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RE: SB 15, Oregon Legislature 2021 Session; Hearing: March 10, 2021
Senate Committee on Finance and Revenue

Senators:

SB 15 would add an additional estate value exemption of up to \$1.5 million to Oregon's estate tax beyond the current \$1 million exemption, but only as to estates valued under 8.5 million. The full additional exemption of \$1.5 million would have the effect of eliminating the Oregon estate tax for estates valued under \$2.5 million. The full exemption of \$1.5 million would apply to estates valued up to \$4.5 million, with the exemption decreasing to zero in steps up from \$4.5 million to \$8.5 million in estate value.

This innovative concept limits estate tax relief to estates under a certain value, rather than benefitting all estates. The bill is broader than the similar SB 1560 from the 2020 session. See Ex. A. Under SB 1560, the full additional exemption of \$1.5 million would have applied to estates valued up to \$2.5 million (rather than \$4.5 million), with the exemption decreasing to zero in steps up from \$2.5 million to \$6.5 million (rather than from \$4.5 million to \$8.5 million), as I understand.

The combined exemptions above \$2.5 million in estate value under the prior SB 1560 would have been: \$2.2 million (\$3 million estate); \$1.9 million (\$4 million estate); \$1.6 million (\$5 million estate); \$1.3 million (\$6 million estate); \$1 million exemption only (\$6.5 million estate and above), as I understand.

I prefer more modest estate tax reform, and suggest that SB 15 be amended to be consistent with the prior SB 1560. As amended, the bill would target precisely the area of estate valuation where relief is needed. The approach is much different than simply seeking to repeal the Oregon estate tax or to raise the overall exemption by a significant amount, such as to match the federal exemption of \$11.7 million. The approach presumably would have significantly less impact on revenues than simply raising the exemption from \$1 million to \$2.5 million.

Only 12 states and the District of Columbia have state estate taxes. See Ex. B. Of those, only 4 states have state estate taxes with an exemption under \$2.5 million. Oregon and Massachusetts have the most burdensome estate taxes with only a \$1 million exemption. Of the states on Oregon's border, Idaho, California and Nevada have no state estate taxes. Washington has a \$2.193 million exemption. Hawaii has a \$5.490 million exemption.

It makes sense that retired people in Oregon with estates valued above \$1 million would consider moving to states with a warmer and dryer climate and with no state estate tax, such as California, Nevada, Arizona or New Mexico. It is much easier to sell one's Oregon home to move elsewhere now that capital gains on sale of the primary residence may be excluded for a person up to \$250,000 and for a couple up to \$500,000 (with aggregate two years out of five years as primary residence). When long time Oregon residents move to other states to avoid estate taxation, Oregon generally loses their income and property taxes, other taxes, their businesses, and their other contributions to the community, including volunteer work, mentoring and charitable gifting.

Family businesses have crept up in value, such that they could result in significant Oregon estate tax, and could require sale of such businesses to pay the tax. Some people may not even realize that increasing property values could result in significant Oregon estate tax liability, and may not have considered estate planning, to the extent it would help.

Oregon's \$1 million exemption has been in place for about 15 years (since 2006) with no accounting for inflation or for increases in the value of real property. The Oregon Law Commission Work Group recommended ten years ago to the Oregon legislature that Oregon's exemption be increased to \$1.5 million, as part of a comprehensive overhaul of Oregon's death tax. (Inheritance Tax, Work Group Report at 7, HB 2541, March 28, 2011). The increase was not adopted due to opposition to an increase to the highest rate, which was necessary to keep the reform revenue neutral, as I understand.

SB 15, as modified, provides a good, affordable and long overdue solution to the unfairness caused by Oregon's estate tax with its very low exemption. SB 15 should also be amended to annually adjust the exemptions for inflation.

Thank you for your consideration.

Lloyd Helikson

Senate Bill 1560

Sponsored by Senator FINDLEY, Representative SMITH DB; Senators BEYER, BOLES, FREDERICK, GIROD, HANSELL, HEARD, KNOPP, LINTHICUM, THATCHER, Representatives BARRETO, BONHAM, BOSHART DAVIS, DRAZAN, HELT, LEWIS, RESCHKE, SMITH G, WALLAN (Presession 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**.

Provides for additional exemption against Oregon estate tax. Phases out availability of exemption based on size of estate. Applies to estates of decedents dying on or after January 1, 2021. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to estate tax; creating new provisions; amending ORS 118.010; and prescribing an effective date.

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

SECTION 1. Section 2 of this 2020 Act is added to and made a part of ORS 118.005 to 118.540.

SECTION 2. (1) An exemption from taxation based on the amount of the Oregon taxable estate may be allowed under this section.

(2) In order to determine the availability and amount of the exemption, the Oregon taxable estate shall first be calculated without the exemption allowed under this section.

(3) Using the amount calculated under subsection (2) of this section, the exemption shall be determined in accordance with the following table:

If the calculated amount The exemption is:
is:

Less than 2.5 million..... \$1.5 million

**At least \$2.5 million
but less than
\$3.5 million \$1.2 million**

**At least \$3.5 million
but less than
\$4.5 million \$900,000**

**At least \$4.5 million
but less than
\$5.5 million \$600,000**

**At least \$5.5 million
but less than**

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 **\$6.5 million \$300,000**

2
3
4 **(4) No exemption is allowed under this section if the amount calculated under subsection**
5 **(2) of this section is greater than or equal to \$6.5 million.**

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

7 118.010. (1) As used in this section:

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

10 (b) "Resident decedent" means an individual who is domiciled in Oregon on the date the indi-
11 vidual dies.

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

13 (a) Resident decedent; and

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

15 (A) Real property located in Oregon; or

16 (B) Tangible personal property located in Oregon.

17 (3) The Oregon taxable estate to be used for purposes of computing the tax imposed under this
18 section shall be the federal taxable estate:

19 (a) Increased by:

20 (A) The deduction for state estate, inheritance, legacy or succession taxes allowable under sec-
21 tion 2058 of the Internal Revenue Code; and

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

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

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

28 (b) Reduced by:

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

31 **(B) If applicable, the exemption allowed under section 2 of this 2020 Act; and**

32 **[(B)] (C) Any other applicable exclusions or deductions.**

33 (4) The tax imposed under this section shall be calculated by applying the rates in the following
34 table. If the Oregon taxable estate is at least the amount in column 1, but less than the amount in
35 column 2, the tax is the amount in column 3, increased by the excess above the amount in column
36 1 multiplied by the percentage in column 4:

1	2	3	4
\$1,000,000	\$1,500,000	\$0	10.0%
1,500,000	2,500,000	50,000	10.25%
2,500,000	3,500,000	152,500	10.5%
3,500,000	4,500,000	257,500	11.0%
4,500,000	5,500,000	367,500	11.5%
5,500,000	6,500,000	482,500	12.0%

1	6,500,000	7,500,000	602,500	13.0%
2	7,500,000	8,500,000	732,500	14.0%
3	8,500,000	9,500,000	872,500	15.0%
4	9,500,000		1,022,500	16.0%

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

(6) In the case of a nonresident decedent owning, on the date of the decedent’s death, real property located in Oregon or tangible personal property located in Oregon, the tax imposed under this section shall be the amount determined under subsection (4) of this section multiplied by a ratio. The numerator of the ratio shall be the sum of the value of the decedent’s real property located in Oregon and tangible personal property located in Oregon. The denominator shall be the total value of the decedent’s gross estate.

(7) Payment, in whole or in part, of estate taxes from funds of an estate or trust on any benefit subject to tax under ORS 118.005 to 118.540 is not to be considered a further taxable benefit, when such payment is directed by the decedent’s will or by a trust agreement.

(8)(a) If the federal taxable estate is determined by making an election under section 2031(c), 2032, 2032A, 2056 or 2056A of the Internal Revenue Code or another provision of the Internal Revenue Code, or if a federal estate tax return is not required under the Internal Revenue Code, an executor may make separate elections for state estate tax purposes under that same provision.

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

(c) Elections described in this subsection are irrevocable.

SECTION 4. Section 2 of this 2020 Act and the amendments to ORS 118.010 by section 3 of this 2020 Act apply to estates of decedents dying on or after January 1, 2021.

SECTION 5. This 2020 Act takes effect on the 91st day after the date on which the 2020 regular session of the Eightieth Legislative Assembly adjourns sine die.

State Estate Taxes - 2021

State/District	Exemption Level	Low Tax Rate	Top Tax Rate	Description (Federal Exemption is \$11,700,000)	
Connecticut	\$7,100,000	10.8%	12%	increases to \$9.1 million in 2022; federal exclusion amount in 2023	
District of Columbia	\$4,000,000	12.0%	16%	annually adjusted for inflation	
Hawaii	\$5,490,000	10.0%	20%	annually adjusted for inflation	
Illinois	\$4,000,000	0.8%	16%		
Maine	\$5,870,000	8.0%	12%		
Maryland	\$5,000,000	0.8%	16%		
Massachusetts	\$1,000,000	0.8%	16%		
Minnesota	\$3,000,000	13.0%	16%		
New York	\$5,930,000	3.1%	16%	annually adjusted for inflation	
Oregon	\$1,000,000	10.0%	16%		
Rhode Island	\$1,595,156	0.8%	16%	annually adjusted for inflation	
Vermont	\$5,000,000	16.0%	16%		
Washington	\$2,193,000	10.0%	20%		
Rest of States	40 States - No Estate Tax				
Certain States have Inheritance Tax on Heirs which generally exempt spouse, parents, children, linear descendants, etc. (Iowa, Kentucky, New Jersey, Maryland)					
	Nebraska imposes no inheritance tax on spouses, but 1% tax on amounts above \$40,000 to				
	parents, grandparents, siblings, children or other lineal descendants				
	Pennsylvania imposes no inheritance tax on spouses, but 4.5% tax on transfers to direct				
	descendants, higher tax on transfers to others, with exemptions for life insurance proceeds,				
	farms, family owned businesses, etc.				
03/08/2021	Current version			Based upon limited review	