

House Bill 2293

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Oregon State Bar Taxation Section)

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**.

Excludes certain property from estate of decedent for inheritance tax purposes if principal or income from property may be distributed or accumulated only for benefit of surviving spouse and executor files election to have property considered Oregon special marital property. Establishes procedure to elect Oregon special marital property characterization for portion of property in cases where principal or income may be distributed to or accumulated for surviving spouse and other persons.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation; and prescribing an effective date.

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

4 **SECTION 1. Sections 2 to 4 of this 2005 Act are added to and made a part of ORS 118.005**
5 **to 118.840.**

6 **SECTION 2. (1) For purposes of computing the tax imposed under ORS 118.010, the tax-**
7 **able estate to be used for computing the maximum amount of the state death tax credit al-**
8 **lowable under section 2011 of the Internal Revenue Code shall be the taxable estate**
9 **determined for federal estate tax purposes, reduced by the value on the date of death of the**
10 **decedent of all Oregon special marital property in the estate.**

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

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

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

18 **(c) For which the executor of the estate of the decedent has made the election described**
19 **in section 3 (1) of this 2005 Act.**

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

26 **(a) The executor makes the election described in section 3 (1) of this 2005 Act;**

27 **(b) Each beneficiary who is living at the time the election is made and who may be enti-**
28 **led to a distribution from the share during the lifetime of the surviving spouse makes the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 election described in section 3 (2) of this 2005 Act;

2 (c) The surviving spouse makes the election described in section 3 (2) of this 2005 Act;
3 and

4 (d) All elections are attached to the inheritance tax return filed with respect to the es-
5 tate of the decedent, or are filed or maintained as records as otherwise prescribed by the
6 Department of Revenue by rule.

7 **SECTION 3.** (1) The executor of an estate containing property that the executor seeks
8 to qualify as Oregon special marital property under section 2 of this 2005 Act shall make an
9 election under this subsection in order for the property to be Oregon special marital prop-
10 erty. The election shall be made:

11 (a) By attaching a statement to the inheritance tax return for the estate of the decedent
12 that identifies the trust or other property interest that constitutes Oregon special marital
13 property and that affirms that the identified property meets the requirements of Oregon
14 special marital property under section 2 of this 2005 Act and will be administered as required
15 under section 2 of this 2005 Act; or

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

17 (2) For a trust or other property interest described in section 2 (3) of this 2005 Act, in
18 order for any portion of the trust or other property interest to be Oregon special marital
19 property, in addition to the election of the executor described in subsection (1) of this sec-
20 tion, the surviving spouse and each beneficiary who is living at the time of the election and
21 who may be eligible for a distribution from the trust or other property interest during the
22 lifetime of the surviving spouse shall make an election and written consent that is in sub-
23 stantially the following form:

24
25
26 **CONSENT TO ESTABLISHMENT OF**
27 **OREGON SPECIAL MARITAL PROPERTY**
28

29 (a) **ELECTION TO BE SIGNED BY ALL BENEFICIARIES EXCEPT THE SURVIVING**
30 **SPOUSE:** Each of the undersigned acknowledge and consent to a portion of the
31 _____ (name of trust or other property interest) being set aside as a separate
32 share or trust in order to qualify for the Oregon special marital property election in ac-
33 cordance with section 2 of this 2005 Act, for the primary purpose of reducing or eliminating
34 the Oregon inheritance tax due on the estate of _____ (name of decedent). The
35 undersigned together with the surviving spouse constitute all of the persons living on the
36 date of this election who may be entitled to a distribution during the lifetime of the surviving
37 spouse from the _____ (name of trust or other property interest). Each of the
38 undersigned, both on behalf of the undersigned and on behalf of the unborn lineal descend-
39 ants of the undersigned, irrevocably agrees to release all rights to distributions from the
40 Oregon special marital property during the lifetime of the surviving spouse. Each of the
41 undersigned agrees that all other provisions of the _____ (name of trust or
42 other property interest) shall remain in effect and that, upon the death of the surviving
43 spouse, any remaining Oregon special marital property shall be distributed as otherwise
44 provided in the trust or other property interest.
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Signature of: _____ (beneficiary)

Signature of: _____ (beneficiary)

(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 section 2 of this 2005 Act, for the primary purpose of reducing or eliminating the Oregon inheritance tax due on the estate of _____ (name of decedent). I, together with all of the other individuals executing the election in accordance with section 2 of this 2005 Act, constitute all of the persons living on the date of this election 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 may sign the election on behalf of the minor beneficiary and the unborn lineal descendants of the minor beneficiary.**
- SECTION 4.** For purposes of computing the tax imposed under ORS 118.010, the gross estate of a decedent who was a surviving spouse with respect to property that is Oregon special marital property under section 2 of this 2005 Act shall include the Oregon special marital property, valued as of the date of death of the surviving spouse.
- SECTION 5.** (1) An Oregon inheritance tax return that is filed with respect to a death occurring on or after January 1, 2002, and before the effective date of this 2005 Act, may be amended to make the elections described in sections 2 and 3 of this 2005 Act on or before the later of:
 - (a) December 31, 2006; or**
 - (b) The deadline otherwise prescribed by law for the filing of an amended inheritance tax return.**
- (2) An inheritance tax return that is originally filed on or after the effective date of this 2005 Act may be amended to make the elections described in sections 2 and 3 of this 2005 Act as otherwise prescribed by law.**
- (3)(a) If a refund is made as the result of the filing of an amended return that is allowable**

1 because of the date for filing amended returns under subsection (1)(a) of this section, the
2 refund may not bear interest, unless the refund is made on or after March 1, 2007.

3 (b) A refund described in paragraph (a) of this subsection that is made on or after March
4 1, 2007, and attributable to the elections described in sections 2 and 3 of this 2005 Act shall
5 bear interest as prescribed in ORS 305.220, for the period beginning March 1, 2007, and ending
6 on the date the refund is made.

7 (4) Once made, an election described in sections 2 and 3 of this 2005 Act is irrevocable.

8 SECTION 6. This 2005 Act takes effect on the 91st day after the date on which the reg-
9 ular session of the Seventy-third Legislative Assembly adjourns sine die.

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