

PROBATE ADVISORY COMMITTEE
Probate Law Revision

Forty-fourth Meeting
(Joint meeting with Bar Committee on Probate Law and Procedure)

Dates) 1:30 p.m., Friday, January 19, 1968
and)
Times) 9:00 a.m., Saturday, January 20, 1968
Place: Suite 2201 Lloyd Center
(This Board Room is at the head of the spiral
stairway on the Central Plaza, or take elevator
to the medical section.)
Portland, Oregon

Suggested Agenda

1. Approval of minutes of December meeting.
2. Miscellaneous matters.
3. Inheritance Tax. Tab 27.
Miss Lisbakken and special committee.
4. Report by subcommittee on Discharge of Encumbrance. Tab 19.
Mr. Butler.
5. Discussion of Section on effect of "pay my just debts."
Mr. Riddlesbarger.
6. Power--Authority--Duty of Personal Representative. Tab 15.
Draft by Professor Mapp.
7. Escheat. Tab 26.
Mr. Carson.
8. Ancillary Administration. Tab 24.
Professor Mapp, Mr. Riddlesbarger.

PLEASE NOTE: Meeting Place, Lloyd Center.

ADVISORY COMMITTEE
Probate Law Revision

Forty-fourth Meeting, January 19 and 20, 1968
(Joint Meeting with Bar Committee on Probate Law and Procedure)

Minutes

The forty-fourth meeting of the advisory committee (a joint meeting with the Committee on Probate Law and Procedure, Oregon State Bar) was convened at 1:30 p.m., Friday, January 19, 1968, in Suite 2201, Lloyd Center, Portland, by Chairman Dickson.

The following members of the advisory committee were present: Dickson, Allison, Butler, Gooding, Husband, Lisbakken, Mapp and Riddlesbarger; Carson and Frohnmayer attended the Saturday session. Zollinger and Jaureguay were absent.

The following members of the Bar Committee were present: Bettis, Buhlinger, Gilley, Heisler, Krause, Lovett, Meyers, Mayer, McKay, Rhoten, Thalsofer, Shetterly, Smith and Thomas. Anderson, Field, Kraemer, Piazza, Pendergrass, Richardson and Warden were absent.

Also present was Donald Georgeson, an appointee of the advisory committee, who had worked on the preparation of the proposed revised Oregon probate code, Estate Tax.

Also present was James Sorte from the staff of Legislative Counsel.

Approval of the Minutes

A motion was made, seconded and carried to approve the minutes of the December 1967 meeting.

Miscellaneous Matters

The committees discussed the possibility of moving the meetings to Salem and Senator Husband said that he would investigate the problem of space and advise the members at the next meeting.

Sorte advised the committee of the Supreme Court decision regarding the unconstitutionality of Oregon's alien law. A

section will be prepared to repeal this section of Oregon law.

Miss Lisbakken informed the members of a meeting she had with the Public Service and Information Service Committee of the Oregon State Bar regarding Mr. Dacey's book on "How to Avoid Probate." They prepared the following recommendations, which have not been approved by the full committee:

"To obtain enactment of the code by the legislature.

"To create public demand for its passage.

"To improve the image of the Oregon State Bar and its members.

"To appoint one person in charge of implementing this program.

"To have the announcement timed for early September and to carry on a public campaign thereafter.

"Prepare press releases stating the need for the new code, state-wide to all news media.

"The history of its preparation.

"The good it will accomplish for the public and what is necessary to obtain its enactment.

"A contribution of the Oregon State Bar for better judicial procedures.

"Prepared by experienced persons.

"Answer questions concerning the new code.

"Emphasize that revisions were started before the Dacey book was published.

"Announce to members of the Bar and mail and urge support of code.

"Advertise financial implications.

"A staffer to go with bank statements to enlist public support of the program.

"A flyer by savings and loan associations.

"A questionnaire to legislative candidates asking them

to endorse this legislation. Publish their answers in the Bar Bulletin and press releases.

"Followup of Bar members, encouraging support.

"Appearances on TV interview shows.

"Public service announcements, on radio.

"Have Bar announce results of a poll and appraise the proper committee and mail to each legislative representative before the convening date.

"Lobbying, as much personal contact as possible.

"It is not intended to limit to the means mentioned, but get to all fields that can be reached, always keeping in mind objective two, the public image."

Allison pointed out that this is not just a Bar effort, but the Bar Committee sitting with the Law Improvement Committee.

Butler pointed out that the lawyers are about equally divided in Wisconsin, for and against their new code. Dickson also mentioned that the small newspaper publishers might be opposed because of the loss of revenue due to the fewer number of notices to be published, the content and number of times of publication. He also felt that any policy decisions should be made by the Law Improvement Committee since they appointed the advisory committee, which subsequently called upon the Bar committee to help with the program. The Chairman asked Miss Lisbakken to act as the representative of the committee to meet with the Law Improvement Committee and the Bar Committee and obtain the approval of the Law Improvement Committee and direction from them on the steps to be taken by this committee.

Inheritance Tax (The draft discussed is Appendix A to these minutes without the changes made at the meeting)

Miss Lisbakken outlined the background of the work of the subcommittee which consisted of members Carson, Butler and Braun and Don Georgeson. The committee has been attempting to get information on the rates from the State Treasurer's office, but as yet nothing definite has been determined. She said that they have arranged to have information from the State Treasurer's office on inheritance tax returns computed to give information on the rate necessary under the proposed estate tax, rather than an inheritance tax, to

yield the same amount of revenue to the state as is presently being paid.

Butler commented on the subcommittee's appearance before the Legislative Tax Study Committee at which time they requested that committee's assistance in getting information that is needed from the State Treasurer. He indicated the Legislative Tax Study Committee had expressed no concern about their approach to the inheritance or estate tax and that they expressed their appreciation for their appearance.

Miss Lisbakken read parts of an interpretation of federal estate and gift tax from a book written by Mr. Bittker. On a suggestion by Senator Husband the chairman asked that this article read by Miss Lisbakken be reproduced and furnished to the members of the committee.

In discussing Husband's comment that inheritance tax is the third largest revenue producing tax in Oregon, Georgeson estimated the tax amounts to 3 1/2 to 4 percent of the total revenue. Husband suggested that a table be prepared showing the relationship of the inheritance tax to the total of all tax collected.

Riddlesbarger asked whether or not the committee was to go through the entire proposal before they decided on whether to accept the idea or not. Miss Lisbakken and Butler indicated that prior approval of the theory had been obtained from the committee for the estate tax. Husband did not feel the committee, or at least he, could accept the estate tax until he was sure of the rates that would be imposed.

Miss Lisbakken outlined the proposed change from inheritance tax to estate tax would follow the federal estate tax, as much as possible, for simplicity of administration and preparation of tax returns.

Miss Lisbakken read through the entire proposed revision and requested the following changes be made:

Section 240, page 7, delete "255" and insert "225" and in the same line, delete "renouncing," and insert "renunciation."

Section 300, on page 9, delete "300" and insert "310."

Section 330, section (1), page 12, after "before" delete "the date prescribed for filing of the Oregon estate tax return" and insert "the expiration of 15 months from the date of decedent's death." Page 13, delete "date prescribed

for the filing of the Oregon estate tax return" and insert "expiration of 15 months from the date of decedent's death."

Section 520, page 18, subsection (1), after "payment" insert the words "at that time."

Section 530, page 19, delete "a bond is given" and insert "an extension is granted." On page 20, after the period, insert "or expiration of the extension period, whichever first occurs."

Section 550, page 21, after the period insert, "The recorder of deeds shall charge and collect, for the use of the county, the sum of 25 cents for recording each receipt or certificate." In section (3) "Recorder of Deeds" should be "recorder of deeds" and "transfer tax" should be "Transfer Tax."

Section 605, page 22, after "unless" insert "in the discretion of the Treasurer."

Section 610, page 23, delete "615" and insert "620."

Section 630, page 26, delete "State" in "Oregon State Tax Court", and in the next to the last line of subsection (1) insert "Oregon" before "Tax Court." On page 27, delete "by the Treasurer, or the claim for additional refund is asserted by the plaintiff,".

Miss Lisbakken mentioned that chapter 118, the last two sections, should be incorporated after sections 8 and 9. ORS 118.810 through 118.880.

Gilley noted that the discount provision had been eliminated. Georgeson pointed out that several provisions had been deleted from existing law, including exemptions for insurance, homestead and elimination of discounts in order to offset to some extent the loss from the collateral tax elimination.

The committee did not consider the gift tax because this was not in the directive to the committee, but it was agreed that the gift tax law would have to be completely revised to conform to the proposed code.

Allison asked if it was the intention of the subcommittee that a return be filed for every estate. Miss Lisbakken noted that this is presently required by regulation of the Treasurer, who feels there are presently too many deaths they are not aware

of and too much property being transferred without the knowledge of the State Treasurer.

The committee discussed the \$25,000 exemption, the marital deduction, specific exemptions and deductions for debts, claims, last illness, administration, etc., and the proposed rates. Miss Lisbakken again pointed out that the committee had approved the revision and adoption of an estate, as opposed to the existing inheritance tax, with a marital deduction similar to the federal deduction.

Allison brought up the question of whether or not this revision should be presented as a separate measure, apart from the actual probate code, to the legislature. The feeling was that they would perhaps be sent to two different committees of the legislature if introduced separately, but it would be up to the Law Improvement Committee.

On a question regarding the three-year provision in Section 610, on page 2, Georgeson pointed out that this is present law, both state and federal.

Dickson expressed the opinion that the committees should approve this proposal and then submit it to the State Treasurer for his consideration regarding the substantive provisions, before the rates are determined, which will be costly and time-consuming.

Allison expressed concern about the determination of the effect of the marital deduction on the tax rates. Dickson said that he did not feel this would be too difficult after the information from the State Treasurer had been prepared for the computer.

Dickson then asked the committee to go through the proposal, section by section, for explanation and discussion. Georgeson outlined the general provisions of each section.

Tax Imposed

Section 100. Rate of Tax.

Gross Estate

Section 200. Definition of Gross Estate.

Section 205. Property in which the Decedent had an Interest.

Riddlesbarger noted that this was the main section under

Gross Estates.

Shettlerly raised the question, under Section 200, about the meaning of the words "within the jurisdiction of the state." Riddlesbarger agreed that it was more a reference to territory and perhaps should be "subject to the jurisdiction of the state." Dickson pointed out that if there is a reciprocal tax policy with Oregon, to permit Oregon to take personal property at the domicile, Oregon will recognize the same rights of other states to tax in Oregon. Georgeson read Section 118.060 of present Oregon law and commented that the proposal is to eliminate the necessity for looking to the other state to see what type of law they had to determine whether Oregon would tax the estate. Because "within the jurisdiction of the state." is included in present Oregon law; it was the general feeling of the committee that it should be retained.

Section 210. Transactions in Contemplation of Death.

This is incorporated directly from the federal law.

Section 215. Transfers with Retained Life Estate.

This is incorporated from the federal law and is also present Oregon law.

Riddlesbarger inquired about the penalty in this connection, but Georgeson indicated it was covered in the gift tax law, Section 119.100.

Rhoten expressed concern about the phrase "money or money's worth" but others did not feel this was a problem.

Georgeson explained that the distinction of whether these gifts were made prior to or subsequent to 1931, as provided in the federal law, was eliminated and made excludible, regardless of when the transfer was made.

Section 220. Transfers taking Effect at Death.

This provision was taken from the federal law with the elimination of the differences resulting from dates or time of transfer. This is a change from Oregon law, as the State Treasurer presently interprets it.

Section 225. Revocable Transfers.

Georgeson indicated a change on page 4, after "in" and before "money's" insert "money or."

Subparagraph (b) is in the federal law but not in the state. The rest remains the same as present law.

Section 230. Annuities.

This provision was taken from the federal statute. The difference from the state statute is the \$20,000 exemption limit is eliminated.

Section 235. Joint Interests.

This is taken from the federal statute and is a change from existing law in that the entirety exemption of one-half of real property held by husband and wife under present law is eliminated. The husband's contribution would be all includible.

The committee discussed the Oregon Supreme Court Erickson decision in relation to this section.

Section 240. Powers of Appointment.

With modification this was taken from the federal law, and contains reference to the Internal Revenue code. Basically it doesn't change existing Oregon law very much.

Section 245. Proceeds of Life Insurance.

This section adopts the federal approach and all proceeds are taxable. This section also eliminates the exemptions under current Oregon law.

Section 250. Transfers for Insufficient Consideration.

This is from the federal statute.

Shetterly questioned the use of the words "dower and curtesy" since this would be abolished in the new probate code. Georgeson indicated it was left in because it would apply to transfers that have already taken place in other states.

Section 255. Prior Interests.

Basically, this is from the federal.

Taxable Estate

Section 300. Definition of Taxable Estate.

Section 310. Exemption.

The exemption is \$25,000 rather than the current \$15,000.

Section 320. Expenses, Indebtedness, and Taxes.

This section was taken from the federal law but modified to take into account the possibility that portions of the estate might not be subject to tax because of non-residence or located in another state.

Rhoten asked if heirs could advance the cash to pay the taxes or if the claims had to be paid from property included in the gross estate. In discussing this the members decided that an heir could pay a claim and still have it deducted from the gross estate. Gilley suggested that it might simplify paragraphs (a), (b), (c) and (d) by deleting "from property included in the gross estate" from each paragraph.

The committee also discussed the allowance of expenses of the estate including funeral expenses. Bettis pointed out that this was covered in Tab 18 under Claims.

The committees recessed until 9 o'clock Saturday morning, January 20, 1968.

The meeting was reconvened at 9 a.m., Saturday, January 20, 1968, by Chairman Dickson in Suite 2201, Lloyd Center, Portland.

The following members of the advisory committee were present: Dickson, Allison, Butler, Carson, Frohnmayer, Husband, Lisbakken, Mapp and Riddlesbarger.

The following members of the Bar committee were present: Buhlinger, Gilley, Heisler, Krause, Meyers, Mayer, McKay, Rhoten, Thalhofer, Shetterly, Smith and Thomas.

Also present was James Sorte.

Discussion continued on Section 320. Georgeson suggested that this section be rewritten because of the problems involved. Dickson requested that the subcommittee correct the problems in Section 320, as well as in Section 235, relating to property held as joint tenants, if they felt it necessary.

Section 330. Transfers for Public, Charitable and Religious Uses.

Subsection (1) was taken from the federal code and paragraph (a) is somewhat broader than present Oregon income tax law because it designates the United States as a donee.

Paragraph (b) is also taken from the Oregon income tax law, with minor modification. Paragraph (c) is from the Oregon income or gift tax law and (d) is from the Oregon income tax law. The designation of charitable donees are the same form that were included in the Bar bills that were passed by the last legislature, but were vetoed by the Governor.

Riddlesbarger brought up the question of use of the words "private stockholder" where they are unincorporated institutions, in paragraphs (b) and (c). After discussion the members concurred in the following amendment: In the last line of subparagraphs (b) and (c), after "stockholder" insert ", member".

In considering subparagraph (d) Allison pointed out that the terms "contributions and gifts" had been used in place of the usual "legacies and devises" and Dickson asked that this be corrected editorially.

Subsection 3 was taken from the federal law.

Section 340. Bequests, etc., to Surviving Spouse.

This section is the federal deduction provision.

In discussing subsection (2), Georgeson pointed out that the subcommittee did not attempt to follow state or federal regulations in preparing the revision.

Riddlesbarger expressed the opinion that this would be the cause of more dissension among members of the Oregon State Bar than anything the committee has done, because most lawyers don't attempt to learn about marital deductions, but turn it over to accountants.

Butler pointed out that the subcommittee had been given a mandate from the joint committees to draft an estate tax which would incorporate a marital deduction provision, provide administrative determination rather than judicial determination of the tax and would result in no loss of revenue to the State of Oregon.

Mapp discussed the possibility of following the federal law completely, including raising the exemption to \$60,000, to make it easier for the attorneys to follow. The feeling was that the State Treasurer would not go along with this suggestion. Frohnmayer asked if the marital deduction could be dropped and Georgeson indicated it could, except the present law has the homestead exemption and if this section

were dropped it would take away the exemption the widow now has.

Butler asked the committee to reconsider its original action in approving the estate tax approach to inheritance taxation. Husband did not want to vote on this matter until it was known what the rates would be. Riddlesbarger opposed any vote until the entire proposal had been reviewed.

Allison complimented the committee on their work, asked that the committee complete the discussion of the draft and then asked that this draft be introduced as a separate bill, apart from the proposed probate code bill. He further recommended that this draft be submitted to the Taxation Committee of the Oregon State Bar for their approval. Dickson indicated an attempt would be made to get their approval.

The members discussed the possibilities of the two measures, i.e., the tax and the probate bills, being introduced separately. Dickson shared Husband's view that they should be introduced in one package and that they would go to the judiciary committee, but not to the tax committee, because it is not a revenue raising measure. The only thing that might be required would be an amendment at a later date to bring it in line with the quantity of revenue produced. He also expressed the view that these changes were long overdue and he thought it was a good idea to reconsider the position originally taken, if the members felt some change should be made.

Husband pointed out to the committees that the present collateral tax has many inequities.

Butler then moved that the committee reaffirm their original position favoring an estate tax, with a marital deduction and administrative determination. The motion was seconded by Frohnmayer. Dickson asked for a vote and the motion carried, with Husband voting no.

Discussion continued on Section 340. Shetterly questioned the time for filing a disclaimer in (b) (i) and Georgeson indicated that the following correction should be made: On page 15, after "interest" insert "before the expiration of 15 months from the date of death."

Credits Against Tax

Section 400. Credit for Gift Tax.

The credit provision was taken from the federal law. Under

present Oregon law it is treated as a prepayment of the death tax.

Section 410. Credit for Tax on Prior Transfers.

This section incorporates the federal approach, providing for a credit provided the second death occurs within ten years. The reference to inheritance tax in subsection (2) was because of the possibilities of an inheritance tax being paid under the old law.

Payment of Tax

Section 500. To Whom Tax Payable.

This is taken from present Oregon law.

Section 510. When Tax Accrues; When Due.

This is also from present Oregon law, with the addition of the provision for an extension granted under Section 520.

Section 520. Extension of Time for Payment of Tax; Bond.

This is a new provision, a change from existing law and taken from the federal code to some extent. Subsection (1) is from the federal law.

Georgeson outlined that the payment period was not extended to the federal 15 months, primarily because of the revenue impact this would have. Butler added that the subcommittee was also concerned about extending the time required for probate in the smaller estates.

Subsection (2) is similar to present Oregon law, but was taken from the federal statute.

Riddlesbarger brought up the question of the type of bond required. Frohnmayer and Gilley agreed it was covered because the Treasurer is given the power to make rules and regulations in such matters.

Mayer asked why there was no provision for discount for prompt payment and Georgeson indicated that this would require an increase in the rates to offset the discount. The members, in discussing this, determined that the effectiveness of a discount was largely dependent upon the money market. There was comment on the possibility of charging the interest from date of death if not paid on the date due, but this was

determined to be unfair.

A motion was made to include a five percent discount for payment within eight months. Dickson asked for a division and there were ten for and eleven against the motion and the motion failed.

Section 530. Interest.

This section is in present Oregon law.

Mayer asked if interest should not be paid by the state on any overpayment. Georgeson agreed, and this could be done, if the overpayment was made with the return when the tax was determined, but that it should not be paid when an overpayment is made before a return has been filed and the tax determined. A motion was made that an appropriate section be included so that if an overpayment results, interest will be paid from the date of payment. Butler asked that it be amended to provide for interest to accrue from the date the claim for refund was made. The amendment was accepted. The motion to include a section so that if an overpayment results, interest is paid from the date the claim for refund is made, carried.

Shetterly asked if the State Treasurer might delay making the refund. Butler replied that he would be required to make the refund immediately. In discussing the time limit of 90 days within which the Treasurer must approve or reject a return, Georgeson thought there should be some point where temporary payment ceases to be a temporary payment if the personal representative thinks he is entitled to a refund and the State Treasurer thinks more tax is due, and he suggested allowing the Treasurer 30 days.

Shetterly moved, second by Rhoten, that the Treasurer make the refund without interest within 30 days after filing of the return, and if not made, interest shall accrue at the rate of six percent per annum. The motion carried. Dickson asked the subcommittee to make that correction in the draft.

Mapp asked what circumstances would constitute necessary litigation or unavoidable delay to give the Treasurer discretion to lower the interest rate to six percent. Georgeson said, for example, a will contest or litigation to determine whether a decedent did or did not own certain property. Dickson added any litigation that would affect the amount of the estate or the people entitled to distribution. Mapp did not believe this was fair to the person who was unable to pay within the eight months but did not have litigation, but the general feeling was that the cost of attorneys fees incurred in

litigation would more than offset the difference in interest rates.

Section 540. Liability for Payment; Lien of Tax.

Rhoten mentioned the fact that heirs are not mentioned in the definition of a personal representative. He felt that if the personal representative does not pay the tax, the heirs should have the right to go in and pay it. Butler pointed out that the definition in Section 700 would cover it, but Rhoten did not think it would.

Carson suggested the following change: After "(1)" insert "If not otherwise paid," and this was accepted by the committee.

Frohnmayr asked who would have the right to the over-payment if there was a disagreement between the personal representative and the heirs and the heirs made the payment on the tax. Thomas wondered if, under this language, the personal representative could pay the tax or would he have to wait to see if anyone else was going to pay it. Butler advised the members that the subcommittee had discussed this situation and the term refund would mean you refund the amount to the person who made the payment and that "refund" was self-explanatory.

Dickson inquired if there shouldn't be some method to enable the personal representative to relieve himself of such liability by forcing an unwilling beneficiary to pay the tax. Miss Lisbakken concurred that some provision should be made. Frohnmayr mentioned the fact that the basic concept is supposed to be that the personal representative is liable only to pay the tax on property that comes into his possession, not on property over which he never gets control.

After discussing the right of the personal representative to collect funds for payment of taxes, Dickson authorized Mapp and Allison to prepare language for insertion in the section on powers and duties of the personal representative to cover this situation. Allison indicated a belief that the personal representative can recover attorney's fees from the estate in situations such as this, but the committee felt that the estate should not pay the attorney's fees, but they should come from the heir who took his benefit and didn't pay the tax. Georgeson and Allison both agreed that such a provision would properly belong in the inheritance tax section.

Allison advised the committee that they had not considered Section 3-614 of the Uniform Probate Code entitled "Uniform Estate Tax Apportionment Act" and he read the following from the latest draft of the Uniform Probate Code:

"Section 3-614. [Apportionment of Estate Taxes.]

"(a) Definitions. For purposes of this section:

"(1) 'estate' means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

"(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, curatelic trustee, guardian of property and trustee;

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

"(5) 'tax' means the federal estate tax and the additional inheritance tax provided by _____ and interest and penalties imposed in addition to the tax;

"(6) 'fiduciary' means executor, administrator of any description or trustee.

"(b) Apportionment among interested persons; valuations; testamentary apportionment. Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose. In the event the decedent's will directs a method of apportionment of tax different from the method described in this act, the method described in the will shall control.

"(c) Apportionment proceedings; jurisdiction; equitable apportionment; penalties and interest; charging fiduciary; court determination of amount of tax.

"(1) the [probate] court where venue over the administration of the estate of a decedent lies, may on

petition for the purpose determine the apportionment of the tax;

"(2) if the [probate] court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable;

"(3) if the [probate] court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the personal representative with the amount of the assessed penalties and interest;

"(4) in any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this act, the determination of the [probate] court in respect thereto shall be prima facie correct.

"(d) Withholding of tax; recovery from estate; bond of distributee.

"(1) the personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this act;

"(2) if property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

"(e) Exemptions; allowance; relationship of donee;

foreign taxes; tax credits; property includable in computation.

"(1) in making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for 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 purposes of the gift shall inure to the benefit of the person bearing such relationship or receiving the gift; except that when an interest is subject to a prior present interest which 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 taxes of a foreign country paid by the decedent or his estate shall inure 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 shall inure 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 section (b) hereof, and to that extent no apportionment shall be made against the property. The sentence immediately preceding shall not apply to any case where the result will be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1954 of the United States, relating to deduction for state death taxes on transfers for public, charitable or religious uses.

"(f) Income interests; life or temporary interests; charging corpus. No interest in income and no estate for years or for life or other temporary interest in any

property or fund shall be subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder shall be chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

"(g) Proceedings for recovery of tax; commencement; liability of fiduciary; apportionment of amount recovered. Neither the personal representative nor other person required to pay the tax shall be under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the three months' period shall not be subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the state was collectable at a time following the death of the decedent but thereafter became uncollectable. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate, who are subject to apportionment.

"(h) Foreign fiduciaries and estates; tax credits.

"(1) a personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax; or an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state shall be prima facie correct.

"(i) Construction. This section embodies the Uniform Estate Tax Apportionment Act and shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it."

Georgeson felt this approach was broader and goes beyond the probate estate. He also indicated the Bar had looked at the Uniform Probate Code approach and felt it was too complicated. Allison agreed.

Dickson advised the members that this was answered by Allison and Mapp who indicated this had been covered during the last meeting. Georgeson said this would not be adequate because there are gifts that pass notwithstanding the estate and the apportionment statute in the tax chapter.

Allison expressed the view that the expenses of administration, including taxes, should come out of the residual estate, which is after the specific devises have been taken care of, but there is no recourse for collecting expenses from the assets or the benefits of nonprobate assets. Mapp didn't completely agree because most of the new statutes in the uniform code do specifically provide for specific apportionment to specific devisees, before distribution of the residue.

Mapp read to the committee from the Uniform Probate Code, Apportionment of Estate Taxes: "Apportionment of all estate taxes, definitions, 1. Estate means gross estate of decedent . . . payable to this state."

Riddlesbarger felt this was in line with his work on the direction meaning in a will the phrase "to pay all debts." Dickson then asked that Riddlesbarger, Mapp and Allison work with Pat Lisbakken and her subcommittee on this matter, and it will be discussed as the first item on the agenda at the next meeting.

Section 540. Liability for Payment; Lien of Tax.

Georgeson indicated this material should be taken under advisement and revised and discussed at another time.

Dickson expressed the opinion that subsection (3) could be eliminated entirely.

Section 550. Receipt.

This is in the present law, but not in the same language. It is also in the probate provisions of the code the committee has been working on. Allison read the revised language and the committee agreed that it would be worthwhile to leave the provision in both places. The reference in the proposed probate code is in Tab 23.

Georgeson suggested an amendment in subsection (4) by deleting "additional" in the last line of page 21. This section was taken from present law.

The meeting recessed at 11:45 a.m.

When the meeting reconvened at 1 p.m., the following members were present: Advisory committee, Dickson, Allison, Butler, Carson, Frohnmayer, Gooding, Husband, Lisbakken and Mapp; Bar committee, Buhlinger, Gilley, Heisler, Krause, Rhoten, Shetterly, Smith and Thomas.

Also present was Sorte.

When the committees reconvened Dickson expressed the regret of the entire committee in losing the services of Mr. Sorte. Allison also thanked him for his help with the work of the committees.

Filing of Return

Section 600. Returns by Personal Representative.

Section 605. Addition to Tax for Failure to File a Return.

This would be a new provision in the Oregon law and it was taken from the federal law.

Husband thought the 25 percent penalty was a little high, and Rhoten agreed.

Frohnmayer agreed that the penalty was too high and would favor eliminating it altogether and failing that, he would like to see it lowered to five percent of the tax. Husband agreed.

Georgeson pointed out that the filing of the return and payment of the tax are two different obligations. Even if the tax is paid within the eight months, the return must be filed within the eight months, an extension obtained or the penalty assessed.

Dickson expressed the opinion that the federal provision for 15 months should be adopted. Butler opposed this because it would open the door to the extension of time for probate of estates. He felt if the penalty was too severe, the answer was not an extension of the time, but to modify the percent of penalty.

Gilley moved to delete from Section 605, starting in the 4th line, "for each month or part of month after the return is due, but no such addition shall exceed 25 percent of the tax." The motion was seconded by Krause and carried.

Section 610. Determination of Tax, Assessment, Limitation, Collection.

In subsection (2) Georgeson pointed out that while this was

in existing law, because of the change from the court granting extensions, it was felt the time should be extended from 60 to 90 days. Gilley felt this language was a little bit difficult to understand and Georgeson agreed that the committee should take this under advisement and perhaps express it more clearly. Dickson requested that this be done.

In subsection (3) Dickson recommended omitting the words "at any time" and Georgeson concurred.

Dickson then suggested changing subsection (3) to read as follows:

"If no return as required under the chapter is filed with the Treasurer, or if a false or fraudulent return is filed with intent to evade the tax, the Treasurer may determine and assess the correct amount of the tax, within six years after the facts are discovered."

Frohnmayr thought the Treasurer should be limited to a shorter period of time than six years in subsection (4) in which to collect the taxes due. Gooding agreed that a two year limit would be sufficient. Dickson suggested this could hold true for both subsection (3) and subsection (4). Frohnmayr then moved that "two years" be substituted for "six years" in subsection (3) and (4). The motion was seconded by Gooding and carried.

Georgeson pointed out that the procedure in subsection (5) for the statute of limitations is similar to the income tax procedure. The committee discussed the periods of time that would be involved in the running of the statute of limitations as it relates to this section. Allison expressed the belief that the 90-day period or 15-day period tells you to get something done, but the statute of limitations tells you when you can assert in court a legal right or remedy, and he did not feel that the 90-day period was intended as a statute of limitations.

Gilley suggested amending the parenthetical clause by deleting "if" and insert "until".

Dickson reread the changes in the first part of the section as follows:

"The running of the limitations provided in this section shall be suspended after the mailing of a notice under Section 620 for the period during which the Treasurer is prohibited from making the assessment or the beginning of a proceeding in court. . ."

At Gilley and Georgeson's suggestion, Dickson asked for

editorial revision of the section because of the inability of so many committee members to understand it.

Section 615. Definition of Deficiency.

This section was taken from the Oregon income tax schedules and similar definitions are included in the federal income and estate tax laws.

Rhoten asked that "personal representative" be deleted from this section and that there be a reference just to "from the time the return is filed" or "upon the filing of the return" because it might be filed by an heir or interested party.

Allison questioned the words "previously assessed" with respect to the filing of a return. He did not feel they could be previously assessed when a return had not been filed.

Frohmayer asked why there was a need for a definition, but Miss Lisbakken indicated it was quite important to have deficiency defined.

Because of the confusion expressed by the members over the section, Georgeson agreed to take this section under advisement.

Section 620. Determination and Notice of Deficiency.

Krause again brought up the definition of personal representative, which he felt should include anybody that filed the return. Georgeson felt it should be limited because of the personal liability involved in other sections. The committee outlined various instances where a person not in constructive or actual possession of property of the estate might file a return.

Dickson asked that the subcommittee make editorial revision of this subsection (1), or perhaps by definition of personal representative.

Allison suggested that subsection (1) be amended in the second sentence, after "and" insert "make."

Allison expressed the opinion that these provisions would be sufficient, because they wouldn't begin to run until the assessment was made.

Section 625. Refund of Tax Erroneously Paid; Limitation.

Rhoten did not feel that this section was clear in subsection (2)

that the claim would be filed with the Treasurer, so Georgeson recommended inserting at the end of the sentence, after the word "filed" the words "with the State Treasurer."

Frohnmayr suggested the time limit in this section should also be made two years. After discussion of this section with relation to Section 610, Frohnmayr moved that the limitation in that section be changed to three years. The motion was seconded by Gooding and carried.

The committee discussed the provision which provides for automatic rejection if the Treasurer fails to act within 90 days. Some felt it should be the other way around, if the claim is not denied within 90 days, it is deemed accepted. Thomas pointed out that there is the right to appeal within 60 days, so the lawyer would have time to take care of it.

Section 630. Appeal.

Georgeson advised the committees that the reference to State Treasurer should be changed to "Treasurer" all the way through.

Gilley expressed doubt that the procedures to be followed in the Tax Court would need to be in the inheritance tax code. Georgeson indicated that these procedures had been included in the income tax law by the last legislature and was written by Judge Howell.

Allison and Thomas both questioned whether having the clerk of the Oregon Tax Court mailing a certified copy constituted service, and if the clerk did not do so, would the appeal be lost. Georgeson felt this was taken care of in the section, because once the two copies were filed with the court, the appeal was perfected.

Members of the committee questioned the provision for a responsive pleading and the fact that no time was stated in which a response was to be made. Dickson suggested editorial revision of the section.

Allison advised the committee that it was his feeling subsections (4) and (5) did not belong in the same section as (1), (2) and (3) because these sections tell how to appeal to the Oregon Tax Court and (4) and (5) provide if a complaint is filed with the court or if no claim is filed with the court. Georgeson agreed that this should be done and they will become subsections (1) and (2) of Section 635.

Shetterly asked if there was further appeal from this Oregon Tax Court and Georgeson advised that Section 305.445 provides for the appeal of any Tax Court decision to the Supreme Court.

Section 700. Definition of Personal Representative.

Rhoten reminded the committees of the discussion on enlarging the definition of the personal representative to include anyone who would file a return. The members further discussed the necessity for a broader definition and Georgeson agreed the sub-committee should reconsider this definition from the standpoint of liability of the personal representative and the notice of deficiency and determine who should be included in the definition of a personal representative.

The committees also discussed the liability of the personal representative, both as to payment of tax on property which he never had under his control and property discovered after the return had been filed and the tax paid and the remainder of the estate distributed. Dickson asked the committees to provide some reciprocal provision to enable the State Treasurer to reach transferees in another state.

Section 710. Disposition of Revenues.

This section taken from present laws.

Section 720. Consent Required for Transfer of Stock or Bonds.

This section was taken from present law.

Georgeson indicated that a new section relating to safety deposit boxes and bank accounts was to be inserted after Section 720, but it has not been done as yet. It would contain the requirements for notifying the State Treasurer of the inventory for boxes and releases of bank accounts. Dickson thought this was under banks and banking laws, but Georgeson said that it was not.

Section 730. Rules and Regulations.

Section 740. Reference to Internal Revenue Code; Intent.

Allison questioned why the reference date to the Internal Revenue Code could not be changed to December 31, 1968, since the proposed tax measure would be presented to the 1969 legislature.

Dickson referred back to Section 100, which applies to the date of the enactment of this chapter. He felt the dates of the probate code and the inheritance tax should coincide, and the probate code is to be effective on January 1, 1970. The committees concurred with this suggestion.

Georgeson pointed out that reference to the Internal Revenue Code and the date, December 31, 1967, is to be deleted wherever it appears in this code, except in Section 740 will refer to the Internal Revenue Code as of December 31, 1968.

Dickson asked if it was the intention of the subcommittee to incorporate the provisions of Sections 118.010 to 118.800 at the end of the draft and Georgeson indicated it was.

Dickson then asked if the subcommittee could complete all of the revisions that have been indicated throughout the draft, submit the draft to the Bar Committee on Taxation and be able to report back with a final draft for the March meeting. The subcommittee agreed that this could be done.

Frohnmayr asked if the comments would be ready at that time and Dickson did not feel it would be necessary to have them in March. Allison felt the comments were going to be very important to the understanding of what has been done in this draft.

Miss Lisbakken then moved the committee approve the Estate Tax Law as indicated by the corrections, additions, deletions and instructions that were given yesterday and today. The motion was seconded by Butler and carried.

Dickson reminded the committees that the draft on apportionment should be ready for the February meeting.

Miss Lisbakken advised the committee that Mr. Georgeson had worked many hours on this draft and was not a member of either committee. Dickson expressed the appreciation of the committees for his work on the estate tax law.

Husband asked if the next meeting would be the 16th and 17th of February and Dickson indicated it would.

Allison advised the committee that the question on discharge of encumbrances has been cleared up so it will not have to be on the agenda and neither will the matter of "pay my just debts". Mapp is to have something ready by next time on Ancillary Administration, which Riddlesbarger feels should be tabled.

Butler moved the meeting adjourned.

The meeting of the committees adjourned at 3:30 p.m.

APPENDIX A

(Minutes, Probate Advisory Committee Meeting,
January 19 and 20, 1968)

Proposed revised Oregon probate code
INHERITANCE TAX
January 19, 1968

TAX IMPOSED

Sec.
100

Rate of Tax

GROSS ESTATE

200	Definition of Gross Estate
205	Property in which the Decedent had an Interest
210	Transactions in Contemplation of Death
215	Transfers with Retained Life Estate
220	Transfers taking Effect at Death
225	Revocable Transfers
230	Annuities
235	Joint Interests
240	Powers of Appointment
245	Proceeds of Life Insurance
250	Transfers for Insufficient Consideration
255	Prior Interests

TAXABLE ESTATE

300	Definition of Taxable Estate
310	Exemption
320	Expenses, Indebtedness, and Taxes
330	Transfers for Public, Charitable, and Religious uses
340	Bequests, etc., to Surviving Spouse

CREDITS AGAINST TAX

400	Credit for Gift Tax
410	Credit for Tax on Prior Transfers

PAYMENT OF TAX

500	To Whom Tax Payable
510	When Tax Accrues; When Due
520	Extension of Time for Payment of Tax; Bond
530	Interest
540	Liability for Payment; Lien of Tax
550	Receipt

ADMINISTRATION

600	Filing of Return
605	Addition to Tax for Failure to File a Return
610	Determination of Tax, Assessment, Limitation, Collection
615	Definition of Deficiency
620	Determination and Notice of Deficiency
625	Refund of Tax Erroneously Paid; Limitation
630	Appeal

MISCELLANEOUS

700	Definition of Personal Representative
710	Disposition of Revenues
720	Consent Required for Transfer of Stock or Bonds
730	Rules and Regulations
740	Reference to Internal Revenue Code; Intent
750	Effective Date

TAX IMPOSED

§100. Rate of Tax.

A tax computed in accordance with the following table is hereby imposed on the transfer of the taxable estate, determined as provided in section 300, of every decedent dying after the date of enactment of this chapter.

GROSS ESTATE

§200. Definition of Gross Estate.

The gross estate of the decedent shall be determined by including, to the extent provided for in this chapter, the value at the time of his death of all property within the jurisdiction of this state exclusive of intangible personal property of a nonresident decedent.

§205. Property in Which the Decedent had an Interest.

The gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

§210. Transactions in Contemplation of Death.

(1) The gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, in contemplation of his death.

(2) If the decedent within a period of three years ending with the date of his death (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) transferred an interest in property, relinquished a power, or exercised or released a general power of appointment, such transfer, relinquishment, exercise, or release shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section and sections 225 and 240 (relating to revocable transfers and powers of appointment); but no such transfer, relinquishment, exercise, or release made before such three-year period shall be treated as having been made in contemplation of death.

§215. Transfers with Retained Life Estate.

The gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death---

(a) The possession or enjoyment of, or the right to the income from, the property, or

(b) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

§220. Transfers Taking Effect at Death.

(1) The gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if---

(a) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and

(b) the decedent has retained a reversionary interest in the property and the value of such reversionary interest immediately before the death of the decedent exceeds five percent of the value of such property.

(2) For purposes of this section, the term "reversionary interest" includes a possibility that property transferred by the decedent---

(a) may return to him or his estate, or

(b) may be subject to a power of disposition by him, but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation. In determining the

value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate. Notwithstanding the foregoing, an interest so transferred shall not be included in the decedent's gross estate under this section if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a general power of appointment (as defined in §240) which in fact was exercisable immediately before the decedent's death.

§225. Revocable Transfers.

The gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death.

§230. Annuities.

(1) The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement (other than as insurance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

(2) Subsection (1) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

(3) Notwithstanding the provisions of this section or of any provision of law, there shall be excluded from the gross estate the value of an annuity or other payment receivable by any beneficiary (other than the personal representative) if the value of such annuity or other payment would be excludible

from the gross estate for Federal estate tax purposes under the provisions of sec. 2039 of the Internal Revenue Code of 1954 as of December 31, 1967.

§235. Joint Interests.

The gross estate shall include the value of all property to the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth; provided, where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person; provided further, where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to

be determined by dividing the value of the property by the number of joint tenants.

§240. Powers of Appointment.

(1) The gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at any time exercised or released a general power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includible in the decedent's gross estate under sections 210 to 255. A disclaimer or renouncing under such power of appointment shall not be deemed a release of such power. The lapse of a power of appointment during the life of an individual possessing the power shall be considered a release of the power.

(2) The provisions of subsection (1) of this section shall not apply to the release of a general power of appointment created prior to August 3, 1955, but shall apply to the exercise of such power.

(3) For purposes of this section, the terms "general power of appointment", "lapse of power" and the "date of creation of power" shall have the same meaning as such terms are defined in section 2041(b) of the Internal Revenue Code of 1954, except the dates therein shall read "August 3, 1955".

§245. Proceeds of Life Insurance.

The gross estate shall include the value of all property--

(1) To the extent of the amount receivable by the personal

representative as insurance under policies on the life of the decedent.

(2) To the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. For purposes of the preceding sentence, the term "incident of ownership" includes a reversionary interest (whether arising by the express terms of the policy or other instrument or by operation of law) only if the value of such reversionary interest exceeded five percent of the value of the policy immediately before the death of the decedent. As used in this paragraph, the term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate, or may be subject to a power of disposition by him. The value of a reversionary interest at any time shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation. In determining the value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or his estate.

§250. Transfers for Insufficient Consideration.

(1) If any one of the transfers, trusts, interests, rights, or powers enumerated and described in sections 210 to 225,

inclusive, and section 240, is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

(2) For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth".

§255. Prior Interests.

Except as otherwise specifically provided therein, sections 210 to 245, inclusive, shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whenever made, created, arising, existing, exercised or relinquished.

TAXABLE ESTATE

§300. Definition of Taxable Estate.

For purposes of the tax imposed by section 100, the value of the taxable estate shall be determined by deducting from the value of the gross estate the exemption and deductions provided for in sections 300 through 340.

§310. Exemption.

For purposes of the tax imposed by section 100, the value of the taxable estate shall be determined by deducting from the value of the gross estate an exemption of \$25,000.

§320. Expenses, Indebtedness, and Taxes.

For purposes of the tax imposed by section 100:

(1) The value of the taxable estate shall be determined by deducting from the value of the gross estate amounts allowable by the laws of this state:

(a) For funeral expenses which are paid from property included in the gross estate;

(b) For administration expenses incurred with respect to property included in the gross estate;

(c) For claims against the estate which are paid from property included in the gross estate; and

(d) For unpaid mortgages on, or any indebtedness in respect of, property where the value of decedent's interest therein undiminished by such mortgage or indebtedness is included in the value of the gross estate.

(2) There shall be deducted in determining the taxable estate amounts representing expenses incurred in administering property not subject to claims which is included in the gross estate to the same extent such amounts would be allowable as a deduction under subsection (1) if such property were subject to claims, and such amounts are paid before the

expiration of the period of limitation for assessment provided in section 610.

(3) (a) The deduction allowed by this section in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded on a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in section 330 for the purposes specified therein, the deduction for such claims shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under section 330 if such promise or agreement constituted a bequest.

(b) Any income taxes on income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes, shall not be deductible under this section.

(c) In the case of the amounts described in subsection (1), there shall be disallowed the amount by which the deductions specified therein exceed the value, at the time of the decedent's death, of property subject to claims, except to the extent that such deductions represent amounts paid before the date prescribed for the filing of the Oregon estate tax return. For purposes of this section, the term "property subject to claims" means property includible in the gross estate of the decedent which, or the avails of which,

would, under the applicable law, bear the burden of the payment of such deductions in the final adjustment and settlement of the estate.

§330. Transfers for Public, Charitable, and Religious Uses.

(1) For purposes of the tax imposed by section 100, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for filing of the Oregon estate tax return)-to or for the use of:

(a) The United States, the State of Oregon or any political subdivision thereof for use exclusively for public purposes within the State of Oregon;

(b) A corporation, trust, community chest, fund, foundation or association organized and operated or which, pursuant to the terms of the instrument containing such devise, bequest, legacy or gift, is to be organized and operated, exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual;

(c) Posts or organizations of war veterans (including their auxiliary units and societies) located

in the State of Oregon no part of the net earnings of which inures to the benefit of any private stockholder or individual; and

(d) A domestic fraternal society, order or association, operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals.

(2) For purposes of this section, the complete termination before the date prescribed for the filing of the Oregon estate tax return of a power to consume, invade, or appropriate property for the benefit of an individual before such power has been exercised by reason of the death of such individual or for any other reason shall be considered and deemed to be an irrevocable disclaimer with the same full force and effect as though he had filed such irrevocable disclaimer.

(3) Property includible in the decedent's gross estate under section 240 (relating to powers of appointment) received by a donee described in this section shall, for purposes of this section, be considered a bequest of such decedent.

(4) If the tax imposed by section 100, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible

under this section, then the amount deductible under this section shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

(5) The amount of the deduction under this section for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

§340. Bequests, etc., to Surviving Spouse.

(1) For purposes of the tax imposed by section 100, the value of the taxable estate shall, except as limited by subsections (2) and (3), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse if such interest is of such character as would qualify for the marital deduction under the provisions of section 2056 of the Internal Revenue Code of 1954, as of December 31, 1967, defined and valued as provided therein, but only to the extent such interest is included in determining the value of the gross estate.

(2) The aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed 50 percent of the value of the adjusted gross estate. For this purpose the adjusted gross estate shall be computed by subtracting from the entire value of the gross estate the aggregate amount of the deductions allowed by section 320.

(3) (a) If under this section an interest would, in the absence of a disclaimer by the surviving spouse, be

considered as passing from the decedent to such spouse, and if a disclaimer of such interest is made by such spouse, then such interest shall, for the purposes of this section, be considered as passing to the person or persons entitled to receive such interest as a result of the disclaimer.

(b) If under this section an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled to receive such interest, then---

(1) If the disclaimer of such interest is made by such person before the date prescribed for the filing of the Oregon estate tax return and if such person does not accept such interest before making the disclaimer, such interest shall, for purposes of this section, be considered as passing from the decedent to the surviving spouse, and

(11) If subparagraph (1) does not apply, such interest shall, for purposes of this section, be considered as passing not to the surviving spouse, but to the person who made the disclaimer, in the same manner as if the disclaimer had not been made.

CREDITS AGAINST TAX

§400. Credit for Gift Tax.

(1) If a tax on a gift has been paid under ORS chapter 119, and thereafter on the death of the donor any amount in respect of the gift is required to be included in the value of the gross estate of the decedent for purposes of this chapter, then there shall be credited against the tax imposed by section 100 the amount of the tax paid on the gift under ORS chapter 119 with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 100 as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate bears to the value of the entire gross estate reduced by the aggregate amount of the charitable and marital deductions allowed under sections 330 and 340.

§410. Credit for Tax on Prior Transfers.

(1) The tax imposed by section 100 shall be credited with all or part of the amount of the Oregon estate tax, or Oregon inheritance tax under corresponding provisions of prior laws, paid with respect to the transfer of property (including property passing as a result of the exercise or non-exercise of a power of appointment) to the decedent by or from a person (herein designated as a "transferor") who died

within 10 years before, or within two years after, the decedent's death. If the transferor died within two years of the death of the decedent, the credit shall be the amount determined under subsection (2). If the transferor predeceased the decedent by more than two years, the credit shall be the following percentage of the amount so determined--

- (a) 80 percent, if within the third or fourth years preceding the decedent's death;
- (b) 60 percent, if within the fifth or sixth years preceding the decedent's death;
- (c) 40 percent, if within the seventh or eighth years preceding the decedent's death; and
- (d) 20 percent, if within the ninth or tenth years preceding the decedent's death.

(2) The credit provided by this section shall be an amount which bears the same ratio to the estate or inheritance tax paid with respect to the estate of the transferor as the value of the property transferred bears to the taxable estate of the transferor (determined for purposes of the estate or inheritance tax) decreased by any estate or inheritance tax paid with respect to such estate and increased by the exemption provided for by section 310, or the corresponding provisions of prior laws, in determining the taxable estate of the transferor for purposes of the estate or inheritance tax. For purposes of the preceding sentence, the estate or inheritance tax paid shall be the Oregon estate or inheritance tax paid increased by any credits allowed against such estate

tax under section 400, or corresponding provisions of prior laws, on account of gift tax, and for any credits allowed against such estate or inheritance tax under this section on account of prior transfers where the transferor acquired property from a person who died within 10 years before the death of the decedent.

PAYMENT OF TAX

§500. To Whom Tax Payable.

The tax imposed by section 100 shall be paid to the State Treasurer.

§510. When Tax Accrues; When Due.

The tax imposed by section 100 takes effect at and accrues upon the death of the decedent, and is due and payable at the expiration of eight months from the death of the decedent unless an extension therefor is granted under section 520.

§520. Extension of Time for Payment of Tax.

(1) If the Treasurer finds the payment of any part of the tax imposed by section 100 would result in undue hardship to the estate or person liable therefor, the Treasurer may extend the time for payment for a reasonable period not in excess of ten years from the date prescribed in section 510 for payment of the tax.

(2) If the value of a reversionary or remainder interest in property is included in the value of the gross estate, the

payment of the part of the tax attributable to such interest may be postponed, at the election of the personal representative, until six months after the termination of the precedent interest or interests in property, under such regulations as the Treasurer may prescribe.

(3) In the event the Treasurer grants an extension of time within which to pay any tax or any deficiency therein, the Treasurer may require the personal representative or other person seeking the extension to furnish a bond in an amount not exceeding three times the amount with respect to which the extension is granted, conditioned upon the payment of the amount extended in accordance with the terms of such extension. The Treasurer may require the renewal of such bond every five years.

§530. Interest.

(1) If the tax imposed by section 100 is not paid within eight months from the accruing thereof, interest shall be charged and collected thereon at the rate of eight percent per year from the time when the tax became due and payable, unless by reason of claims upon the estate, necessary litigation or other unavoidable delay such tax could not be determined and paid as provided in this chapter, in which case interest at the rate of six percent per year shall be charged upon such tax from the time when the tax became due and payable until the cause of such delay is removed, after which eight percent per year shall be charged.

(2) In all cases in which a bond is given under the

provisions of section 520, interest shall be charged at the rate of six percent per year from the time when the tax became due until the date of payment.

(3) If the tax has not been determined, a temporary payment may be made to avoid interest. Should the amount of the temporary payment exceed the amount due, the State Treasurer shall refund the excess without interest.

(4) Payments made after accrual of interest on the tax shall be applied first to interest and then to principal.

§540. Liability for Payment; Lien of Tax.

(1) The tax imposed by section 100 shall be paid by the personal representative.

(2) The tax is a lien upon the property included in the gross estate until paid, and the person to whom such property is transferred, and the personal representative and trustee of every estate embracing such property, are personally liable for the tax until its payment, to the extent of the value of such property in the actual or constructive possession of such person, personal representative or trustee at the date of death.

(3) A personal representative has power to sell as much of the property included in the gross estate which is in his possession as will enable him to pay the tax, in the same manner as he is authorized to do for the payment of the debts of the decedent.

(4) Any part of the gross estate sold for purposes of administration or distribution shall be divested of the lien

of the tax and such lien shall be transferred to the proceeds of the sale. A mortgage on property executed for purposes of administration or distribution shall constitute a lien upon the property prior and superior to the estate tax lien, which estate tax lien shall attach to the proceeds of the mortgage.

§550. Receipt.

(1) The State Treasurer shall give the personal representative or other person paying the tax imposed by section 100 a receipt as provided by ORS 293.290, which shall be a proper voucher in the settlement of his account, or, if no tax is found by the Treasurer to be due, a certificate to that effect. The receipt or certificate shall identify the real property included in the gross estate if the decedent's estate is not being probated in the county wherein such property is situated.

(2) No personal representative is entitled to approval of his final account by the court until he files a receipt or certificate, or a copy thereof certified by the Treasurer, with the court, or unless bond approved by the Treasurer has been filed as prescribed by section 520.

(3) The receipt or certificate may be recorded in the office of the Recorder of Deeds in the county in which real property is situated, in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

(4) The Treasurer shall, upon the payment of \$2, issue to any person demanding the same, a copy of the receipt or certificate issued under subsection (1). No additional charge

for copies of a receipt or certificate shall be made by the Treasurer if issued at the time of the issuance of the original thereof.

FILING OF RETURN

§600. Returns by Personal Representative.

The personal representative of every decedent leaving a gross estate as defined in this chapter shall make a return with respect to the tax imposed by this chapter.

(2) The return shall be filed with the Treasurer prior to the expiration of eight months from the date of decedent's death unless within such period written application is made for an extension, whereupon the due date of the return shall be automatically extended to the expiration of fifteen months from the date of decedent's death. The Treasurer may grant such further extensions of time for filing the return as he may deem reasonable. No extension of time for filing the return shall extend the time within which the tax imposed by this chapter is due and payable.

§605. Addition to Tax for Failure to File a Return.

If a timely return is not made and filed as required by this chapter, then, unless the failure to file was due to reasonable cause, five percent of the tax imposed by section 100 shall be added thereto for each month or part of month after the return is due, but no such addition shall exceed 25 percent of the tax. Any such addition to the tax shall be collected at the same time, in the same manner, and as a part of the tax.

§610. Determination of Tax; Assessment; Limitation; Collection.

(1) As soon as practicable after the return is filed, the State Treasurer shall examine the same and shall determine the correct amount of the tax.

(2) Except as provided in subsection (3) of this section, the amount of tax imposed by this chapter shall be assessed within 90 days after the return is filed, or within such additional time thereafter as may be fixed by written stipulation between the Treasurer and the personal representative, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(3) If no return as required under this chapter is filed with the Treasurer, or if a false or fraudulent return is filed with intent to evade tax, the Treasurer may determine and assess the correct amount of tax at any time after the facts are discovered, but in no event after the lapse of six years from the time the facts are discovered.

(4) Whenever the assessment of the tax imposed by this chapter has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by a proceeding in court, but only if begun within six years after the assessment of the tax.

(5) The running of the statute of limitations provided in this section shall be suspended, after the mailing of a notice under section 615, and the period during which the Treasurer is prohibited from making the assessment or beginning a proceeding in court (and in any event, if a proceeding in respect of the deficiency becomes final), and for 60 days

thereafter.

§615. Definition of Deficiency.

As used in this chapter, the term "deficiency" means:

(1) The amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the personal representative upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed, or collected without assessment, as a deficiency, and decreased by the amounts previously refunded or otherwise repaid in respect of the tax; or

(2) If no amount is shown as the tax by the personal representative upon his return, or if no return is made by the personal representative, then the amount by which the tax exceeds the amounts previously assessed, or collected without assessment, as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously refunded or otherwise repaid in respect of such tax.

§620. Determination and Notice of Deficiency.

(1) If the State Treasurer determines that there is a deficiency in respect of the tax imposed by this chapter, he shall send notice of such deficiency to the personal representative by mail. The notice shall state the reason for each proposed adjustment to the return and reference to the statute, regulation or other authority upon which the proposed adjustment is based.

(2) The personal representative shall have the right at any time, by a signed notice filed with the Treasurer, to

waive the restrictions provided in subsection (1) of this section and in section 625 upon the assessment and collection of the whole or any part of the deficiency.

(3) Giving of notice to the personal representative at his last-known address shall constitute the giving of notice of deficiency as prescribed in subsection (1) of this section.

(4) No assessment of any deficiency in respect of the tax imposed by this chapter and no suit for its collection shall be made, begun or prosecuted until the notice required by this section has been given, nor, if a complaint has been filed by the personal representative or other interested person for a review of the deficiency, until the decision of such review has become final.

§625. Refund of Tax Erroneously Paid; Limitation.

(1) When there has been an overpayment of the tax imposed by this chapter, the amount of such overpayment shall be refunded immediately by the State Treasurer.

(2) No such refund shall be allowed or made after three years from the time the tax is paid, unless before the expiration of such period a claim therefor is filed.

(3) When a claim for refund has been filed the Treasurer shall examine it and, within 90 days after such claim is filed or within such additional time thereafter as may be fixed by written stipulation between the Treasurer and the person claiming the refund, the Treasurer shall approve or reject the claim in whole or in part. If the Treasurer fails to act upon any claim within such period, the claim shall be deemed rejected on the last day of such period.

§630. Appeal.

(1) An appeal from the determination by the State Treasurer of a deficiency pursuant to section 620, or from the rejection in whole or in part of a claim for refund filed pursuant to section 625, may be taken by the personal representative by filing a complaint against the Treasurer in the Oregon State Tax Court. An original and one certified copy of the complaint shall be filed with the clerk of the Oregon Tax Court at its principal office at the State Capitol, Salem, Oregon, within 60 days after notice of the deficiency has been given as provided in section 620 or within 60 days after rejection of the claim for refund as provided in section 625. Such filing in the Oregon Tax Court shall constitute the perfection of the appeal. Service upon the Treasurer shall be accomplished by the clerk of the Tax Court filing a certified copy of the complaint with the Treasurer.

(2) The complaint shall state the nature of the plaintiff's interest; the facts showing how the plaintiff is aggrieved and directly affected by the Treasurer's determination, and the grounds upon which the plaintiff contends the Treasurer's determination is erroneous. The complaint shall be entitled in the name of the person filing the same as plaintiff and the Treasurer as defendant. A responsive pleading shall be required of the defendant.

(3) The Oregon Tax Court has jurisdiction to determine the correct amount of the deficiency or refund, even if the amount so determined is greater or less than the amount of the

MISCELLANEOUS

§700. Definition of Personal Representative.

The term "personal representative" wherever it is used in this chapter means the personal representative of the decedent appointed, qualified and acting within this state, or, if there be no personal representative appointed, qualified and acting within the state, then any person in actual or constructive possession of any property of the decedent.

§710. Disposition of Revenues.

The net revenue from the taxes imposed by this chapter and ORS chapter 119, including temporary payments, fees, taxes, interest and penalties, after deduction of refunds, shall be credited to the General Fund as miscellaneous receipts available generally to meet any expense or obligation of this state properly incurred. A working balance of unreceipted revenue from these taxes may be retained for the payment of refunds under this chapter and ORS chapter 119, however, the working balance shall not at the end of any fiscal year exceed \$250,000.

§720. Consent Required for Transfer of Stock and Bonds.

(1) No personal representative or trustee of any resident decedent shall assign or transfer any stock or bonds of any corporation of this state or of any national banking association located in this state standing in the name of the decedent, or in the joint names of the decedent and one

or more other persons, or in trust for the decedent, without first obtaining the consent of the State Treasurer to such a transfer.

(2) No corporation of this state or national banking association located in this state shall transfer any stock or bonds of such corporation or association standing in the name of a resident decedent, or in the joint names of a resident decedent and one or more other persons, or in trust for a resident decedent, without obtaining a written consent from the Treasurer to such transfer. The Treasurer or his representative may examine the shares of stock of such resident decedent at the time of such transfer and also the transfer books of the corporation or association showing such transfer.

(3) Any such corporation or association making any transfer of stock or bonds in violation of the provisions of this section is liable for the payment of the amount of the tax to which the property so transferred is subject, which liability for tax and interest shall be enforced in an action of debt in the name of the state, brought by the Treasurer. In determining whether a decedent is a resident or non-resident of this state, the corporation or association may rely upon the truth of facts stated in an affidavit furnished to such corporation or association.

(4) Nothing in this section shall affect stock properly assigned and held as collateral security.

(5) The Treasurer is empowered to consent to the transfer of any asset standing in the name of a decedent, or in

the joint names of a decedent and one or more other persons, or in trust for a decedent, after payment of the tax imposed by this chapter, or prior to such payment, whenever he deems the transfer may be made without prejudice to the interest of the State of Oregon.

(6) The Treasurer shall, upon the payment of \$2, issue to any person demanding the same, a copy of any consent issued pursuant to the provisions of this section; provided no payment shall be required for any original consent or copies thereof issued at the same time as the original.

§730. Rules and Regulations.

The State Treasurer may, from time to time, make and publish such rules and regulations, not inconsistent with legislative enactments, as he considers necessary under this chapter.

§740. Reference to Internal Revenue Code; Intent.

(1) Any reference in this Act to the Internal Revenue Code means the Internal Revenue Code of 1954, and amendments thereto, in effect on December 31, 1967.

(2) It is the intent of the legislative assembly, by the adoption of this Act, insofar as possible, to provide an estate tax in this state similar to the provisions of the Federal Internal Revenue Code of 1954 relating to the Federal estate tax, modified as necessary by the state's jurisdiction to tax. Insofar as is practicable in the administration of this Act, the State Treasurer shall apply and follow the

administrative and judicial interpretation of the Federal estate tax law.

(3) Notwithstanding the provisions of subsection (2), the Treasurer may determine the tax imposed by this chapter independently of any determination of Federal estate tax by the Internal Revenue Service.