

Enrolled
House Bill 2541

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

CHAPTER

AN ACT

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

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

SECTION 1. ORS 118.005 is amended to read:

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

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

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

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

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

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

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

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

(7) "Oregon taxable estate" means the federal taxable estate with the adjustments provided by ORS 118.010 (3).

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

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

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

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

SECTION 2. ORS 118.007 is amended to read:

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

SECTION 3. ORS 118.010 is amended to read:

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

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

(1) As used in this section:

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

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

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

(a) Resident decedent; and

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

(A) Real property located in Oregon; or

(B) Tangible personal property located in Oregon.

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

(a) Increased by:

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

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

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

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

(b) Reduced by:

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

(B) Any other applicable exclusions or deductions.

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

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

| | | | |
|-----------|-----------|-----------|-------|
| 6,500,000 | 7,500,000 | 602,500 | 13.0% |
| 7,500,000 | 8,500,000 | 732,500 | 14.0% |
| 8,500,000 | 9,500,000 | 872,500 | 15.0% |
| 9,500,000 | | 1,022,500 | 16.0% |

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

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

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

[(5) In the case of decedents dying 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 or 2056] **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, *[the Department of Revenue may adopt rules providing for a separate election for state inheritance tax purposes.]* **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. ORS 118.013 is amended to read:

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

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

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

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

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

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

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

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

(b) Each [*beneficiary who is living at the time the election is made and who may be entitled to a distribution from the share during the lifetime of the surviving spouse*] **permissible distributee** makes the election described in ORS 118.016 (2);

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

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

SECTION 5. ORS 118.016 is amended to read:

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

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

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

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

CONSENT TO ESTABLISHMENT OF
OREGON SPECIAL MARITAL PROPERTY

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

special marital property during the lifetime of the surviving spouse. Each of the undersigned agrees that all other provisions of the _____ (name of trust or other property interest) shall remain in effect and that, upon the death of the surviving spouse, any remaining Oregon special marital property shall be distributed as otherwise provided in the trust or other property interest.

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

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

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*] **permissible distributee who is a minor, or any person who is authorized under ORS 130.110**, may sign the election on behalf of the [*minor beneficiary*] **permissible distributee** and the unborn lineal descendants of the [*minor beneficiary*] **permissible distributee**.

SECTION 6. ORS 118.100 is amended to read:

118.100. (1) The tax provided for in ORS 118.010 shall **take effect at and accrue upon the death of the decedent. A return shall be filed and the tax 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 **45 days after the due date of the return or** on the date the amended return or refund claim is filed, **whichever is later, and ending at [to]** the time the refund is made.

(2) If the amount of federal estate tax reported on a [*United States*] **federal** 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 the disqualification.

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

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

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

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

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

SECTION 7. ORS 118.140 is amended to read:

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

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

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

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

[(A) *Natural resource property.*]

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

[(i) *Used in the conduct of a fishing business as defined in section 1301(b)(4) of the Internal Revenue Code, including boats, gear, equipment, vessel licenses and permits and commercial fishing licenses and permits; or*]

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

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

[(i) Timber, trees and improvements;]

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

[(iii) Forestry and farming equipment.]

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

[(b) A taxpayer may:]

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

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

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

[(c) If the value of property for which the credit allowed under this section is claimed is at least the amount in column 1, but less than the amount in column 2, the credit 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 | \$100,000 | \$0 | |
| 100,000 | 150,000 | 0 | 0.8% |
| 150,000 | 200,000 | 400 | 1.6% |
| 200,000 | 300,000 | 1,200 | 2.4% |
| 300,000 | 500,000 | 3,600 | 3.2% |
| 500,000 | 700,000 | 10,000 | 4.0% |
| 700,000 | 900,000 | 18,000 | 4.8% |
| 900,000 | 1,100,000 | 27,600 | 5.6% |
| 1,100,000 | 1,600,000 | 38,800 | 6.4% |
| 1,600,000 | 2,100,000 | 70,800 | 7.2% |
| 2,100,000 | 2,600,000 | 106,800 | 8.0% |
| 2,600,000 | 3,100,000 | 146,800 | 8.8% |
| 3,100,000 | 3,600,000 | 190,800 | 9.6% |
| 3,600,000 | 4,100,000 | 238,800 | 10.4% |
| 4,100,000 | 5,100,000 | 290,800 | 11.2% |
| 5,100,000 | 6,100,000 | 402,800 | 12.0% |
| 6,100,000 | 7,100,000 | 522,800 | 12.8% |
| 7,100,000 | 7,500,000 | 650,800 | 13.6% |
| 7,500,000 | 8,100,000 | 402,800 | 13.0% |
| 8,100,000 | 9,100,000 | 253,344 | 12.5% |
| 9,100,000 | 10,100,000 | 146,800 | 12.0% |
| 10,100,000 | 11,100,000 | 35,400 | 11.2% |
| 11,100,000 | 12,100,000 | 15,520 | 7.7% |
| 12,100,000 | 13,100,000 | 8,000 | 5.7% |
| 13,100,000 | 14,100,000 | 0 | 3.7% |
| 14,100,000 | 15,100,000 | 0 | 1.7% |
| 15,100,000 | | 0 | 0% |

[_____]

(1) As used in this section:

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

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

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

(A) Raising, harvesting or selling fruit or crops;

(B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or bees, or the produce thereof;

(C) Dairying and selling dairy products;

(D) Breeding, stabling or training equines;

(E) Propagating, cultivating, maintaining or harvesting aquatic species, birds or animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

(F) Raising nursery stock;

(G) Practicing animal husbandry; or

(H) Raising other agricultural or horticultural products.

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

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

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

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

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

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

(A) Real property used as forestland or as forestland homesites, not to exceed 5,000 acres, or that is in farm use.

(B) Timber or trees.

(C) Crops, fruit or other horticultural products, both growing and stored.

(D) Forestry business or farm business equipment.

(E) Livestock, poultry, fur-bearing animals, bees, dairying animals, equines, aquatic species, birds or other animal species, including stored products or by-products.

(F) Nursery stock as defined in ORS 571.005.

(G) Boats, gear, equipment, vessel licenses or permits, commercial fishing licenses or permits and other real or personal property used in the operation of a fishing business.

(H) Real or personal property used to process and sell the catch of a fishing business in fresh, canned or smoked form directly to consumers, including a restaurant with seating capacity of fewer than 15 seats at which catch from the fishing business is prepared and sold.

(I) An operating allowance.

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

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

(k) "Qualified beneficiary" has the meaning given that term in ORS 130.010.

(L) "Real property" means real property, as defined in ORS 307.010, that is in this state.

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

(b) The credit allowed under this section shall be computed by multiplying the tax that would be payable under this chapter absent the credit by a ratio, the numerator of which is

an amount equal to the lesser of the amount of natural resource property claimed under this section or \$7.5 million, and the denominator of which is an amount equal to the total adjusted gross estate.

(c) An executor may:

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

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

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

(3) Except as provided in subsections [(4) and (5)] (4), (7) and (8) of this section, a credit is allowed under this section only if:

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

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

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

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

(4) Property that otherwise meets the requirements of this section shall be allowed a credit under this section if:

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

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

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

(5) **A credit is allowed under this section for the following real property only if the real property was owned by the decedent or a family member during an aggregate period of five out of the eight years ending on the date of the decedent's death and used in a business described in subsection (3)(d) of this section:**

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

(b) **Real property used in farm use.**

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

(a) **Owned a vessel used in taking food fish or shellfish for commercial purposes as defined in ORS 506.006;**

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

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

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

(7) **For the purpose of meeting the requirements of subsection (5) of this section, in determining the period of time during which the decedent or a family member owned real property received in exchange under section 1031 of the Internal Revenue Code or acquired in an involuntary conversion under section 1033 of the Internal Revenue Code, the period during which the decedent or a family member owned the exchanged or acquired real property, if the exchanged or acquired real property was used in the farm business or forestry business, may be included.**

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

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

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

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

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

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

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

[(b)] **(e) The additional tax liability shall be the amount of *[the credit allowed on]* additional tax that would have been imposed, had the disqualified property not been included in the numerator of the ratio in subsection (2)(b) of this section, multiplied by ((five minus the number of years the property was used as natural resource property) divided by five). The additional tax liability *[shall be]* is the responsibility of the owner of the property at the time of the disposition or disqualifying event and is due within six months after the date on which the disposition or**

event occurs. The Department of Revenue may establish by rule procedures for reporting the additional tax due, consistent with ORS chapter 305.

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

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

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

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

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

(c) The asset has been subject to a disposition under subsection (9) of this section, resulting in additional tax.

SECTION 8. ORS 118.160 is amended to read:

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

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

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

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

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

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

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

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

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

SECTION 9. ORS 118.171 is amended to read:

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

SECTION 10. ORS 118.225 is amended to read:

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

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

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

SECTION 11. ORS 118.260 is amended to read:

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

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

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

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

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

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

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

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

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

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

SECTION 12. ORS 118.280 is amended to read:

118.280. (1) Every executor, administrator or trustee has power to sell as much of the property embraced in any inheritance, devise, bequest or legacy, as will enable the executor, administrator

or trustee to pay the tax imposed by ORS 118.005 to 118.840, in the same manner as the executor, administrator or trustee is authorized to do for the payment of the debts of a decedent.

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

SECTION 13. ORS 118.300 is amended to read:

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

SECTION 14. ORS 118.350 is amended to read:

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

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

SECTION 15. ORS 118.525 is amended to read:

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

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

(2) As used in this section:

(a) "Officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or former officer, employee or person, or an authorized representative of such former officer, employee or person.

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

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

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

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

(6) Each officer or employee of the department and each person described or referred to in subsection (5) of this section to whom disclosure or access to tax information is given, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of subsection (1) of this section and ORS 118.990 (3), and shall as a condition of employment or performance of duties execute a certificate for the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of subsection (1) of this section.

SECTION 16. ORS 105.645 is amended to read:

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

SECTION 17. ORS 111.025 is amended to read:

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

SECTION 18. ORS 114.075 is amended to read:

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

SECTION 19. ORS 116.083 is amended to read:

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

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

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

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

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

(2) Each account must include the following information:

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

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

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

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

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

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

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

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

(f) Such other information as the personal representative considers necessary to show the condition of the affairs of the estate or as the court may require.

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

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

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

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

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

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

(b) A statement that all creditors have been paid in full other than creditors owed administrative expenses that require court approval.

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

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

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

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

SECTION 20. ORS 116.173 is amended to read:

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

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

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

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

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

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

(b) One percent of the property, exclusive of life insurance proceeds, not subject to the jurisdiction of the court but reportable for Oregon inheritance **or estate** tax or federal estate tax purposes.

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

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

SECTION 21. ORS 116.303 is amended to read:

116.303. As used in ORS 116.303 to 116.383:

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

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

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

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

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

SECTION 22. ORS 116.343 is amended to read:

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

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

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

(4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as, the credit reduces the tax.

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

SECTION 23. ORS 129.250 is amended to read:

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

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

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

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

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

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

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

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

(5) A fiduciary may not reduce principal or income receipts from property described in subsection (1) of this section because of a payment described in ORS 129.400 or 129.405 to the extent that the will, the terms of the trust or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the prop-

erty, whether those amounts accrued or became due before, on or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

SECTION 24. ORS 305.490 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 25. ORS 314.415 is amended to read:

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

(2)(a) The department may not allow or make a refund after three years from the time the return was filed, or two years from the time the tax (or a portion of the tax) was paid, whichever period

expires later, unless before the expiration of this period a claim for refund is filed by the taxpayer in compliance with ORS 305.270. In any case, if the original return is not filed within three years of the due date, excluding extensions, of the return, the department may allow or make a refund only of amounts paid within two years from the date of the filing of the claim for refund. If a refund is disallowed for the tax year during which excess tax was paid for any reason set forth in this subsection, the department may not allow the excess as a credit against any tax occurring on a return filed for a subsequent year.

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

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

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

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

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

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

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

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

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

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

(4)(a) If the claim for credit or refund relates to an overpayment on account of the deductibility by the taxpayer, or by a partnership, of the worthlessness of a share of stock in a corporation, of the right to subscribe for or to receive a share of stock in a corporation, or of a debt, in lieu of the three-year period of limitation prescribed in subsection (2) of this section, the period shall be seven

years from the date prescribed by law for the filing of the return for the year with respect to which the claim is made.

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

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

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

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

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

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

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

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

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

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

SECTION 27. When the Department of Revenue and the taxing official of one or more other states each claims that the state of that official respectively was the domicile of the decedent for the purpose of estate taxes or claims taxing authority over the same property in an estate, the department may negotiate, and enter into an agreement, with the taxing

official of the other state and with the executor to accept payment of estate tax, together with any interest and penalties. The department may enter into binding arbitration or into a compromise agreement with respect to disputed liability for estate taxes with each taxing official and with the executor.

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

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

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

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

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

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

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

Passed by House May 10, 2011

Received by Governor:

Repassed by House June 15, 2011

.....M.,....., 2011

Approved:

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Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

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Bruce Hanna, Speaker of House

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John Kitzhaber, Governor

.....
Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

Passed by Senate June 13, 2011

.....M.,....., 2011

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State