allowance in an amount not to exceed 20 percent of the natural re-
21 source property for which a deduction under this section is claimed; and

22 (C) Property that otherwise meets the requirements of this section and that replaces
23 property described in this paragraph, as prescribed by the Department of Revenue by rule.

24 (b) An executor may:

25 (A) Elect not to claim the deduction allowed under this section;

26 (B) Elect to claim less than the full amount of the deduction allowed under this section;

27 or

28 (C) Elect to claim the deduction only for the value of certain assets.

29 (3) Except as provided in subsections (4) and (5) of this section, a [*credit*] **deduction** is allowed
30 under this section only if:

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

32 (b) The total value of property for which the [*credit*] **deduction** established under this section
33 is allowable is at least 50 percent of the total adjusted gross estate;

34 (c) The **natural resource** property is transferred to a [*member of the family, as that term is de-*
35 *fin*] **family member**; and
36

37 (d) During an aggregate period of five out of the eight years ending on the date of the decedent's
38 death, the decedent[, *a member of the decedent's family or the decedent's registered domestic partner*]
39 **or a family member** owned the **natural resource** property and the property was devoted to use
40 [*as a farm or used for farm or forest purposes*] **in a qualifying use**.

41 (4) Property that otherwise meets the requirements of this section [*shall be allowed a credit*]
42 **qualifies for a deduction** under this section if:

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

45 (b) The property is held in trust for a [*person described in subsection (3)(c) of this section*] **family**

1 **member.**

2 (5) Property that otherwise meets the requirements of this section and that is owned indirectly
 3 by the decedent or a [*member of the family described in subsection (3)(c) of this section, or the regis-*
 4 *tered domestic partner, of the decedent shall qualify for a credit*] **family member qualifies for a**
 5 **deduction** under this section if the property is owned through an interest in a limited liability
 6 company or in a corporation, partnership or trust as the terms corporation, partnership or trust are
 7 used in section 2032A(g) of the Internal Revenue Code. In order to qualify [*for a credit*] under this
 8 subsection, at least one [*member of the family, or the registered domestic partner, of the decedent*]
 9 **family member** must materially participate in the business after the transfer. For purposes of this
 10 subsection, “materially participate” means to engage in active management, as defined in section
 11 2032A of the Internal Revenue Code, of [*natural resource property or a fishing business*] **a qualifying**
 12 **use**. The department [*of Revenue*] may adopt rules to administer this subsection consistent with this
 13 definition.

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

19 [(7)(a)] **(6)(a)** An additional tax under ORS 118.005 to 118.840 shall be imposed if property for
 20 which a [*credit*] **deduction** is allowed under this section is not used in [*commercial fishing operations*
 21 *or as natural resource property*] **a qualifying use** for at least five out of the eight calendar years
 22 following the decedent’s death or is disposed of by the transferee other than by disposition to [*an-*
 23 *other member of the family, or the registered domestic partner, of the decedent*] **a family member** or
 24 to another entity eligible for the [*credit*] **deduction** allowed under this section. Property that oth-
 25 erwise meets the requirements of this section and is conveyed after the decedent’s death as a qual-
 26 ified conservation contribution, as that term is defined in section 170(h) of the Internal Revenue
 27 Code, [*shall continue*] **continues** to qualify [*for a credit*] under this section.

28 (b) The additional tax liability shall be the amount of [*the credit allowed on*] **additional tax that**
 29 **would have been imposed, had** the disqualified property **been included in the taxable estate,**
 30 multiplied by ((five minus the number of years the property was used as natural resource property)
 31 divided by five). The additional tax liability [*shall be*] **is** the responsibility of the owner of the
 32 property at the time of the disposition or disqualifying event **and is due within six months after**
 33 **the date on which the disposition or event occurs. The department may establish by rule**
 34 **procedures for reporting the additional tax due, consistent with ORS chapter 305.**

35 (c) Prior to the transfer of property under this section, the executor shall notify the transferee
 36 of the potential for tax consequences to the transferee if the transferee fails to meet the conditions
 37 of paragraph (a) of this subsection. The transferee’s written acknowledgment of this notice shall be
 38 attached to the [*inheritance*] **estate** tax return.

39 [(8)] **(7)** The department shall adopt rules consistent with those adopted under the Internal Re-
 40 venue Code to administer this section.

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

42 118.160. (1) Except as provided in subsection (2) of this section:

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

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

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

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

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

9 (D) January 1, 2006, **and before January 1, 2011**, unless the value of the gross estate is \$1
10 million or more[.]; **and**

11 **(c) An estate tax return is not required with respect to the estates of decedents who die**
12 **on or after January 1, 2011, unless the value of the gross estate is \$1.5 million or more.**

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

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

22 118.171. The provisions of ORS chapter 305 as to the audit and examination of reports and re-
23 turns, determination of deficiencies, assessments, claims for refund, conferences and appeals to the
24 Oregon Tax Court, and the procedures relating thereto, shall apply to the determination of
25 [*inheritance*] **estate** taxes under this chapter, except where the context requires otherwise.

26 **SECTION 10.** ORS 118.220 is amended to read:

27 118.220. All taxes imposed by ORS 118.005 to 118.840 take effect at and accrue upon the death
28 of the decedent, and are due and payable on the date the decedent's federal estate tax is due and
29 payable **or, if no federal estate tax return is required, no later than nine months following**
30 **the date of death of the decedent**, except as otherwise provided in ORS 118.005 to 118.840.

31 **SECTION 11.** ORS 118.240 is amended to read:

32 118.240. Any personal representative or trustee having in charge, or in trust, any property for
33 distribution, embraced in or belonging to any inheritance, devise, bequest, legacy or gift, subject to
34 [*inheritance*] **estate** tax shall deduct the tax therefrom, and pay the same to the Department of Re-
35 venue, as provided in ORS 118.005 to 118.840. If such property is not in money, the personal repre-
36 sentative or trustee shall collect the tax on such inheritance, devise, bequest, legacy or gift upon
37 the appraised value thereof from the person entitled thereto. The personal representative or trustee
38 shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, be-
39 quest, legacy or gift, subject to tax under ORS 118.005 to 118.840, to any person until it has collected
40 the tax thereon.

41 **SECTION 12.** ORS 118.260 is amended to read:

42 118.260. (1) If no return has been filed as required by this chapter, there shall be added to the
43 amount of tax required to be shown on the return a delinquency penalty of five percent of the
44 amount of such tax.

45 (2) If the failure to file a return continues for a period in excess of three months after the due

1 date, there shall be added to the amount of tax required to be shown as tax on the return a failure
 2 to file penalty of 20 percent of the amount of such tax. This penalty is in addition to the delin-
 3 quency penalty imposed by subsection (1) of this section.

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

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

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

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

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

23 (7) If the tax has not been determined, a deposit may be made to avoid interest. Should the
 24 amount of such payment exceed the sum subsequently determined to be due, the Department of Re-
 25 venue shall refund the excess.

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

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

32 **SECTION 13.** ORS 118.280 is amended to read:

33 118.280. (1) Every executor, administrator or trustee has power to sell as much of the property
 34 embraced in any inheritance, devise, bequest or legacy, as will enable the executor, administrator
 35 or trustee to pay the tax imposed by ORS 118.005 to 118.840, in the same manner as the executor,
 36 administrator or trustee is authorized to do for the payment of the debts of a decedent.

37 (2) Any part of the gross estate sold for the payment of claims against the estate and expenses
 38 of administration, for the payment of the tax imposed by ORS 118.005 to 118.840, or for purposes of
 39 distribution, shall be divested of the lien of such tax, and such lien shall be transferred to the pro-
 40 ceeds of such sale. A mortgage on property executed for payment of claims against the estate and
 41 expenses of administration and for payment of the tax imposed by ORS 118.005 to 118.840 shall
 42 constitute a lien upon said property prior and superior to the [*inheritance*] **estate** tax lien, which
 43 [*inheritance*] **estate** tax lien shall attach to the proceeds of such mortgage.

44 **SECTION 14.** ORS 118.300 is amended to read:

45 118.300. Any person or corporation beneficially interested in any property chargeable with a tax

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

12 **SECTION 15.** ORS 118.350 is amended to read:

13 118.350. (1) Whenever an estate, devise, legacy or beneficial interest therein, charged or sought
 14 to be charged with the [*inheritance*] **estate** tax is of such nature or is so disposed that the liability
 15 of the same is doubtful, or the value thereof cannot with reasonable certainty be ascertained under
 16 the provisions of law, the Department of Revenue may compromise with the beneficiaries or repre-
 17 sentatives of such estate, and compound the tax thereon. The payment of the amount of the taxes
 18 so agreed upon shall discharge the lien against the property of the estate.

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

38 **SECTION 16.** ORS 118.470 is amended to read:

39 118.470. Personal representatives or trustees of the estates subject to [*inheritance*] **estate** tax
 40 shall when requested by the Department of Revenue furnish certified copies of reports, and upon
 41 failure to comply with such requests, the department may obtain copies and transcripts from the
 42 clerk of the court with the costs therefor to be charged against the estate.

43 **SECTION 17.** ORS 118.525 is amended to read:

44 118.525. (1) It shall be unlawful for the Department of Revenue or any of its officers or em-
 45 ployees to divulge or make known in any manner any particulars disclosed in any return or sup-

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

11 (2) As used in this section:

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

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

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

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

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

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

43 **SECTION 18.** ORS 118.810 is amended to read:

44 118.810. (1) The provisions of ORS 118.810 to 118.840 apply to the estate of any nonresident
45 decedent if the laws of the state of domicile of the nonresident decedent contain a provision, of any

1 nature or however expressed, whereby this state is given reasonable assurance of the collection of
 2 its [*inheritance or death taxes*] **estate tax**, interest and penalties, from the estates of decedents dying
 3 domiciled in this state in cases where the estates of such decedents are being administered by the
 4 probate court of such other state, or if the state of domicile of the nonresident decedent does not
 5 grant letters in nonresident estates until after letters have been issued by the state of domicile.

6 (2) The provisions of ORS 118.810 to 118.840 shall be construed liberally in order to insure that
 7 the state of domicile of any decedent shall receive any [*death taxes*] **estate tax, as that term is**
 8 **defined in ORS 118.855**, together with interest and penalties thereon, due to it.

9 (3) For the purpose of ORS 118.810 to 118.840, the words, "state of domicile" or "domiciliary
 10 state" include any territory of the United States, the District of Columbia and any foreign country.

11 **SECTION 19.** ORS 118.820 is amended to read:

12 118.820. At any time before the expiration of 18 months after the qualification in any probate
 13 court of this state of any executor of the will of, or administrator of the estate of, any nonresident
 14 decedent, such executor or administrator shall file with the clerk of the court in which the executor
 15 or administrator qualified proof that all [*death taxes*] **estate taxes, as that term is defined in ORS**
 16 **118.855**, together with interest or penalties thereon, which are due to the state of domicile of such
 17 decedent, or to any political subdivision thereof, have been paid or secured, or that no such taxes,
 18 interest or penalties are due, as the case may be, unless it appears that letters of administration or
 19 letters testamentary have been issued in the state of domicile.

20 **SECTION 20.** ORS 118.830 is amended to read:

21 118.830. (1) The proof required by ORS 118.820 may be in the form of a certificate issued by the
 22 official or body charged with the administration of the [*death*] **estate** tax laws of the domiciliary
 23 state.

24 (2) If the proof is not filed within the time limit set out in ORS 118.820, the clerk of the court
 25 shall notify by mail the official or body of the domiciliary state charged with the administration of
 26 the [*death*] **estate** tax laws with respect to the estate and shall state in the notice, as far as is
 27 known to the clerk:

28 (a) The name, date of death and last domicile of the decedent;

29 (b) The name and address of each executor or administrator;

30 (c) A summary of the values of the real estate[,] **and** tangible [*personalty and intangible*
 31 *personalty*] **and intangible personal property**, wherever situated, belonging to the decedent at the
 32 time of death; and

33 (d) The fact that the executor or administrator has not filed the proof required in ORS 118.820.

34 (3) The clerk shall attach to the notice:

35 (a) A plain copy of the will and codicils of the decedent, if the decedent died testate; or

36 (b) If the decedent died intestate, a list of heirs and next of kin of the decedent, so far as is
 37 known to the clerk.

38 (4) Within 60 days after the mailing of the notice, the official or body charged with the admin-
 39 istration of the [*death*] **estate** tax laws of the domiciliary state may file with the court in this state
 40 a petition for an accounting in the estate. The official or body of the domiciliary state shall be
 41 deemed a party interested for the purpose of petitioning the court for the accounting.

42 (5) If the petition is filed within the period of 60 days, the court shall order the accounting and,
 43 upon the filing and approval of the accounting, shall enter a judgment requiring the remission to the
 44 fiduciary appointed by the domiciliary probate court of the balance of the intangible [*personalty*]
 45 **personal property** after the payment of creditors and expenses of administration in this state.

1 **SECTION 21.** ORS 118.855 is amended to read:

2 118.855. For the purposes of ORS 118.855 to 118.880:

3 (1) “Board” means board of arbitration.

4 (2) “[*Death*] **Estate tax**” means any tax levied by a state on account of the transfer or shifting
5 of economic benefits in property at death, or in contemplation thereof, or intended to take effect in
6 possession or enjoyment at or after death, whether denominated an “inheritance tax,” “transfer
7 tax,” “succession tax,” “estate tax,” “death duty,” “death dues,” “**death tax**” or otherwise.

8 (3) “Executor” means an executor of the will or administrator of the estate of the decedent, but
9 does not include an ancillary administrator nor an administrator with the will annexed if an execu-
10 tor named in the will has been appointed and has qualified in another state.

11 (4) “Interested person” means any person who may be entitled to receive or who has received
12 any property or interest which may be required to be considered in computing the [*death*] **estate**
13 taxes of any state involved in the dispute.

14 (5) “State” means the District of Columbia and any state, territory or possession of the United
15 States.

16 (6) “Taxing official” means the Director of the Department of Revenue and the designated au-
17 thority of a reciprocal state charged with the duty of collecting its [*death*] **estate** taxes.

18 (7) “This state” means the State of Oregon.

19 **SECTION 22.** ORS 118.860 is amended to read:

20 118.860. When the taxing official of this state and the taxing official of one or more other states
21 each claims that the state of the official respectively was the domicile of the decedent for the pur-
22 pose of [*death*] **estate** taxes, at any time prior to the commencement within this state of suit or
23 action for determination of the decedent’s domicile for [*death*] **estate** tax purposes, or within 60 days
24 thereafter, the executor or the taxing official of any such state may elect to invoke the provisions
25 of ORS 118.855 to 118.880. Such executor or taxing official shall send a notice of such election by
26 registered or certified mail, receipt requested, to the taxing official of each such state and to each
27 executor, ancillary administrator, and interested person. Within 40 days after the receipt of such
28 notice of election the executor may reject such election by sending a notice of rejection by regis-
29 tered or certified mail, receipt requested, to all persons to whom the notice of election is required
30 to be sent. When an election has been rejected by the executor no further proceedings shall be had
31 under ORS 118.855 to 118.880. If such election is not rejected within the 40-day period, the dispute
32 in respect of the domicile of the decedent for [*death*] **estate** tax purposes shall be settled solely as
33 provided in ORS 118.865 to 118.880 and no other or additional proceedings to determine or redeter-
34 mine the domicile of the decedent for [*death*] **estate** tax purposes shall thereafter be instituted in
35 any court of this state or otherwise.

36 **SECTION 23.** ORS 118.865 is amended to read:

37 118.865. (1) In any case in which an election is made and not rejected, as provided in ORS
38 118.860, the Department of Revenue may enter into a written agreement with the other taxing offi-
39 cials involved and with the executor to accept a sum certain in full payment of any [*death*] **estate**
40 taxes, together with interest and penalties, [*which*] **that** may be due this state, provided the agree-
41 ment fixes the amount of [*death*] **estate** taxes with interest and penalties to be paid to the other
42 states involved in the dispute.

43 (2) Notwithstanding the commencement of a legal action for determination of domicile within
44 this state or the commencement of an arbitration proceeding as provided in ORS 118.870, the de-
45 partment, at any time prior to the conclusion of such action or proceeding, may in any case enter

1 into a written agreement with the other taxing officials involved and with the executor to accept
 2 a sum certain in full payment of any [*death*] **estate** tax, together with interest and penalties,
 3 [*which*] **that** may be due this state, provided the agreement fixes the amount of [*death*] **estate** taxes
 4 with interest and penalties to be paid the other states involved in the dispute. Upon the filing of the
 5 agreement with the authority [*which*] **that** would have jurisdiction to assess the [*death*] **estate** taxes
 6 of this state if the decedent died domiciled in this state, an assessment shall be made as provided
 7 in such agreement, and such assessment shall finally and conclusively fix the amount of [*death*] **es-**
 8 **tate** taxes due this state. [*If the aggregate amount payable under such agreement or under an agree-*
 9 *ment made in accordance with the provisions of subsection (1) of this section to the states involved in*
 10 *the dispute is less than the minimum credit allowable to the estate against the United States estate tax*
 11 *imposed with respect thereto, the executor forthwith shall also pay to the department the same per-*
 12 *centage of the difference between such aggregate amount of such credit as the amount payable to the*
 13 *department under such agreement bears to such aggregate amount.*]

14 **SECTION 24.** ORS 118.870 is amended to read:

15 118.870. (1) When it appears by the written admission of the executor and the tax official of each
 16 state involved in the dispute that an agreement contemplated in ORS 118.865 (1) cannot be reached
 17 or, in all events, if one year has elapsed from the date of the election without such an agreement
 18 having been reached, the domicile of the decedent at the time of death shall be determined solely
 19 for [*death*] **estate** tax purposes as provided in this section.

20 (2) When this state and one other state only are involved in the dispute, the Director of the
 21 Department of Revenue and the taxing official of the other state shall each appoint a member of a
 22 board of arbitration and those members shall appoint the third member of the board. If this state
 23 and more than one other state are involved, the taxing officials of the involved states shall agree
 24 upon the authorities charged with the duty of administering [*death*] **estate** tax laws in three states
 25 not involved in the dispute and each of these authorities shall appoint one member of the board of
 26 arbitration. The board shall select one of its members as chairperson.

27 (3) The board may administer oaths, take testimony, subpoena witnesses and require their at-
 28 tendance, require the production of books, papers and documents and issue commissions to take
 29 testimony. Subpoenas may be issued by any member of the board. Failure to obey a subpoena of the
 30 board may be punished by any court of record in the same manner as if the subpoena had been is-
 31 sued by the court.

32 (4) Whenever practicable the board shall apply the rules of evidence then prevailing in the fed-
 33 eral courts under the federal rules of civil procedure.

34 (5) The reasonable compensation and expenses of the members of the board and its employees
 35 shall be agreed upon among the members, the taxing officials involved and the executor. If such an
 36 agreement cannot be reached, the compensation and expenses shall be determined by the taxing of-
 37 ficials and, if they cannot agree, by the appropriate probate court of the state determined to be the
 38 domicile of the decedent. The amount so determined shall be borne by the decedent's estate and
 39 shall be deemed an administration expense of the estate.

40 (6) The board shall hold hearings at places the board deems necessary, upon reasonable notice
 41 to the executor, ancillary administrators, all interested persons and the taxing officials of the states
 42 involved, all of whom are entitled to be heard.

43 (7) The board, by the decision of its majority, shall determine the domicile of the decedent at
 44 the time of death. The decision of the board is final and conclusive and binds this state and all of
 45 its judicial and administrative officials on all questions concerning the domicile of the decedent for

1 *[death]* **estate** tax purposes. If the board does not render a decision within one year from the time
2 that it is fully constituted, all authority of the board shall cease and the bar to court proceedings
3 set forth in ORS 118.860 shall no longer exist.

4 (8) The decision of the board and the record of the board's proceeding shall be filed with the
5 authority that has jurisdiction to assess *[death]* **estate** taxes in the state determined to be the
6 domicile of the decedent and with the authorities that would have had jurisdiction to assess
7 *[death]* **estate** taxes in each of the other states involved if the decedent had been found to be
8 domiciled there.

9 **SECTION 25.** ORS 118.875 is amended to read:

10 118.875. When the board of arbitration determines that a decedent died domiciled in this state,
11 the total amount of interest and penalties for nonpayment of the tax during the period commencing
12 with the date of the election and ending with the date of the final determination of the board shall
13 not exceed one percent per month or fraction of a month of the amount of the *[death]* **estate** taxes
14 found to be due.

15 **SECTION 26.** ORS 118.880 is amended to read:

16 118.880. (1) ORS 118.855 to 118.880 shall be applicable only to cases in which each of the states
17 involved in the dispute has in effect therein a statute substantially similar to ORS 118.855 to 118.880,
18 or has in effect therein a statute empowering one or more of its officials to voluntarily enter into
19 a binding arbitration or compromise agreement respecting disputed liability for *[death]* **estate** taxes
20 and such an agreement with each of the other states involved in the dispute and the executor is
21 entered into prior to the appointment of the board of arbitration as provided in ORS 118.870.

22 (2) Any procedural conflict between ORS 118.855 to 118.880 and the statute of a reciprocal state
23 involved in the dispute shall be resolved by the decision of the majority of the board. If there is a
24 statutory conflict relating to the number of board members to be selected or the manner of their
25 selection, the appropriate provision of whichever of the conflicting statutes is designated by the
26 executor shall govern and control.

27 **SECTION 27.** ORS 111.025 is amended to read:

28 111.025. For purposes of ORS chapters 111 to 116, the Oregon Tax Court is not a court having
29 probate jurisdiction and is limited to the trial of appeals on inheritance **or estate** tax matters.

30 **SECTION 28.** ORS 114.075 is amended to read:

31 114.075. Subject to the limitations imposed by ORS 114.065, provision for support under ORS
32 114.015 ordered by the court has priority over claims and expenses of administration. The provision
33 *[shall]* **is** not *[be]* charged against the distributive share of the person receiving support. The pro-
34 vision *[shall be]* **is** treated as an expense of administration, but *[shall]* not *[be]* **as** a deduction for
35 *[inheritance]* **estate** tax purposes.

36 **SECTION 29.** ORS 116.083 is amended to read:

37 116.083. (1) A personal representative shall make and file in the estate proceeding an account
38 of the personal representative's administration:

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

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

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

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

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

- 1 (a) The period of time covered by the account.
- 2 (b) The total value of the property with which the personal representative is chargeable ac-
3 cording to the inventory, or, if there was a prior account, the amount of the balance of the prior
4 account.
- 5 (c) All money and property received during the period covered by the account.
- 6 (d) All disbursements made during the period covered by the account. Vouchers for disburse-
7 ments must accompany the account, unless otherwise provided by order or rule of the court, or un-
8 less the personal representative is a trust company that has complied with ORS 709.030, but that
9 personal representative shall:
- 10 (A) Maintain the vouchers for a period of not less than one year following the date on which
11 the order approving the final account is entered;
- 12 (B) Permit interested persons to inspect the vouchers and receive copies thereof at their own
13 expense at the place of business of the personal representative during the personal representative's
14 normal business hours at any time prior to the end of the one-year period following the date on
15 which the order approving the final account is entered; and
- 16 (C) Include in each annual account and in the final account a statement that the vouchers are
17 not filed with the account but are maintained by the personal representative and may be inspected
18 and copied as provided in subparagraph (B) of this paragraph.
- 19 (e) The money and property of the estate on hand.
- 20 (f) Such other information as the personal representative considers necessary to show the con-
21 dition of the affairs of the estate or as the court may require.
- 22 (g) A declaration under penalty of perjury in the form required by ORCP 1 E.
- 23 (3) When the estate is ready for final settlement and distribution, the account must also include:
- 24 (a) A statement that all Oregon income **taxes**, inheritance **or estate taxes** and personal prop-
25 erty taxes, if any, have been paid, or if not so paid, that payment of those taxes has been secured
26 by bond, deposit or otherwise, and that all required tax returns have been filed.
- 27 (b) A petition for a judgment authorizing the personal representative to distribute the estate to
28 the persons and in the portions specified therein.
- 29 (4) If the distributees consent thereto in writing and all creditors of the estate have been paid
30 in full other than creditors owed administrative expenses that require court approval, the personal
31 representative, in lieu of the final account otherwise required by this section, may file a statement
32 that includes the following:
- 33 (a) The period of time covered by the statement.
- 34 (b) A statement that all creditors have been paid in full other than creditors owed administra-
35 tive expenses that require court approval.
- 36 (c) The statement and petition referred to in subsection (3) of this section.
- 37 (d) A declaration under penalty of perjury in the form required by ORCP 1 E.
- 38 (5) Notice of time for filing objections to the statement described in subsection (4) of this section
39 is not required.
- 40 (6) The Chief Justice of the Supreme Court may by rule specify the form and contents of ac-
41 counts that must be filed by a personal representative.
- 42 **SECTION 30.** ORS 116.173 is amended to read:
- 43 116.173. (1) Upon application to the court a personal representative is entitled to receive com-
44 pensation for services as provided in this section. If there is more than one personal representative
45 acting concurrently, the compensation shall not be increased, but may be divided among them as

1 they agree or as the court may order. The compensation is a commission upon the whole estate, as
2 follows:

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

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

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

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

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

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

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

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

19 **SECTION 31.** ORS 116.303 is amended to read:

20 116.303. As used in ORS 116.303 to 116.383:

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

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

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

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

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

32 **SECTION 32.** ORS 116.343 is amended to read:

33 116.343. (1) In making an apportionment, allowances shall be made for any exemptions granted,
34 any classification made of persons interested in the estate and any deductions and credits allowed
35 by the law imposing the tax.

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

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

44 (4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in re-
45 spect to property or interests includable in the estate inures to the benefit of the persons or inter-

1 ests chargeable with the payment thereof to the extent that, or in proportion as, the credit reduces
2 the tax.

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

11 **SECTION 33.** ORS 129.250 is amended to read:

12 129.250. After a decedent dies, in the case of an estate, or after an income interest in a trust
13 ends, the following rules apply:

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

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

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

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

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

32 (3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the
33 interest or any other amount provided by the will, the terms of the trust or applicable law from net
34 income determined under subsection (2) of this section or from principal to the extent that net in-
35 come is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an
36 income interest ends and no interest or other amount is provided for by the terms of the trust or
37 applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary
38 would be entitled under applicable law if the pecuniary amount were required to be paid under a
39 will.

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

45 (5) A fiduciary may not reduce principal or income receipts from property described in sub-

1 section (1) of this section because of a payment described in ORS 129.400 or 129.405 to the extent
2 that the will, the terms of the trust or applicable law requires the fiduciary to make the payment
3 from assets other than the property or to the extent that the fiduciary recovers or expects to re-
4 cover the payment from a third party. The net income and principal receipts from the property are
5 determined by including all of the amounts the fiduciary receives or pays with respect to the prop-
6 erty, whether those amounts accrued or became due before, on or after the date of a decedent's
7 death or an income interest's terminating event, and by making a reasonable provision for amounts
8 that the fiduciary believes the estate or terminating income interest may become obligated to pay
9 after the property is distributed.

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

11 305.490. (1) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay a
12 filing fee at the time of filing for each complaint or petition as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **SECTION 35. ORS 118.009 and 118.019 and section 3, chapter 806, Oregon Laws 2003, are**
5 **repealed.**

6 **SECTION 36. The amendments to ORS 111.025, 114.075, 116.083, 116.173, 116.303, 116.343,**
7 **118.005, 118.007, 118.010, 118.013, 118.016, 118.100, 118.140, 118.160, 118.171, 118.220, 118.240,**
8 **118.260, 118.280, 118.300, 118.350, 118.470, 118.525, 118.810, 118.820, 118.830, 118.855, 118.860,**
9 **118.865, 118.870, 118.875, 118.880, 129.250 and 305.490 by sections 1 to 34 of this 2011 Act and**
10 **the repeal of ORS 118.009 and 118.019 and section 3, chapter 806, Oregon Laws 2003, by section**
11 **35 of this 2011 Act apply to estates of decedents who die on or after January 1, 2011.**

12 **SECTION 37. This 2011 Act takes effect on the 91st day after the date on which the 2011**
13 **session of the Seventy-sixth Legislative Assembly adjourns sine die.**

14