

House Bill 3421

Sponsored by Representative SCOTT (at the request of Roger Reif)

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**.

Modifies Oregon inheritance tax. Imposes tax as percentage of taxable estate.
Applies to estates of decedents who die on or after January 1, 2006.

A BILL FOR AN ACT

Relating to inheritance taxes; creating new provisions; amending ORS 118.005, 118.007, 118.010, 118.100, 118.120 and 118.160; and repealing ORS 118.009.

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 tax purposes whether or not such estate is subject to administration.

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

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

[(7) "*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)] (7) "Personal representative" means personal representative as defined in ORS 111.005.

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

(9) "Taxable estate" has the meaning given that term in section 2051 of the Internal Revenue Code.

(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,

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 unless a different meaning is clearly required or the term is specifically defined in ORS 118.005 to
 2 118.840. Any reference in ORS 118.005 to 118.840 to the Internal Revenue Code means the federal
 3 Internal Revenue Code as amended and in effect on December 31, [2000,] **2004**, except where the
 4 Legislative Assembly has specifically provided otherwise.

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

6 118.010. (1) A tax is imposed upon [*a transfer of property and any interest therein, within the ju-*
 7 *risdiction of the state, whether belonging to the inhabitants of this state or not, which passes to or vests*
 8 *in any person or persons, or any body or bodies politic or corporate, in trust or otherwise, or by reason*
 9 *whereof any person or body politic or corporate shall become beneficially entitled, in possession or ex-*
 10 *pectation, to any property or interest therein or income thereof.*] **the taxable estate of a decedent**
 11 **that is within the jurisdiction of the state, as provided for in this section.**

12 (2) The tax imposed under this section shall equal [*the maximum amount of the state death tax*
 13 *credit allowable against the federal estate tax under section 2011 of the Internal Revenue Code*]
 14 **_____ percent of the taxable estate of the decedent.**

15 (3) In the case of a resident decedent owning property outside of the jurisdiction of this state
 16 at the time of death, the tax imposed under this section shall be the amount determined under sub-
 17 section (2) of this section multiplied by a ratio. The numerator of the ratio shall be the sum of the
 18 appraised value of the decedent's real property located in Oregon, tangible personal property located
 19 in Oregon and intangible personal property located both in and outside of Oregon. The denominator
 20 of the ratio shall be the total appraised value of the decedent's gross estate.

21 (4)(a) In the case of a nonresident decedent owning property within the jurisdiction of this state
 22 at the time of death, the tax imposed under this section shall be the amount determined under sub-
 23 section (2) of this section multiplied by a ratio. The numerator of the ratio shall be the sum of the
 24 appraised value of the decedent's real property located in Oregon, tangible personal property located
 25 in Oregon and intangible personal property located in Oregon. The denominator shall be the total
 26 appraised value of the decedent's gross estate.

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

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

33 [(6)] (5) Payment, in whole or in part, of inheritance and estate taxes from funds of an estate
 34 or trust on any benefit subject to tax under ORS 118.005 to 118.840 is not to be considered as a
 35 further taxable benefit, when such payment is directed by decedent's will or by a trust agreement.

36 [(7) *If the federal taxable estate is determined by making an election under section 2032 or 2056*
 37 *of the Internal Revenue Code or another provision of the Internal Revenue Code, or if a federal estate*
 38 *tax return is not required under the Internal Revenue Code, the Department of Revenue may adopt*
 39 *rules providing for a separate election for state inheritance tax purposes.*]

40 **SECTION 4.** ORS 118.100 is amended to read:

41 118.100. (1) The tax provided for in ORS 118.010 shall be paid to the Department of Revenue on
 42 the date the federal estate tax is payable. If interest is paid on federal estate tax installments re-
 43 sulting in a reduction of the federal estate tax, and the department determines, pursuant to an
 44 amended return or refund claim, that the amount of tax imposed by ORS 118.010 is less than the
 45 amount theretofore paid, the excess tax shall be refunded by the department with interest at the

1 rate established by ORS 305.220 for each month or fraction thereof during a period beginning on the
2 date the amended return or refund claim is filed to the time the refund is made.

3 (2) If the amount of federal estate tax reported on a United States estate tax return is changed
4 or corrected by the Internal Revenue Service or other competent authority, resulting in a change
5 in the [*maximum state death tax credit allowable under the federal estate tax law*] **amount of tax due**
6 **under ORS 118.005 to 118.840**, the executor shall report the change or correction in federal estate
7 tax to the department. If the federal change or correction results in a reduction [*of the allowable*
8 *state death tax credit*] **in the amount of tax due**, the report of the change or correction shall be
9 treated by the department as a claim for refund pursuant to ORS 305.270 and, notwithstanding the
10 limitations of ORS 305.270, shall be deemed timely if filed with the department within two years af-
11 ter the federal correction was made. If the change or correction results in an increase in the [*state*
12 *death tax credit allowable on the federal estate tax return*] **amount of tax due**, the department may
13 issue a notice of deficiency within two years after the federal change or correction was made or
14 within two years after receiving a report of the federal change or correction, whichever is the later.
15 Any executor filing an amended federal estate tax return shall also file an amended return with the
16 department within 90 days thereafter.

17 (3)(a) In the case of an estate that contains property that is valued under section 2032A of the
18 Internal Revenue Code for federal estate tax purposes (relating to the valuation of certain farm or
19 other property) and that ceases to qualify for valuation under section 2032A, an additional tax under
20 ORS 118.005 to 118.840 shall be imposed. The additional tax shall equal the amount of [*any increase*
21 *in the state death tax credit allowable under section 2011 of the Internal Revenue Code*] **the increase**
22 **in the taxable estate of the decedent** that is attributable to the change in the value of the estate
23 resulting from the imposition of additional federal estate tax under section 2032A, **multiplied by**
24 **the tax rate under ORS 118.010.**

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

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

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

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

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

39 **SECTION 5.** ORS 118.120 is amended to read:

40 118.120. (1) In the case of an estate that contains a qualified family-owned business interest, an
41 additional tax shall be imposed under ORS 118.005 to 118.840 if:

42 (a) The value of the interest was originally taken as a deduction under section 2057(a) of the
43 Internal Revenue Code in computing the value of the taxable estate for federal estate tax purposes;
44 and

45 (b) An additional federal estate tax is imposed with respect to the qualified family-owned busi-

1 ness interest for the reasons stated in section 2057(f) of the Internal Revenue Code.

2 [(2)(a)] (2) The additional tax imposed under this section shall equal the amount of any [allow-
3 able increase in the state death tax credit under section 2011 of the Internal Revenue Code if the ap-
4 plicable percentage of the family-owned business interest that is being disqualified under section 2057(f)
5 of the Internal Revenue Code were added to the] **increase in the** taxable estate for federal estate tax
6 purposes, **multiplied by the tax rate under ORS 118.010.**

7 [(b) The applicable percentage to be used in calculating the additional tax under this subsection
8 shall equal the applicable percentage used in calculating the additional federal estate tax under section
9 2057(f)(2)(B) of the Internal Revenue Code.]

10 (3) The Department of Revenue must be notified of the qualified family-owned business interest
11 being made subject to additional federal estate tax under section 2057(f) of the Internal Revenue
12 Code at the same time and in the same manner as the Internal Revenue Service is notified of the
13 additional federal tax.

14 (4) The period for assessment of the additional tax imposed under this section, including any
15 penalty or interest, shall be two years from the date on which the department receives the notice
16 described in subsection (3) of this section.

17 (5) The other provisions of ORS 118.005 to 118.840 and ORS chapter 305 shall apply to the ad-
18 ditional tax imposed under this section in the same manner in which those provisions apply to the
19 tax imposed under ORS 118.010.

20 **SECTION 6.** ORS 118.160 is amended to read:

21 118.160. (1) Except as provided in subsection (2) of this section[:]

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

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

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

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

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

33 [(D) January 1, 2006, unless the value of the gross estate is \$1 million or more], **an inheritance**
34 **tax return is required to be filed under ORS 118.005 to 118.840 whenever a federal estate tax**
35 **return is required to be filed and any property of the decedent is within the jurisdiction of**
36 **this state under ORS 118.010.**

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

45 **SECTION 7.** The amendments to ORS 118.005, 118.007, 118.010, 118.100, 118.120 and 118.160

1 by sections 1 to 6 of this 2005 Act apply to estates of decedents who die on or after January
2 1, 2006.

3 SECTION 8. ORS 118.009 is repealed.

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