

ADVISORY COMMITTEE

Probate Law Revision

Thirty-fifth Meeting

(Joint Meeting with Bar Committee on Probate Law and Procedure)

Dates) 1:30 p.m., Friday, April 21, 1967
and : and
Times) 9:00 a.m., Saturday, April 22, 1967
Place: Judge Dickson's courtroom
244 Multnomah County Courthouse
Portland, Oregon

Suggested Agenda

1. Approval of minutes of March meeting.
2. Miscellaneous matters.
3. Definition of Ancillary Administration (Mr. Carson and Mr. Zollinger).
4. Partial Distributions (Report by Mr. Richardson, Mr. Tassock and Mr. Keller).
5. Inheritance by Aliens.
6. Conserving Property of Missing Persons, Chapter 127 (Draft reflecting committee action at the March meeting).
7. Presumption of Death (Report by Professor Mapp and Mr. Richardson on whether or not the seven year presumption should be shortened, and the effect a change might have on the evidence code).
8. Inheritance Tax (Mr. Carson, Mrs. Braun and Miss Lisbakken).
9. Uniform Simultaneous Death Act, as amended (Recommendation of Mr. Frohmayer and Mr. Piazza of whether or not the Oregon law should be amended to reflect amendments made in the Uniform Act).

ADVISORY COMMITTEE
Probate Law Revision

Thirty-fifth Meeting, April 21 and 22, 1967
(Joint Meeting with Bar Committee on Probate Law and Procedure)

MINUTES

The thirty-fifth 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, April 21, 1967, in Chairman Dickson's courtroom, 244 Multnomah County Courthouse, Portland.

The following members of the advisory committee were present: Zollinger (Mr. Zollinger presided in Chairman Dickson's absence), Allison (left at 2:45 p.m.), Butler, Frohnmayer, Gooding, Jaureguy, Lisbakken (arrived at 3:30 p.m.) and Mapp. Dickson, Carson, Husband and Riddlesbarger were absent.

The following members of the Bar committee were present: Biggs, Braun, Gilley, Krause, Lovett, Meyers, Thalholfer, Pendergrass, Thomas, Richardson and Bettis. Copenhagen, Kraemer, McKay, McKenna, Mosser, Piazza, Silven and Warden were absent.

Also present: James Sorte from the staff of Legislative Counsel, William Keller and William Love.

Zollinger, who presided in the absence of Chairman Dickson, advised the committees that the proposed agenda would be varied somewhat so that Allison could discuss the Rights of Nonresident Aliens to Inherit as the first order of business.

Inheritance by Nonresident Aliens

Allison suggested that it would save time if he would first read the changes he made in the draft dated October 3, 1966. [Note: A copy of this draft is Appendix A of these minutes.] The changes suggested by Allison were as follows:

Section 1. (1) In the last sentence of subsection (1) of section 1 delete "other" between "of" and "property", and delete the next to last word of the sentence, i.e. "the" and add in place thereof "decedent's". (2) In subsection (2) of section 1, change the next to the last line after the comma to read: "...his attorney and the attorney and attorney in fact representing...", and delete the words "conversion and deposit."

Section 2. (3) In subsection 1 of section 2 delete the last sentence. Change subsection 2 of section 2 to subsection

(4); change subsection (3) to subsection (2); change subsection (4) to subsection (3).

Section 3. Section 3 was amended to read: "(1) If the money due an alien distributee deposited as provided in section 1 and interest accrued thereon is not withdrawn and paid as provided in section 2, the court that ordered the deposit shall order that the money deposited and interest be withdrawn and paid to any distributee of the estate, other than the alien distributee, who is found by the court to be entitled to receive the money and who has filed with the court, within one year after the expiration of the 10 year period specified in section 2 a petition requesting the withdrawal and payment." There was also added a section 4 which is as follows:

Section 4. "All proceedings hereunder shall be had under the register number of the estate in which the court order to deposit was made, and no order reopening the estate shall be required." Allison moved that the draft be approved, Zollinger seconded the motion, and the motion carried.

Minutes of the March Meeting

There being no objection, the minutes of the last meeting (March 17, 18, 1967) were approved as submitted.

Miscellaneous Matters

Sorte advised the committees that Riddlesbarger called to say that he was unable to attend the April meeting because of illness. Carson also contacted Legislative Counsel and indicated that he would not be in attendance at the Friday meeting.

Uniform Probate Code

Zollinger explained to the committees that he had discussed with Professor Mapp the possibility of Mapp attending the Summer meeting of the draftsmen of the Uniform Probate Code in Boulder, Colorado. Mapp explained to the committees that he had been in communication with the chairman of the committee, and that the chairman had indicated that he would allow Professor Mapp to attend the sessions. Mapp explained the probable costs that would be incurred by his travel to and return from Colorado. He explained the intended purpose was that after attending the sessions of the draftsmen, he would then, in future meetings of the Advisory and Bar committees, be in a position to advise the committees of the action by the Uniform Probate Code draftsmen and their reasons for the action. Zollinger expressed his belief that a program as

outlined by Mapp would be an excellent opportunity and would assist the Oregon probate project. Other members of the committees expressed approval. A motion was made, seconded and carried that the Advisory committee be on record as approving Mapp attending the sessions in Colorado.

The committees then considered the prospect of Mr. Allison assuming the responsibility of draftsman for the committees. Zollinger explained that Sorte would begin a two month leave of absence beginning in June. Zollinger outlined the experience Mr. Allison has from drafting legislation in Alaska and Oregon. He said that he had discussed the matter with Judge Dickson and that there is space available for Allison and a secretary in the Multnomah County Courthouse. Zollinger explained that Allison would be compensated at a rate to be agreed upon, and that he would arrange a meeting, after May 8, 1967, which is the date that Judge Dickson will return from vacation, with the Portland members of the Law Improvement Committee and with Lundy, Legislative Counsel. A motion was made, seconded and carried that the Advisory and Bar committees go on record as favoring Allison drafting the probate code under terms and compensation to be agreed upon.

Zollinger inquired of Sorte whether the drafts of everything that had been considered by the committees would be available at the May 1967 meeting, and he was assured that the drafts would be distributed prior to the meeting.

Partial Distribution (ORS 117.350 to 117.390)

Richardson requested that the committees vary the agenda to accommodate Mr. Keller, who had worked with Mr. Tassock and Richardson in preparing the draft on Partial Distribution. [Note: This draft is Appendix B to these minutes.] Richardson explained that by earlier committee action, a decision was made to use partial distributions, in place of a small estates provision, to speed up distribution of an estate, particularly where the widow was in need or where there were other exigencies that required prompt action. He indicated that there would be a time limitation and that some notice would have to be given. Keller explained that the provisions of the code would have to give notice to heirs and creditors and be consistent with the sections on claims and the time limits within which claims could be filed. Keller explained that what was intended was to give notice to the heirs and creditors of intent thereafter to petition the court for a partial distribution. Keller pointed out some difficulty with the term "distribution". He explained the difficulty was encountered when trying to reconcile that term with the

previous action of the committee adopting the concept that real and personal property vests in those entitled to it at the time of death. Keller said that the subcommittee had considered the use of the word "surrender" in place of "distribution". Zollinger indicated that the word "delivery" could be used in place of "distribution".

Keller explained that the notice requirement would be such that it would correspond with the time for filing claims. He indicated that notice by mail should be sufficient notice, and that notice would be sent only to those creditors not barred from payment. Zollinger said that subsection (4) of section 1, by using a period of four months, implied that a creditor could file a claim in the estate after that time. Allison expressed the opinion that there could not be a partial distribution if the estate was in an insolvent condition. Zollinger expressed the opinion that he would prefer the notice be sent to persons who had presented claims and claims that were not barred. Zollinger indicated that the absolute minimum waiting period should coincide with the final time for filing of claims against the estate. Pendergrass questioned waiting a long period of time. He said that usually the personal representative knows, shortly after being appointed, what the condition of the estate is in and whether there will be sufficient assets for payment of claims and expenses. He favored distribution as soon as possible under the factual circumstances. Pendergrass cited as an example a \$150,000 estate and a legatee requesting distribution of a \$1,000 legacy. Zollinger suggested that the requirement of the distributee to post a bond could be an alternative to waiting until the period for filing claims had expired. Pendergrass indicated that he was opposed to the idea of requiring the expense of obtaining a surety bond. He would favor leaving the safeguards to the discretion of the court. Pendergrass also noted that as a practical matter estates are usually partially distributed, subject to later confirmation by the decree of final distribution. As an example he cited the case where the family car, household furnishings and the house are used by the widow immediately after death. He indicated that most lawyers advise the widow to go ahead and use that kind of property. Krause said that he recently had a case where the Welfare Department filed a claim just before the running of time for filing claims in the amount of \$3,800 in a \$4,000 estate. Butler was of the opinion that the beneficiaries of an estate are the recipients of a gift, and that under such circumstances the committees should not be so concerned because the beneficiaries had to wait to receive the gift. Zollinger asked for an expression of opinion of the committees as to whether or not they favored shortening the minimum waiting

period to less than four months. Nine members favored shortening the period to less than four months and five members voted against shortening the period. Gilley directed the attention of the committees to section 11.72.002 of the Washington code and indicated his approval of the approach taken by Washington. Gilley noted that Washington makes a distinction between distribution of a specific piece of property and a general partial distribution. He noted that Washington would not allow a partial distribution of money. Gilley said that he would not be in favor of allowing partial distributions of money and intangibles. Keller said that it was his understanding that Washington would allow partial distribution of tangible personal or real property, and at any time. Butler suggested that another approach might be to distribute tangible property, taking a note from the distributee to be held until final distribution was authorized. Mapp pointed out that the Wisconsin provision was similar to Washington. Zollinger expressed the opinion that he was not aware of a reason to make a distinction between tangibles and intangibles. He pointed out that after the distribution of tangibles, the distributee could convert the property into intangibles. Richardson advised the committees that Iowa has a provision similar to Washington. Richardson suggested that the committees should follow the approach of Iowa. There followed a discussion of whether or not bond should be required of a distributee of a partial distribution. Frohnmayer expressed the opinion that whether or not a bond should be required should be left up to the discretion of the court. He indicated that one of the things the draftsmen of the Uniform Code would be strongly advocating is a nonintervention provision. He expressed the opinion that the more formalities required by a code the more arguments the advocates of nonintervention have. There followed a discussion concerning whether or not there should be notice of intention to make a partial distribution. Keller favored a provision requiring that there be such notice as ordered by the court. Judge Thalholfer expressed the view that if the matter of notice were left to a court, the first thing the Judge would do is start asking questions concerning the status of the estate. Zollinger asked for an expression of the committees' opinion as to whether or not there should be a provision describing the kind of notice to be given prior to a partial distribution. Five members voted in favor and nine opposed a specific provision of what notice should be given.

Richardson indicated that he would favor a showing of good cause before a partial distribution was authorized. Frohnmayer disagreed and indicated that he favored leaving to the discretion of the court the showing required prior to a

partial distribution. He said that if the court authorized the partial distribution, the court is in effect, saying that there is good cause. Thomas said that he would favor spelling out what is required to prove to the court on a hearing to determine whether there should be partial distribution.

A motion was made, seconded and carried to adopt the approach of Iowa with regard to partial distributions. Zollinger directed the subcommittee to redraft the draft following the approach of Iowa.

Definition of Ancillary Administration

Zollinger explained that he and Mr. Carson had been appointed to draft a definition of ancillary administration. [Note: This draft is appendix C to these minutes.]

Butler questioned the appropriateness of "ancillary administration" being an administration in Oregon. He suggested the word "the" replace the word "an". Zollinger agreed with Butler. A motion was made approving the draft with the amendment. Motion carried.

Presumption of Death after Seven Years of Absence

Mapp and Richardson were appointed members of a subcommittee at the March 1967 meeting to determine the relationship of the time limitation, before distribution, in the chapter on missing persons, and the evidentiary presumption of death after seven years absence. Mapp explained that although he had initially favored shortening the time lapse before the presumption of death would be available, he now questioned whether shortening the period of time was advisable. He said that he had reviewed the Washington and New York approach. Both of those states allow someone to immediately petition the court for an order to authorize management of business and protection of property when a person is missing. New York designates the person protecting the property the trustee. Both Washington and New York require that the property be administered for a period of five years, at which time a distribution may be made to the persons that would have been entitled to the property had the missing person been deceased. Both states allow, upon proof of death, a winding up of the administration. Both Washington and New York provide that the distribution is final after seven years. Mapp expressed his approval of authorizing administration immediately upon a person becoming missing, a waiting period of five years and provisional distribution at that time, and final distribution after seven years. Pendergrass asked if the

person administering the estate would have the same basic powers as a trustee or if it would be more like a conservator. Mapp expressed the view that the actual time of death would be established at the time the person appeared to be missing rather than after the passage of the seven year period. Gooding asked why the seven year presumption should be shortened, and Jaureguy said that it should be changed because of the changes in communication and transportation.

Uniform Simultaneous Death Act (As amended)

Frohnmayr explained to the committees that Oregon adopted the Model Act in 1947. In 1953 there were certain amendments to the Model Act, but Oregon did not adopt the amendments. [Note: A copy of a report of this subject is appendix D to these minutes] Frohnmayr explained the reasons for the changes made in the Uniform Act. He said that he and Mr. Piazza had discussed the matter in detail and both were of the opinion that Oregon should amend the Oregon law to conform to the amended Uniform Act. Zollinger was of the opinion that the second sentence of the added paragraph of section 2 of the draft conflicted with the first sentence. He suggested the insertion of "Upon the death of all of the beneficiaries" at the beginning of the second sentence. Krause suggested that the second sentence of the added paragraph to section 1 of the draft be amended to read: "If there is no sufficient evidence that all of two or more beneficiaries..." Zollinger and Frohnmayr agreed that the amendment of Krause would be more clear than the draft. Zollinger said the situation might arise where initially there were five remaindermen, but prior to the common calamity of three of them, two of them died. In that case the second sentence of the added paragraph of section 1 of the draft would apply to the three that were killed simultaneously. Gooding suggested that the result of the Miami case (see comment on the case after section 1 of the draft) might be the most just result. Frohnmayr moved the adoption of the amendment of section 2 suggested by Krause. The motion carried. Frohnmayr moved the adoption of section 3 of the draft. The motion carried. There followed a discussion of section 4 and the problems that arise because of the numerous people living in Oregon that own community property in another state, or who convert to sell community property and purchase property in Oregon with the proceeds from the sale of community property. A motion was made, seconded and carried to adopt section 4 of the draft. Zollinger moved that the amended portion of section 5 of the draft be amended to read "...except if the policy or any interest therein is community property...". Motion carried. Frohnmayr moved

the adoption of section 5 of the draft, which contains the amendments of the Uniform Act. The motion was seconded and carried.

The meeting recessed at 5:15 p.m.

The meeting was reconvened at 9:00 a.m., Saturday, April 22, 1967, in Chairman Dickson's courtroom, 244 Multnomah County Courthouse, Portland, Vice-chairman Zollinger presiding in Judge Dickson's absence.

The following members of the advisory committee were present: Zollinger, Allison, Butler, Carson, Frohnmayer, Gooding (Arrived at 10:15 a.m.), Jaureguy and Mapp. Absent were Dickson, Husband, Lisbakken and Riddlesbarger.

The following members of the Bar committee were present: Biggs, Braun, Gilley, Krause, Lovett, Meyers, Thalholfer, Thomas, Richardson and Bettis. Absent were: Kraemer, McKay, McKenna, Copenhaver, Pendergrass, Piazza, Mosser, Silven and Warden. Also present were Sorte from Legislative Counsel Committee and Love.

Conserving Property of Missing Persons (Chapter 127)

Zollinger explained that Legislative Counsel had amended Chapter 127 to conform to the changes suggested by the committees at the March 1967 meeting, and that there were other minor housekeeping changes made. (The committees, at the March 1967 meeting, voted to remove any waiting period before a person could petition for appointment as administrator to take care of property of a missing person). Zollinger explained that Chapter 127 is similar to the draft of Allison on Missing Persons. Richardson expressed the opinion that the two chapters should be combined, as was done in Washington and New York, and the waiting period prior to petition for letters should be shortened. Allison agreed that the two chapters should be combined so that a trustee could be appointed when a person appeared to be missing, and after proof of actual death, or death because of the seven year presumption, there should be a relatively easy transition to change the status of the trustee to an administrator to wind up the affairs of the estate. Zollinger expressed concern over notice in the case of missing persons. He cited as an example the man returning after six years. In such a case, he asked, what would there be to protect the acts of the personal representative and the distributee or purchaser from either of them. Frohnmayer was of the opinion that there is a difference between the situation where there is a boat overturned, or an airplane goes down, and a situation where the

person is merely missing. In the former instance there should be a provision for immediate administration while in the latter the man might return. However, he would favor placing provisions for both situations in the same chapter of the revised code. Zollinger questioned whether the court has jurisdiction in a case where there is merely an allegation that a boat overturned and the petitioner believes the party to be dead. Zollinger indicated he believed there would be a due process problem with petitioning for letters without proof of actual death. There followed a discussion of when the missing persons rights to the property are extinguished. Allison suggested that if the committees retained the presumption, there would not be a due process question as to notice to the absentee. Mapp pointed out that Washington and New York follow the seven year waiting period, but at that point the rights of the missing person are cut off. Mapp pointed out that under Washington code the rights of an absentee person may be cut off sooner than seven years if it could be shown that the missing person is dead. Bettis favored shortening the period of time for distribution. Frohnmayer was opposed to using different periods of time to cut off the rights of an absentee, for, on the one hand a person disappears mysteriously, and on the other, circumstances from which death would be probable. Braun favored allowing the missing person to return and reclaim any property still in existence without regard to the time element. Frohnmayer favored a provision that all missing persons have the same rights upon their return, whether missing mysteriously or where there are circumstances from which death could be inferred, and that if the person appeared within five years he could reclaim property in existence, if beyond five years the rights would be extinguished. Zollinger indicated that he favored combining the chapters of Missing Persons (Allison's draft, Appendix) with Chapter 127, or with the sections dealing with initiation of probate. Mapp explained the different approaches taken by the Uniform Probate code, New York code, and the Washington code. The Uniform code would allow the absentee to recover any property in existence irrespective of when the person returned. New York and Washington would cut off all rights of the absentee after a period of seven years. Washington also allows provisional distribution of the estate after five years, and if, during the absence, there were circumstances indicating death, the court allows final distribution. Allison expressed concern over whether or not there would be due process if there was a distribution prior to seven years. He suggested that if the period of time is to be shortened, it would require amending subsection (3) of section 1 of the draft on missing persons. Bettis was of the opinion that there was

no justifiable reason for a long period of time preceding the presumption of death. Bettis also indicated that a situation of a missing person returning would be infrequent.

Section 1 of draft on Missing Persons. A motion was made, seconded and carried to amend subsection (3) of section 1 of the draft on missing persons to shorten the time limit from three to one year.

Section 2. A motion was made, seconded and carried to strike the word "accidental" from section 2 of the draft.

Section 3. The first sentence of section 3 was designated subsection (1); subsection (1) was designated paragraph (a) and subsection (2) was designated paragraph (b). A motion was made, seconded and carried to delete the words "letters of" from the first sentence of section 3.

Section 4. A motion was made, seconded and carried to substitute the word "publications" for the word "periodicals" in subsection (1) of section 4.

Section 5. Section 5 was amended to read: "(1) Upon the hearing the court shall determine whether the absentee died, and if so, the date of his death and whether testate or intestate and shall issue letters accordingly, or, in the absence of such finding the court may deny the petition." Paragraph (a) of subsection (2) of section 5 was amended to read: "...; and that notice is given by postage prepaid letters to be forwarded through the United States Social Security Administration to his last address available to that agency." Paragraph (b) of subsection (2) of section 5 was amended to read: "(b) The court finds that diligent search was made."

Section 7. The first sentence of section 7 was amended to read: "Upon proof that the absentee is alive letters heretofore granted shall be revoked."

Section 8. Section 8 was amended to read: "...The absentee may be substituted as defendant upon his own application or that of the plaintiff in actions and suits brought against the personal representative. If the absentee is substituted as defendant he shall not be compelled to go to trial within less than three months from the date of the substitution." Subsection (2) of section 8 was deleted.

Section 9. The words "of administration" were deleted from section 9.

Section 10 of draft on Missing Persons. The words "of administration" were deleted from the lead line of section 10.

Zollinger called the attention of the committees that William Love, member of the Law Improvement Committee was present and had been attending the meetings of the April 1967 meeting. Mr. Love expressed appreciation for the work by the committees.

The meeting recessed at 12:25 p.m.

The meeting was reconvened at 1:55 p.m. The following members of the advisory committee were present: Zollinger (presiding in Judge Dickson's absence), Allison, Carson, Frohnmayer (arrived at 2:40 p.m.), Gooding, Jaureguy, Lisbakken and Mapp. The following members of the Bar committee were present: Biggs, Braun, Gilley, Krause, Meyers, Thomas (arrived at 2:50 p.m.) and Bettis. Also present were Sorte and Love.

Conserving Property of Missing Persons (Chapter 127)

After some discussion of the wording of Chapter 127, Braun suggested that the problem presented was closely akin to guardianship and that the chapter dealing with guardianship and missing persons should be combined. The committees agreed, and Zollinger referred the question to Braun and Gilley to report back to the committees. A question was asked about the relation of missing persons to the law dealing with conservatorships, and Zollinger expressed the view that conservatorships are only applicable when the ward consents, and that it was not a similar situation to missing persons.

Taxation

Mr. Carson discussed the various suggestions made in the draft that he submitted to the committees (Appendix). Carson indicated that prior to serious consideration of the suggestions of his report, the committees should resolve the following policy considerations that would have a direct bearing on a draft relating to tax matters. The policy questions were: (1) Whether or not the so-called collateral tax should be abolished and tax be on the estate as a whole, (2) Whether the committees favored an administrative, rather than court determination, of inheritance tax. The committees were of the opinion that the collateral tax should be abolished and that tax should be determined administratively

rather than by the court. Carson explained that he had compared the Oregon code with that of about eight other states, but that he did not have specific recommendations because he first had to learn that administrative determination of the tax was desired by the committees. [Note: Copies of the laws of the other states are appended to these minutes]. He indicated that now that the policy question is resolved in favor of administrative determination of the tax, he would, at a later date, make specific recommendations. Carson also indicated that in California there was an advisory committee appointed to determine whether there was a necessity for improvement in the process of determining and collecting inheritance tax. Specifically, the committee had considered the possibility of abolishing the collateral tax and taxing only the estate. In addition the committee had considered having a contract with the Federal Government and other states, that would provide that the Federal Government would collect all of the tax, and reallocate the state's portion back to the state. The California committee considered not determining the tax until after the federal tax was determined. After consideration, the California committee abandoned the idea of having the Federal Government collect the tax and reapportion the state tax. The delay in payment to the state was a prime factor in abandoning the idea. Carson said that an argument raised by the opponents of abolition of the collateral tax was that the tax would then be on the immediate family of the decedent. He indicated that this argument could be met with the argument that a decedent would not be likely to be making gifts to collaterals if the decedent had immediate family. In response to a question by Frohnmayer Carson replied that about 40 states have a collateral tax in some form. Love suggested that the committees should consider whether or not Oregon should adopt a marital deduction and the amount that the deduction might be. Zollinger said that since the committees had taken the position of abolishing the collateral tax, that the tax on the estate would have to be raised to offset the loss of revenue from that source. Zollinger referred to the subcommittee (Carson, Braun and Lisbakken) the task of revising the tax laws to conform to the committees action, and, in addition, that the committees make a recommendation as to what changes will be necessary because of the abolition of the collateral tax.

The meeting was adjourned at 5 p.m.

APPENDIX A

INHERITANCE BY NONRESIDENT ALIENS

Rough Draft

Section 1. Deposits for nonresident alien distributees.

(1) If, at the time of distribution of an estate, the court finds that a distributee is an alien not residing within the United States who would not receive the benefit, use or control of property due him, the court shall order the personal representative to convert the property into cash and deposit the money due the alien distributee to the credit of the alien distributee at interest in a savings account in a bank or banks in this state. Sale of the property shall be in the manner provided by law for the sale of other property of the estate.

(2) Before money is deposited as provided in subsection (1) of this section, there shall be deducted therefrom the expenses of any sale of the property and amounts the court may allow for the services of the personal representative, his attorney and the attorney in fact representing the alien distributee in the conversion and deposit proceeding.

(3) The pass book or other evidence of the deposit shall be delivered to the clerk of the court, who shall be custodian thereof until it is needed for withdrawal of the money deposited as provided in section 2 or 3.

(4) The money deposited and interest accrued thereon may be withdrawn and paid or disposed of only as provided in section 2 or 3. The deposit and interest are not subject to the Uniform Disposition of Unclaimed Property Act (ORS 98.302 to 98.436 and 98.991).

Section 2. Payment of deposits to nonresident alien distributees. (1) At any time within 10 years after the date of the court order to deposit money due an alien distributee as provided in section 1, the alien distributee or, if he is deceased, the personal representative of his estate appointed by a court of this state may file with the court that ordered the deposit a petition requesting withdrawal of the money deposited and interest accrued thereon and payment thereof to the petitioner or his attorney in fact. The petition shall be filed and all proceedings thereon shall be had under the register number of the estate proceeding in which the court order to deposit was made, but the estate need not be reopened for the purpose of the withdrawal proceeding.

(2) If a petition filed as provided in subsection (1) of this section is denied by the court, a subsequent petition so filed requesting withdrawal of the same money deposited

and interest shall allege the particulars of new or changed circumstances occurring after that denial that justify withdrawal and payment.

(3) The court, upon the filing of the petition, shall fix a time and date certain for a hearing on the petition, and shall order that written notice of the hearing be given not less than 30 days before the date thereof to the clerk of the State Land Board, the bank or banks in which the money is deposited and the consular representative of the county of which the alien distributee is or, if deceased, was a citizen.

(4) If it appears to the court at the hearing that the alien distributee or, if deceased, his heirs or beneficiaries would receive the benefit, use or control of the money deposited, the court shall order that the money deposited and interest accrued thereon be withdrawn and paid to petitioner or his attorney in fact, after deduction therefrom of the costs and expenses of the withdrawal proceeding allowed by the court.

Section 3. Payment of nonresident alien distributee deposits to other distributees; escheat. (1) If the money due an alien distributee deposited as provided in section 1 and interest accrued thereon is not withdrawn and paid as provided in section 2, the court that ordered the deposit shall order that the money deposited and interest be withdrawn and paid to any distributee of the estate, other than the alien distributee, who files with the court a petition requesting the withdrawal and payment within one year after the expiration of the 10-year period specified in section 2 and who is found by the court to be eligible to receive the money. The petition shall be filed and all proceedings thereon shall be had under the register number of the estate proceeding in which the court order to deposit was made, but the estate need not be reopened for the purpose of the withdrawal proceeding.

(2) If the money deposited and interest accrued thereon is not withdrawn and paid as provided in section 2 or subsection (1) of this section, the money and interest shall be disposed of as escheated property.

Sec. 2. After the date set forth in said notice, the personal representative may file with the court an application for such partial distribution. The time and place for the hearing upon said application shall be given to any interested party who has requested notice thereof. If, upon the hearing, it appears that all inheritance taxes payable to the estate have been paid, or that the State Treasurer has consented in writing to the partial distribution in question, and that the legacy, devise or share of the estate or portion thereof may be distributed without loss to the creditors or injury to the estate or any person interested therein, the court in its discretion may grant the petition or some part thereof, either with or without bond of the distributee as the court may determine. If the distribution is to be made upon bond, the court shall authorize distribution upon the condition that the distributee files with the court, within a time specified in the order, an undertaking, with one or more sufficient sureties, any of whom may be required to justify, for the benefit of whom it may concern, in such sum as the court may designate, to be void upon the condition that such distributee will pay, when required, his proportion towards satisfying any claim against the estate, including determined and undetermined state and federal tax liability, not exceeding the amount of the legacy or portion of the estate so ordered to be distributed.

Sec. 3. The distribution and delivery of the assets in accordance with an order of the court issued pursuant hereto, shall be a full discharge of the personal representative with respect to all property embraced in such order.

Sec. 4. The sureties in the undertaking mentioned in Sec. 2 shall have the same qualifications as sureties in bail upon arrest, and shall qualify before the court or judge thereof in like manner.

Sec. 5. If, after any partial distribution, it becomes necessary to require the payment of all or any part of the sum or property distributed to satisfy any claim against the estate, the executor or administrator shall apply by petition to the court for a decree to that effect. Notice of the application shall be given to the distributee and to his sureties, if any, at least ten days before the application is made.

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Sec. 6. If upon the hearing, it becomes necessary and proper that the payment mentioned in Sec. 5 be made, the court shall decree accordingly, specifying therein the amount to be paid, and within what time. If the amount is not paid within the time specified, the decree may be enforced against such party and the sureties in the undertaking, by execution, in the same manner as a decree in the Circuit Court.

Sec. 7. The costs of all proceedings under Sec. 1 to 7 hereof shall be borne or paid as the court in its discretion may determine.

APPENDIX C

REPORT: April 5, 1967

TO: Members of the
Advisory Committee on Probate Law Revision
and
Bar Committee on Probate Law and Procedure

From: Legislative Counsel

Subject: At the March 1967 meeting, Judge Dickson appointed Mr. Carson and Mr. Zollinger as a subcommittee to define the term "ancillary administration." This report is the definition drafted by the subcommittee.

An ancillary administration is an administration in Oregon of the estate of a nonresident decedent whose estate is also being administered in the state of his domicile. The term does not mean that the Oregon administration is subordinate or auxiliary to the domiciliary administration, or that the Oregon personal representative is accountable to the domiciliary personal representative except as the Oregon court shall order.

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survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.]

If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. If there is no sufficient evidence that two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were such beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived.

Comment: Section 2 was amended in 1953 to provide that if the holder of a life estate and a remainderman of the same estate die where there is no sufficient evidence that the two died otherwise than simultaneously, the remainderman will be deemed not to have survived and his estate will take nothing. This amendment was made as a result of the court's decision in Miami Beach First Nat'l Bank v. Miami Beach First Nat'l Bank, 52 So. 2d 893 (Fla. 1951). In that case T granted a life estate to A with the remainder in a class of persons of which B was a member. A and B were killed in a common accident. B's estate claimed B's share of T's estate under sec. 2 and the other remaindermen contented that the section did not apply. The court held that sec. 2 applied and that B's estate received B's share of T's estate. The Uniform Commissioners believed this to be a misinterpretation of sec. 2 and designed the first sentence of the amendment to nullify the result. The second sentence of the proposed amendment would continue the rule of the current section with slightly modified wording. It is meant to apply when all the beneficiaries die in a common accident by providing that the estates of each would receive the share that each beneficiary would have received had he survived.

Section 3. ORS 112.030. (1) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(2) The term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.

Comment: Subsection (1) of section 3 remains unchanged. The 1953 amendments added subsection (2) to solve the problem created in states not having joint tenancy. Oregon abolished joint tenancies in ORS 93.180.

Section 4. Where a husband and wife have died, leaving community property, and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband survived and the other one-half thereof shall pass as if the wife had survived.

Comment: This section was proposed in 1953 to cover the situation where community property is involved. Unless Oregon adopts community property, there is no need for this new section.

Section 5. ORS 112.040. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, except if the policy is community property of the insured and his spouse, and there is no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under section 4.

Comment: This section remains the same as it was when adopted with the exception of the addition of the new provision to cover community property. As with sec. 4 the new provision is not necessary in Oregon in the absence of the adoption of community property.

Section 6. ORS 112.050. This chapter shall not apply

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to the distribution of the property of a person who has died before July 5, 1947.

Comment: No provision for this section was made in the 1953 amendments. Two questions concerning it might be raised:

- 1) should this section be retained or can it be repealed,
- 2) should a new provision be added to prevent the 1953 amendments from being retroactively applied?

Section 7. ORS 112.060. This chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation where [in] provision [has been] is made for distribution of the property different from the provisions of this chapter, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided.

Comment: The phrase "or other situation" was adopted from the Texas version of the Act. The clause "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided" was contained in Alabama's 1951 enactment. The committee was of the opinion that the courts would construe the original Act the same as the amended one, if a liberal construction was adopted, but that the amendment would clarify and be helpful. "Draftsmen of instruments listed in the Act quite often make provision for a presumption of survivorship. They may provide that a person shall not be deemed to have survived unless he shall survive by at least 30 days. They may, in connection with the so-called Marital Deduction in the Federal Estate Tax Law, provide that the beneficiary shall be deemed to have survived if there is no sufficient evidence that the testator and the beneficiary spouse died other than simultaneously."

Section 8. ORS 112.070. This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact the Uniform Simultaneous Death Act.

Comment: No changes were made in this section by the 1953 amendments.

Section 9. ORS 112.080. This chapter may be cited as the "Uniform Simultaneous Death Act."

Comment: No changes were made in this section by the 1953 amendments.

APPENDIX E

APRIL, 1967

ORS CHAPTER 118 (ESTATE AND INHERITANCE TAXATION)

REVISED STATEMENT OF ALTERATIONS CONSIDERED BY SUB-COMMITTEE COMPOSED OF PATRICIA A. LISBAKKEN, PATRICIA Y. BRAUN AND WALLACE P. CARSON

(1) 118.005 (Definitions): No alteration suggested.

(2) 118.010 (Property, transfers and interests subject to tax): Consider whether this section should, or should not, be amended to the extent of restoring the provisions relating to general powers of appointment to those that existed before the 1965 amendment of this section was made. It may be presumed that the State Inheritance and Gift Tax Division would oppose an amendment of that kind.

(3) 118.020 (Transfers to governmental units and certain private institutions): Amend this section in such manner as to allow exemption of bequests and devises made in trust.

Since this recommendation originally was made, the Oregon Supreme Court has rendered opinions in two cases (United States National Bank of Oregon v. Straub, Or Adv Sh, v 84, p 285; and Straub v. First National Bank of Oregon, Or Adv Sh, v 84, p 309). Consequently, this recommendation now should be reconsidered in the light of those opinions.

(4) 118.030 and 118.040: No alteration suggested.

(5) 118.050 (Pension, retirement and social security benefits exempt from taxation): No alteration suggested.

(6) 118.060 (Reciprocal exemption of intangible property of nonresident decedent): No alteration suggested.

(7) 118.070 (Deductions): Consider further whether to amend the provisions of Section (2) "In unprobated estates", Subsection (a), in such manner as to permit deduction of all debts of the decedent paid by the surviving tenant by the entirety of real property or by the surviving owner(s) of personal property previously owned jointly by the decedent and another, or others, with rights

of survivorship. Evidently, the State Inheritance and Gift Tax Division would oppose that contemplated amendment.

(8) 118.075 to 118.090, inclusive: No alteration suggested.

(9) 118.100 (Rates of tax): Whether or not the rates of taxation should be altered depends upon the question (among others) whether the so-called collateral tax shall be abolished and taxation shall be limited to a tax on the estate, as a whole. If so, it may be presumed that the rate of taxation on the estate, as a whole, would be adjusted upward to such extent as would be necessary to produce approximately the same amount of revenue as would be produced under the presently existing statutes. In this connection, see a copy (when available) of the report concerning the study of a proposal of this nature that heretofore was made in California.

(10) 118.100 (Tax rate applicable to net estate after allowing deductions): No alteration suggested.

(11) 118.210 to 118.390, inclusive: Subject to qualifications appearing elsewhere herein, no alteration is suggested.

(12) 118.410 to 118.700, inclusive (Administration of Inheritance Tax Act): First consider, and determine, whether these sections should be repealed and, in lieu thereof, new statutes should be enacted for the purpose of substantially altering the procedure for determination of estate and inheritance taxes in all instances, and whether or not a personal representative is appointed, in a manner similar to that now prevailing in respect of so-called "unprobated estates", with appropriate provisions made for judicial determination only in the event that the State Treasurer, the personal representative, or any other interested party elects to cause an issue or issues to be determined judicially. If alteration of the procedure in a manner such as that indicated above is approved in principle, the matter of drafting the proposed legislation should follow. Presumably, the State Inheritance and Gift Tax Division should not oppose, in principle, enactment of legislation of this nature.

Herewith are submitted for consideration copies of the respective statutes of several states that provide for administrative determination of the tax in the first instance, subject to review by the court, if sought.

(13) 118.610 (Duty of representative; filing inventory and appraisal): Repeal.

(14) 118.620 (Extension of time to file appraisal): Repeal.

(15) 118.630 (Appointment of appraisers): Repeal.

(16) 118.640 (Immediate appraisal; avaluating particular interests):

(1) Delete that part thereof preceding the semicolon, and amend the remainder of this subsection substantially as was proposed by House Bill 1480 introduced on February 9, 1965.

(2) Delete "each *** in common" and insert in lieu thereof "the grantees or devisees took undivided halves of the real property as tenants in common".

(3) Delete "if" and insert "though" in lieu thereof.

(4) No alteration now is suggested, except deletion of "every" and insertion of "a" in lieu thereof; and substitute "the" for each "such".

(17) 118.650 (Fixing time and place of appraisal; notice; attendance of witnesses; report of appraisers; limitation on fees): Repeal.

(18) 118.660 (Delivery to State Treasurer of copy of inventory and appraisal and other information):

(1) Delete "executor, administrator" and insert "personal representative" in lieu thereof, in two places; and delete "beneficiary" and insert "beneficial" in lieu thereof.

(2) Delete "such executor, administrator" and insert "personal representative" in lieu thereof; delete "deceased" and insert "decedent" in lieu thereof; delete "beneficiary" and insert "beneficial" in lieu thereof; delete "full and true value" and insert "true cash value" in lieu thereof, in two places; delete "probated or"; and insert "the" between "of" and "decedent" in the twenty-second line of this subsection.

If administrative determination of the tax in the first instance is to be provided for, require that the "schedule, list or statement" (tax report) contain

computation of the tax payable, whether or not the estate is administered under judicial supervision.

(19) 118:670 (Court's duty to determine tax):

(1) Delete "from *** such" and insert "Based on the evidence relating to the estate that is before the court" in lieu thereof; delete "forthwith"; delete "full and true value of all such estates" and insert "true cash value of the estate" in lieu thereof; and delete "the same are" and insert "it is" in lieu thereof.

(2) Delete "full and true value of all such estates" and insert "true cash value of the estate" in lieu thereof; and delete "the same are" and insert "it is" in lieu thereof.

However, if administrative determination of the tax in the first instance is to be provided for, this section should, instead, be repealed.

(20) 118:680 (Court may act on first inventory):

Delete "such" from sixth line of this section and insert "the" in lieu thereof; delete "executor, administrator" and insert "personal representative" in lieu thereof; delete "as provided in ORS 118.005 to 118.840"; and delete "full and true value" and insert "true cash value" in lieu thereof.

However, if administrative determination of the tax in the first instance is to be provided for, this section should, instead, be repealed.

(21) 118:690 (Court to give notice on determination of value): Delete "probate" from the first line of this section.

However, if administrative determination of the tax in the first instance is to be provided for, this section should, instead, be repealed.

(22) 118:700 (Reappraisalment; appeal):

(1) Delete "assessment and" from the first line of this subsection; insert "probate" between "the" and "court" in the sixth and eighth lines of this subsection; delete "reassessment and" from the ninth line of this subsection; and delete "such" from the last line of this subsection and insert "the" in lieu thereof.

(2) Delete "objection" from the first line of this subsection and insert "objection's" in lieu thereof; at each appropriate place in this subsection delete "such" and insert "the" in lieu thereof; insert "to" between "and" and "all", and insert "other" between "all" and "parties", in the fifth line of this subsection; delete "reappraisalment" from the eleventh line of this subsection and insert "redetermination" in lieu thereof; and delete the final sentence from this subsection and insert in lieu thereof:

"If, upon the hearing, the probate court finds that its previous determination of any tax imposed by ORS 118.005 to 118.840 was erroneous in any respect affecting the substantial rights of the State Treasurer, or of any other party interested, it shall, by order, set aside its previous determination and redetermine the tax."

(3) Delete all this subsection and insert in lieu thereof:

"(3) The State Treasurer, or any other party interested, may appeal from the whole, or from any part of the order of the probate court redetermining, or refusing to redetermine, any tax imposed by ORS 118.005 to 118.840 in the manner provided by law for prosecuting an appeal from the probate court. The appeal shall be heard and determined anew in the same manner, and with the same effect, as provided by law in respect of an appeal from a decree or other determinative order in a suit in equity. An appeal may be taken to the Supreme Court from the whole, or from any part, of a decree or other determinative order of the circuit court upon an appeal to the circuit court from an inferior probate court, as well as from the whole, or from any part, of a decree or other determinative order of a circuit court exercising original probate jurisdiction, which redetermines the tax, in the same manner, and with the same effect, as provided by law in respect of an appeal from the circuit court in a suit in equity."

However, if administrative determination of the tax in the first instance is to be provided for, this section should, instead, be repealed.

General:

If the so-called collateral tax shall be abolished and taxation shall be limited to a tax on the estate, as a whole, all existing Oregon statutes that are pertinent,

including, particularly, the entire ORS chapter 118, should be examined with that alteration in mind, and all provisions thereof, respectively, that are inconsistent with that alteration should be amended or repealed, as may be appropriate.

If administrative determination of the tax in the first instance is to be provided for, all existing Oregon statutes that are pertinent, including, particularly, the entire ORS chapter 118, should be examined with that alteration in mind and all provisions thereof, respectively, that are inconsistent with that alteration should be amended or repealed, as may be appropriate.

APPENDIX F

Colorado--Law

APPRAISAL AND ASSESSMENT

Sec. 138-3-46. (1) It shall be the duty of the inheritance tax commissioner to appraise the estate of every deceased person at its fair market value, and for that purpose the commissioner and each of his deputies is authorized to issue subpoenas for, and compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall determine the fair market value of all of the estate belonging to the deceased at the time of his death and the description of the same; all debts, claims, fees, and commissions including the fees and commissions of the executor, and administrator; the names, relationship, and residence of all persons, corporations, or institutions, receiving or claiming any of the estate of the deceased; a description of any property belonging to the estate of said decedent alleged to have been transferred by deed, grant, sale, or gift, made in contemplation of death by the said decedent, or intended to take effect in possession or enjoyment at or after such death; a description of all estates left by said decedent whether an estate in fee, annuities, life estates, or for a term of years; whether such decedent died intestate or left a will; and upon such determination the inheritance tax commissioner, with the approval of the attorney general, shall compute and assess the tax or fee to which the estate or transferees are liable, and immediately shall give notice by mail to the executor, administrator, trustee, or person filing the application, and file in the court, if any, under whose jurisdiction the estate is undergoing administration, a report of the appraisement of the estate and the assessment of the tax.

(2) Any person including the attorney general, dissatisfied with the assessment made or tax fixed may object thereto, either upon the ground of erroneous valuation, appraisement or assessment, or otherwise, by a written objection filed in the district or probate court within ninety days after the filing of the report of assessment. The court, after a hearing wherein the attorney general shall represent the state, shall thereupon enter a judgment modifying or confirming in whole or in part, the appraisement and assessment. Witnesses subpoenaed under the provisions of this article shall have such fees as are now provided by law; provided, that on the petition of the attorney general and with the consent of the court, expert witnesses may be called, the amount of whose fees shall be

determined by the court. If no objections are filed or if objections filed are overruled by the court and no appeal is taken from such ruling, then said assessment order shall have the force and effect of a judgment, as in other cases provided, and execution may issue thereon to enforce the same by sale of the said property to satisfy said judgment. These provisions shall apply to all matters in custodia legis and all proceedings now pending for the collection and enforcement of any inheritance tax due the state of Colorado.

APPEAL FROM DISTRICT OR PROBATE COURT

Sec. 138-3-48. Nothing herein contained shall be construed to deny the right of appellate review by the supreme court.

ACTIONS TO QUIET TITLE

Sec. 138-3-49. Actions may be brought against the state by any interested person for the purpose of quieting the title to any property against the lien or claim of lien of any taxes under this article, or for the purpose of having it determined that any property is not subject to any lien for taxes, nor chargeable with any tax under this article. No such action shall be maintained where any proceedings are pending in any court of this state wherein the taxability of such transfer and the liability therefor, and the amount thereof, may be determined. All parties interested in said transfer and in the taxability thereof shall be made parties thereto, and any interested person who refuses to join as plaintiff therein may be a defendant. Summons for the state in said action shall be served upon the attorney general. Should the court determine that the property described in the complaint is subject to the lien of said tax and that said property has been transferred within the meaning of this article, the court shall award affirmative relief to the state in said action, and judgment shall be rendered therein in favor of the state ascertaining and determining the amount of said tax, the person liable therefor, and the property chargeable therewith or subject to lien therefor.

INVESTIGATIONS--ESTATE SUBJECT TO TAX

Sec. 138-3-50. It shall be the duty of said inheritance tax commissioner and each of his deputies upon learning of the death of any person known or supposed to have died possessed of property in this state or subject to the tax

imposed by this article, to make an immediate investigation and to take steps to secure the assessment of any inheritance tax due.

REFUSAL TO FURNISH INFORMATION

Sec. 138-3-51. Whenever an executor, administrator, trustee, or any other person who is liable to taxation under the provisions of this article refuses or neglects to furnish the inheritance tax commissioner with any information which in the opinion of the inheritance tax commissioner is necessary to the proper computation of the taxes payable by such executor, administrator, trustee, or person, after having been requested to so do, the inheritance tax commissioner shall certify such taxes at the highest rate at which they could in any event be computed.

LETTERS OF ADMINISTRATION

Sec. 138-3-52. In case letters testamentary or of administration shall not have been issued upon the estate of any deceased person and the tax provided for in this article shall not have been paid to the satisfaction of the attorney general within sixty days from the date of the death of any deceased person, the county court having jurisdiction in the matter may grant letters of administration or letters of administration with the will annexed, to any person upon the application of the attorney general. Nothing contained in this section shall be construed to compel the attorney general to apply for such appointment, unless he so desires, or to prevent the enforcement of the collection of any tax provided for herein in any other manner as may be provided by law.

CERTIFICATE OF NONLIABILITY--FEES

Sec. 138-3-53. (1) (a) Whenever the inheritance tax commissioner, upon investigation, shall be satisfied that the transfer of any property of a deceased person is not liable to taxation under this article, he shall make and sign a certificate with the approval of the attorney general, to that effect which shall be filed with the clerk of the court having jurisdiction of the administration of such estate. Such certificate shall be conclusive upon the state as to the liability of said estate to taxation, except as to property subsequently found to belong to said estate.

(b) For issuing such certificates, the following fees shall be assessed and collected:

On estates not in excess of \$300--no fee;
On estates in excess of \$300 but not in excess of \$2,000--\$1.00;
On estates in excess of \$2,000 but not in excess of \$5,000--\$5.00;
On estates in excess of \$5,000 but not in excess of \$7,500--\$7.50;
On estates in excess of \$7,500 but not in excess of \$10,000--\$10.00;
On estates in excess of \$10,000 but not in excess of \$12,500--\$12.50;
On estates in excess of \$12,500 but not in excess of \$15,000--\$15.00;
On estates in excess of \$15,000 but not in excess of \$17,500--\$17.50;
On estates in excess of \$17,500 but not in excess of \$20,000--\$20.00;
On estates in excess of \$20,000 but not in excess of \$22,500--\$22.50;
On estates in excess of \$22,500 but not in excess of \$25,000--\$25.00;
On estates in excess of \$25,000--\$30.00.

(2) Such fees shall be computed on the gross value of the estate, as determined by the inheritance tax commissioner without deduction for encumbrances or any other deductions allowable.

(3) The provisions of this section shall apply only in the case of decedents dying after the effective date of this section.

FAILURE TO APPRAISE

Sec. 138-3-54. In case of the failure of the inheritance tax commissioner to make such appraisement of the property of the estate of any decedent or to make and file the certificate provided for in section 138-3-53, within one year after the attorney general has received the sworn statement provided for in section 138-3-42, the county court, upon motion of any person interested in said estate, as executor, administrator, trustee, heir, legatee, or devisee, upon giving twenty days' notice by mail to all persons known to be interested in said estate, including the attorney general and the inheritance tax commissioner, of the time and place of hearing, at the time so fixed may hear evidence and determine the value of such estate, and the amount of taxes to which the same is liable, with the same effect as if the value of such estate and the fixing of said tax were made by the commissioner as provided for in this article, and appeals from such order may be taken as provided by section 138-3-48.

OFFICERS TAKING FEES OR REWARD

Sec. 138-3-55. Any inheritance tax commissioner appointed under this article, any deputy inheritance tax commissioner or any inheritance tax appraiser, who shall take or demand for his own use any fees or reward, other than such as are authorized by law, from any person, association, or corporation, shall be guilty of a felony, and upon conviction hereof shall be punished by confinement in the penitentiary for a term of not less than one year nor more than five years.

JURISDICTION--DISTRICT OR PROBATE COURT

Sec. 138-3-56. The district or probate court of any county which has assumed lawful jurisdiction over the property of the decedent for general probate or administration purposes under the laws of Colorado, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this article. If no administration or probate proceedings have been taken out in any court of this state, the district or probate court of the county in which the decedent was a resident, if the decedent was domiciled in this state, or, if the decedent was not so domiciled, any court which had sufficient jurisdiction over the property the transfer of which is taxable, to have issued probate or administration proceedings thereon had the same been justified by the legal status of such property; or the same been applied for, shall have jurisdiction. The district or probate court first acquiring jurisdiction shall retain the same to the exclusion of every other.

Wyoming--Law

PAYMENT OF TAX BY FOREIGN ESTATE; DEDUCTIONS

Sec. 39-358. In case of any property belonging to a foreign estate, which estate, in whole or in part is liable to pay an inheritance tax in this state, the said tax shall be assessed upon actual value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. If the executor, administrator, or trustee of such foreign estate files with the board a duly certified statement, exhibiting the appraised value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of the estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the whole estate.

EXECUTOR OR ADMINISTRATOR NOT TO BE DISCHARGED
UNTIL CERTIFICATE FILED; EXCEPTION;
BOARD ELIGIBLE FOR LETTERS OF ADMINISTRATION

Sec. 39-359. The district court having jurisdiction of any estate shall in no case discharge the administrator, executor or trustee or other legal representative, or release the bond of such person or issue an order or final decree of distribution until such person shall have presented

a receipt or a certificate properly signed and sealed by the board of equalization of the State of Wyoming showing that such estate has been reviewed by it and the tax paid or that no tax has accrued or that a bond has been filed as herein provided, unless the court shall find that no inheritance tax is chargeable in such estate and shall, by its order, excuse the filing of a certificate of the board. The board shall have the same right to apply for letters of administration as that conferred by law upon creditors.

ASSESSMENT SUBJECT TO APPEAL; NOTICE OF AMOUNT

Sec. 39-360. All taxes imposed by this act [§§ 39-336, 39-337, 39-342 to 39-369] shall be assessed and determined, subject to the right of appeal as hereinafter provided, and collected by the board upon the actual value of the property transferred as hereinbefore provided and at the rates provided herein. Notice of the amount of said taxes shall be mailed to the executor, administrator, or trustee or other person liable therefor, or to his or their attorney, by said board, and upon request to any other person by whom said taxes are payable. But a failure to receive said notice shall not excuse the non-payment of or invalidate said taxes.

HEARINGS BY BOARD; ATTENDANCE, EXAMINATION AND FEES OF WITNESSES

Sec. 39-361. The board shall have the power to conduct hearings, and to adjourn the same from time to time, upon reasonable notice to all parties interested, for the purpose of assessing taxes imposed by this act [§§ 39-336, 39-337, 39-342 to 39-369], and to summon and examine on oath any person supposed to know, or to have means of knowing, any material fact touching the subject of such assessment, and to issue subpoenas and compel the attendance of witnesses to testify at such hearings, which subpoenas will be served in the same manner as subpoenas issued out of the district courts of the state, and shall have power to compel such witnesses so subpoenaed to testify and give evidence. The board shall summon and have examined in any hearing the witnesses whose presence is desired by any party interested in such hearing, and all witnesses shall receive fees as in civil cases, the said fees of all witnesses summoned by the board upon its own motion to be paid by the state out of the inheritance tax fund; the fees of all other witnesses to be paid by the party requesting that they be summoned. The examination of any or all witnesses may be reduced to writing, and false swearing by any witness shall be deemed perjury and punished as such. A judge of the district court upon application of the board may compel the attendance of any witness at a

hearing before the board and the giving of testimony at such hearing in the same manner and to the same extent as the attendance of witnesses and the giving of testimony may be compelled before said court.

APPEAL TO DISTRICT COURT

Sec. 39-362. An executor, administrator, trustee, grantee, donee, or survivor aggrieved by any determination of the board of equalization of the State of Wyoming, or any person or number of persons acting jointly who may feel themselves aggrieved by any determination of the board shall have an appeal either to the district court of the county within the State of Wyoming in which the estate of the decedent is being probated or to the district court of Laramie County. The person or persons appealing shall, within sixty (60) days of the determination of the board from which the appeal is being taken, file in the court to which the appeal is taken a notice in writing stating that such person or persons appeals to such court from the determination and order of the board, and upon filing of such notice the appeal shall be deemed to have been taken; provided, however, that the person or persons appealing shall within the sixty (60) days mentioned enter into an undertaking to be approved by the clerk of the court or judge thereof, running to the board of equalization of the State of Wyoming for the use and benefit of the State of Wyoming, in such amount as the court or judge shall fix, conditioned that the persons giving their said undertaking shall diligently prosecute their appeal and without unnecessary delay, and will pay all inheritance taxes found due by the court and such other costs and interest as the court may assess against them. The clerk of the court to which such appeal is taken shall immediately upon the filing of said notice of appeal and of the approval of the bond mentioned in this section transmit to the board a notice, over the seal of the court, to the effect that said appeal has been perfected. The appellant or appellants shall, within sixty (60) days after the appeal as provided for is perfected, file in the office of the clerk of said court a certified transcript of the order of determination made by the board which is appealed from, together with a certified copy of all of the records of the board relating to such determination, and their petition setting forth the grounds upon which such appeal is based. The board shall file such answer, demurrer or other pleading to said petition as may be proper under the code of civil procedure. The appellant or appellants shall be the plaintiff or plaintiffs in said court and the board shall be the defendant. The case shall be tried de novo and the trial shall be had upon the issues raised by the pleadings filed in the district court by said plaintiffs and defendants, and all proceedings shall be conducted

according to the provisions of the civil code of procedure. Either party shall have the right of appeal from the judgment or decree of said court as in other civil cases.

Washington--Law

DETERMINATION OF TAX WITHOUT ADMINISTRATION

Sec. 83.24.010. When any person dies leaving property within the jurisdiction of the state of Washington, which shall pass by the statutes of inheritance of this or any other state, or by deed, grant, sale or gift made in contemplation of the death of the grantor or donor, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any person in trust or otherwise, and there has been no application for letters of administration of the estate of such deceased person, or when administration of any estate has been completed without an adjudication of the inheritance tax, the liability of such property for the payment of an inheritance tax may be determined without administration in the manner hereinafter provided.

Any person interested in such property may file an affidavit with the inheritance tax division of the tax commission and request a determination of the questions arising under the inheritance tax provisions of this title. Such affidavit shall contain the name and date of death of decedent, the description and estimated value of all property involved, the names and places of residence of all persons interested in the same, and such other facts as are necessary for a determination of such questions.

Upon the receipt of such affidavit, and after such investigation as is necessary to determine the fair market value of all of the property becoming subject to the inheritance tax laws, the tax commission through its inheritance tax division shall determine the amount of inheritance tax due, if any.

Where the tax commission, through its inheritance tax division, has determined that no tax is due, or that the amount of tax as determined has been fully paid, it may issue its release and receipt, but such release shall be only as to the assets of the estate shown and disclosed by such affidavit and supplementary exhibits filed in such proceedings.

In any such case the supervisor of the inheritance tax division may compromise such tax and issue a satisfaction therefor, without probate proceedings, where the necessary facts are furnished and filed by affidavit, but such release shall be only as to the assets of the estate shown and disclosed by such proceedings.

JUDICIAL APPEAL

Sec. 83.24.020. Any person who may feel aggrieved by the determination of the tax commission as provided for in RCW 83.24.010 may file a petition with the Superior Court of the County wherein the decedent resided, which petition shall contain the name and date of death of decedent, the description and estimated value of all property involved, the names and places of residence of all persons interested in the same, and such other facts as are necessary to give the court jurisdiction. The court shall thereupon set a day for hearing said petition and a copy thereof, together with a notice of the time and place of such hearing, shall be served by the petitioner or his attorney upon the supervisor of the inheritance tax division and on each person interested in said property at least twenty days before the date of hearing, if served personally, and if served by publication the service shall be the same as the service of summons by publication in civil action. The court shall hear said matter upon the relation of the parties, the testimony of witnesses and evidence produced in open court, and, if it shall be found that the property is not subject to any tax, the court shall make and enter an order determining that fact, but, if it shall appear that the whole or any part of said property is subject to a tax, the same shall be appraised and the tax levied and collected as in other cases. An adjudication by the superior court, as herein provided, shall be conclusive as to the lien of said tax, subject to the right of appeal to the supreme court allowed by the laws of the state.

POWERS OF COMMISSION AND SUPERVISOR

Sec. 83.28.010. All the powers of a referee of the superior court having jurisdiction of the estate of a decedent shall be vested in the tax commission and its supervisor shall have jurisdiction to require the attendance before him of the executor or administrator of said estate or any person interested therein or any other person whom he may have reason to believe possesses knowledge of the estate of said decedent or knowledge of any property transferred by said decedent within the meaning of the inheritance tax provisions of this title or knowledge of any facts that will aid the supervisor or the court in the determination of said tax, but no person shall be required to attend at any place outside of the county in which such decedent resided at the time of his death or in which letters of administration could lawfully issue upon the estate of such decedent.

EXAMINATION BY SUPERVISOR

Sec. 83.28.020. For the purpose of compelling the attendance of such person or persons, and for the purpose of appraising any property or interest subject to or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the tax commission through its supervisor is hereby authorized to issue subpoenas compelling the attendance of witnesses before said supervisor. The supervisor may examine and take evidence of such witnesses or of such executor or administrator or other person under oath concerning such property and the value thereof, and concerning the property or the estate of such decedent subject to probate. Any person or persons who shall be subpoenaed by the said supervisor to appear and testify or to produce books and papers and who shall refuse and neglect to appear and produce books relative to such appraisal shall be guilty of contempt.

FINDINGS FILED IN COURT

Sec. 83.28.030. Upon the completion of the investigation by the supervisor he shall file his findings with the clerk of the superior court in the matter of the estate of the decedent, showing the value of the estate and the amount of inheritance tax chargeable against or a lien upon such interest, acquired by virtue of said probate proceedings or by any transfer within the meaning of the inheritance tax provisions of this title, to any person, institution or corporation acquiring any property by virtue of said probate proceedings, or by any transfer within the meaning of the inheritance tax provisions of this title, and shall find the total amount of tax due the state of Washington, which shall be a claim against the estate and a lien upon all the property of the estate until same is paid.

CLERK TO GIVE NOTICE OF FINDINGS

Sec. 83.28.040. Upon filing said report the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceeding by causing notice thereof to be posted at the courthouse in the county where the court is held, and in addition thereto shall mail to all persons chargeable with any tax in said report, who have appeared in such proceedings, a copy of said notice.

COURT ORDER

Sec. 83.28.050. At any time after the expiration of thirty days thereafter, if no objection to said report be

filed, the said superior court or a judge thereof, shall, without further notice, give and make its order confirming said report and fixing the tax in accordance therewith.

OBJECTIONS

Sec. 83.28.060. At any time prior to the making of such order any person interested in such proceeding may file objections in writing with the clerk of the superior court, and serve a copy thereof upon the supervisor, and the same shall be noted for trial before the court and a hearing had thereon as provided for hearings in probate matters.

HEARING BY COURT

Sec. 83.28.070. Upon the hearing of said objections, the court shall make such order as to it may seem meet and proper in the premises: PROVIDED, That for the purposes of said hearing the report of the supervisor shall be presumed to be correct and it shall be the duty of the objector or objectors to proceed in support of said objection or objections.

Virginia--Law

ASSESSMENT AND VALUATION OF TEMPORARY INTERESTS AND REMAINDERS

Sec. 58-173. In every case in which there shall be a devise, descent, bequest or grant, in trust or otherwise, of a remainder in any property or fund to take effect in possession or enjoyment after the expiration of one or more interests in income, or estate for years or for life, or other temporary interests or estates in such property or fund, the tax shall be assessed on the actual value of such remainder at the time when the beneficiary becomes entitled to the same in possession or enjoyment. The value of all such temporary interests or estates shall be determined as of the death of the decedent in accordance with the applicable provisions of §55-269 to §55-274, inclusive, and where none of said sections shall be applicable, such value shall be determined in such manner as the Department of Taxation may by regulation prescribe. In every case in which it is impossible to compute the present value of any interest or estate in property so passing, the Department of Taxation may effect such settlement of the tax as it shall deem to be for the best interest of the Commonwealth and payment of the same so agreed upon shall be a full satisfaction of such taxes; and, notwithstanding the provisions of the first sentence of this section, such Department may effect like

settlement of the entire tax on estates in which remainders are involved, without awaiting the termination of precedent temporary interests or estates.

NOTICE OF DETERMINATION OF TAXES

Sec. 58-174. The Department of Taxation shall determine all taxes assessable under this chapter and immediately upon the determination of same shall forward a statement of the taxes determined to the person or persons chargeable with the payment thereof and shall give advice thereof to the Comptroller.

APPLICATION TO DEPARTMENT FOR CORRECTION OF DETERMINATION

Sec. 58-175. Within one year after the tax has been determined, any person aggrieved by the determination may apply to the Department, which may make such corrections of the taxes as it may determine proper; provided, however, that the rejection of the application in whole or in part by the Department shall not prevent any person from applying to the court, as hereinafter provided, for the correction of the said taxes.

PAYMENT OF TAX--WHEN DUE

Sec. 58-176. Taxes imposed by the provisions of this chapter shall be payable into the State treasury at the expiration of one year after the death of the decedent; provided, however, that the Department may, upon the application of the personal representative of the decedent, extend the time of payment of such taxes so that the same shall be payable at the expiration of fifteen months after the death of the decedent, if the Department be of the opinion that the gross value of the decedent's estate will be of such amount as to require the filing of a federal estate tax return. In all cases in which there shall be a grant, devise, descent or bequest, in trust or otherwise, of a remainder in any property or fund to take effect in possession or enjoyment after the expiration of one or more interests in income, or estates for years or for life, or other temporary interests or estates in such property or fund, the taxes on such remainder shall, subject to the provisions of § 58-173, be payable by the executors, administrators or trustees in office when such right of possession or enjoyment accrues and no distribution shall be made of the estate until such taxes have been paid, or, if there is no such executor, administrator or trustee, by the person or persons so entitled thereto, and at the expiration of one year after the date when the right of possession or enjoyment accrues to the person or persons so entitled.

PENALTY AND INTEREST FOR NONPAYMENT

Sec. 58-177. If the taxes are not paid when due, one per centum interest for each month or portion of a month from the date when the same were due until paid shall be added to the amount of the taxes and collected as a part of the same; provided, however, that when the estate of any decedent is being administered in a suit, or when for any other cause, the amount of such tax is not determinable until more than eleven months after the death of such decedent, then such penalty shall not be added until thirty days after such tax is determinable.

RECEIPTS FOR TAXES AND CERTIFICATION
OF PAYMENT

Sec. 58-178. Upon the payment of the tax the State Treasurer shall receipt to the person or persons paying the same, and the Comptroller shall certify the fact of such payment to the Department of Taxation; and the Department, upon the basis of such certification, shall certify such fact to the proper clerk or clerks, who shall record the same in the book in which the accounts of personal representatives are recorded. The Department of Taxation shall further certify such fact to the clerk of court of any city or county wherein deeds are recorded, in which the decedent died seized of any real estate.

COLLECTION BY WARRANT--LEVY
AND SALE OR LEASE

Sec. 58-181. If the taxes are not paid within thirty days after they shall have become due, the Department of Taxation shall issue a warrant for the collection of the same to the sheriff of the county or the sergeant of the city in which any property belonging to the estate is located, and the sheriff or sergeant shall immediately levy upon and sell so much of the said property, real or personal, as shall be sufficient to pay the taxes and expenses of sale, including the regular sheriff's or sergeant's fees for sale of property under an execution, or he may rent or lease any property charged with taxes for cash sufficient to pay the amount of taxes due, expenses and fees.

Maine--Law

TAX ASSESSOR TO ADMINISTER LAW;
ABSENCE OR DISABILITY

Sec. 3521. The assessment and collection of all taxes on inheritance and successions and of all estate taxes and

the enforcement and administration of all the provisions of law relating thereto shall be vested in the State Tax Assessor.

AUTHORITY OF STATE TAX ASSESSOR

Sec. 3522. The State Tax Assessor shall collect all taxes, interest and penalties provided by chapters 551 to 567 and is given authority to institute proceedings of any nature necessary or desirable for that purpose, including such proceedings as may be necessary or desirable for the removal of executors, administrators and trustees who have failed to pay the taxes due from estates in their hands.

The State Tax Assessor is given authority to enforce the collection of any taxes secured by bond in a civil action brought thereon regardless of the fact that some other official may be named as obligee therein.

The State Tax Assessor shall pay over all receipts from such taxes, interest and penalties to the Treasurer of State daily.

VALUE OF PROPERTY DETERMINED; APPEAL

Sec. 3523. The value of the property upon which the tax is computed shall be determined by the State Tax Assessor and certified by him to the persons by whom the tax is payable, and such determination shall be final unless the value so determined shall be reduced by proceedings as hereinafter provided: At any time within 90 days after such certification any party interested in the succession, or the executor, administrator or trustee may appeal from the decision of the State Tax Assessor to the probate court in the county where the estate is being administered as provided in section 3801.

At any time within said 90 days the State Tax Assessor may, at the request or with the consent of the persons by whom the tax is payable, alter his determination of value. When an alteration is made, the State Tax Assessor shall notify the persons by whom the tax is payable and the appeal may be taken within 90 days thereafter.

AMOUNT OF TAX DETERMINED

Sec. 3524. The State Tax Assessor shall determine the amount of tax due and payable upon any estate or part thereof and shall certify the amount so due and payable to the persons by whom the tax is payable. Such determination and certification may be made upon account of the tax payable upon the estate generally or upon account or in full for any part thereof or any interest therein. Payment of the amount

so certified upon account shall be a discharge of the tax to the extent of said certification and upon subsequent determination and certification of the full amount of the tax payable upon the estate generally or upon any interest therein or part thereof, payment of the full amount of said tax shall, except as otherwise provided, be a discharge of the tax. In determining the amount of any tax payable under chapters 551 to 567, the State Tax Assessor shall not be required to consider any payments on account of debts, funeral expenses or expenses of administration which have not been allowed by the probate court having jurisdiction of said estate. The amount paid on account of federal estate taxes shall be allowed as a deduction in resident estates. If after determination and certification of the full amount of the tax upon an estate or any interest therein or part thereof the estate shall receive or become entitled to property in addition to that shown in the inventory or disclosed to the State Tax Assessor, the executor, administrator, trustee or other fiduciary shall forthwith notify the State Tax Assessor who shall upon being thus or otherwise informed determine the amount of additional tax, if any, due and payable thereon and shall certify the said amount to the person by whom such tax is payable, which amount shall be due and payable 30 days from the date of the certification. A fiduciary shall be personally liable to pay only so much of said additional tax as is computed on the additional property actually received by him and a beneficiary receiving any part of such additional property shall be liable to pay so much of the tax thereon as is not chargeable as aforesaid to a fiduciary.

PREPARATION OF FORMS AND MAKING
OF RULES BY TAX ASSESSOR

Sec. 3525. The State Tax Assessor shall prepare all blanks, forms, books and papers necessary for or incident to the securing of full information with reference to all estates and may prescribe and establish such rules of practice and procedure, not inconsistent with law, as may be desirable in the economical and efficient administration of chapters 551 to 567.

DUE DATE

Sec. 3742. Said estate tax shall become payable at the expiration of 15 months from the date of death of the decedent, and executors, administrators, trustees, grantees, donees, beneficiaries, and surviving joint owners shall be and remain liable for the tax until it is paid. If the tax is not paid when due, interest at the rate of 10% annually shall be charged and collected from the time the same became due. The State Tax Assessor may, for cause, extend the time

of payment: The State Tax Assessor shall pay over all receipts from such taxes and interest to the Treasurer of State daily.

INTENT OF PROVISIONS

Sec. 3743. The intent and purpose of this chapter, imposing an estate tax, is to obtain for this State the benefit of the credit allowed under Title III, section 301, subsection (b) of the Federal Revenue Act of 1926 to the extent that this State may be entitled by this chapter by imposing an additional tax, and the same shall be liberally construed to effect this purpose. The State Tax Assessor may make such regulations relative to the assessment and the collection of the tax provided by this chapter, not inconsistent with law, as may be necessary to carry out this intent.

EXCEPTIONS

Sec. 3744. This chapter shall become void and of no effect in respect to the estates of persons who die subsequent to the effective date of the repeal of Title III of said Federal Revenue Act or of the provisions thereof providing for a credit of the taxes paid to the several states of the United States not exceeding 80% of the tax imposed by said Title III. If any portion of this chapter relating to said estate tax is held unconstitutional such decision shall not invalidate the portions unaffected thereby. In the event that any part of the Federal Revenue Act or federal Estate Tax Law, hereinbefore referred to, shall be declared to be in violation of the Constitution of the United States, such declaration shall not be construed to affect this chapter relating to estate tax.

INHERITANCE TAX LAW AS APPLICABLE TO ESTATE TAX LAW

Sec. 3745. Chapters 551 to 567, relating to inheritance taxes, shall apply to the sections relating to estate taxes wherever the same are applicable.

PETITION FOR ABATEMENT

Sec. 3801. An executor, administrator, trustee, grantee, donee, survivor or beneficiary aggrieved by the determination of the State Tax Assessor may within 90 days after the certification of any tax apply to the probate court in the county where the estate is being administered for the abatement of the tax determined or any part thereof and if the court adjudges that the tax or any part thereof was wrongly determined, it shall order an abatement

of such part thereof as was determined without authority of law. Questions of law may be reported by the probate court to the Supreme Judicial Court sitting as a court of law. Upon a final decision ordering an abatement of any part of a tax determined, the determination of the State Tax Assessor shall be amended in accordance with the decree of the court.

REFUNDS

Sec. 3802. Whenever a devisee, legatee or heir refunds any portion of the property on which a tax has been paid by him or it is judicially determined that the whole or any part of such tax ought not to have been paid, said tax, or the due proportional part thereof, shall be refunded to him by the executor, administrator or trustee,

REPORTS BY BANKS AND BUILDING AND LOAN COMPANIES

Sec. 3851. Whenever there shall be a certificate of deposit or account in any bank, savings bank or trust company, or a share account in any loan and building association, and any officer or employee of any such institution, who has charge of any such deposit or account, is informed or has knowledge of the death of any person carried on its records as owner or co-owner thereof, then he shall, within 40 days from the receipt of such information or knowledge, notify the State Tax Assessor of such death, giving the name of the deceased person, the value as of the date of his death of all accounts and shares in such institution on which his name appears and the names and addresses of any surviving co-owner or co-depositor. No such report shall be required if the total of the accounts or shares in such institution does not exceed \$200. The State Tax Assessor shall supply blanks for such reports upon request. Willful failure to comply shall render such bank, savings bank, trust company or loan and building association liable to a penalty not to exceed \$10 to be collected in a civil action brought by the Attorney General. It shall be a complete defense to such action that such officer or employee of the banking institution in charge of such account or accounts did not know of the depositor's death or no inheritance or estate tax was payable.

The State Tax Assessor shall pay to each bank and loan building association the sum of 25¢ for each report concerning all the accounts of any one decedent in the reporting institution. Where the decedent has a deposit or deposits in more than one branch of the same bank or in the main bank and

one or more branches, a separate fee shall be payable on account of each bank and branch reporting.

REGISTERS OF PROBATE REPORT TO
TAX ASSESSOR

Sec. 3852. The registers of probate in the several counties shall send to the State Tax Assessor, on forms to be prescribed and furnished by him, a record of every appointment of an executor, administrator or trustee made in his court, immediately following any such appointment. For failure to make any such report any register of probate shall be liable to a penalty of not more than \$50.

SHORT TITLE

Sec. 3911. This chapter may be cited as the "Uniform Act on Interstate Arbitration of Death Taxes".

STATE DEFINED

Sec. 3912. As used in this chapter, the word "state" means any state, territory or possession of the United States and the District of Columbia.

INTERPRETATION OF PROVISIONS

Sec. 3913. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Tennessee--Law SWORN RETURN AND INVENTORY--EXECUTION
BY REPRESENTATIVE OF ESTATE

Sec. 30-1619. Upon receipt of the aforesaid bond and/or statement from the county court clerk, the commissioner shall furnish the representative of the estate all necessary forms and information for the proper inventorying of the property of the estate and shall furnish such representative with a copy of §§ 30-1601--30-1637 and all instructions and information promulgated for the guidance of such representative of the estate in the performance of the duties required of him by §§ 30-1601--30-1637.

Such executor, administrator or trustee shall, within fifteen (15) months from the death of the decedent, prepare and file with the commissioner a copy of the will, if will there be, and a sworn return and inventory of the gross estate in duplicate and shall set forth therein each item of real and personal property separately, showing its full and actual cash value at the date of decedent's death,

together with the names, addresses and relationships of the several beneficiaries, the allowable deductions in detail and the costs of administration, separately set forth; provided, however, that the commissioner may, upon application of the executor, administrator or trustee showing good cause, grant additional time within which the said sworn return and inventory may be filed. If the personal representative is unable to make a complete return as to any part of the gross estate of decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the commissioner such person shall in like manner make a return as to such part of the gross estate.

APPRAISAL OF ESTATE BY COMMISSIONER--
FAILURE TO FILE RETURN AND INVENTORY--PENALTY ADDED TO TAX

Sec. 30-1620. Upon receipt of such sworn return and inventory from the executor, administrator or trustee, the commissioner shall proceed to make an appraisal of the various items of the gross estate and to investigate deductions claimed by such representative of the estate.

In making such appraisal, the commissioner shall direct his deputies, agents or assistants to investigate the valuation placed upon each item of the estate, with a view to determining its fullness and fairness, and, in the absence of written objection upon the part of the representative of the estate, his appraisal shall be final and binding upon the estate; provided, however, that such representative shall have the right to file with the commissioner, within thirty (30) days from the date of such appraisal, an appeal from his appraisal, addressed to a board composed of the governor, the treasurer, the secretary of state, the comptroller, and the commissioner of finance and taxation of the state, which said board shall have authority to consider the exceptions filed, hear proof and determine the valuation in dispute, and the findings, by a majority vote, of said board shall be conclusive as to all parties in interest, subject only to the constitutional right of review in the courts.

When any executor, administrator or trustee shall neglect or refuse to file the sworn return and inventory required under 30-1619, the commissioner is authorized to appraise the estate and to assess the tax upon the basis of all information available. Notice of such appraisal and tax assessment shall be given by the commissioner in accordance with the subsequent provisions of this section and the procedure thereafter with reference to an appeal from the appraisal and with reference to the collection of the tax shall be

the same as in other cases.

In the assessment of any tax when the sworn return and inventory have not been filed in accordance with §§30-1619, there shall be added to the amount of tax found to be due a penalty of five per cent (5%). Notwithstanding that the assessment made by the commissioner in the absence of the sworn return and inventory required shall be altered or revised upon appeal or in litigation, a penalty of five per cent (5%) upon the tax ultimately found to be due shall be added and collected in all cases when the sworn return and inventory are not filed.

In event the return and inventory required by §§30-1619 are not filed until fifteen (15) months from the date of the death of the decedent, the tax shall be paid at the time the return and inventory are filed, unless an extension of time for the payment thereof is granted by the commissioner.

Provided, however, that the representative of the estate, in his discretion, may file the return and inventory earlier and permit the commissioner to proceed with the appraisal of the estate prior to the payment of the tax. In the latter event the commissioner shall, at the completion of the appraisal, notify the representative of the estate by mail of his appraisal and the assessment of the tax. Such notice shall be sent by registered mail to the last known address of such representative and such mailing shall constitute good and sufficient notice.

In event the tax is paid at the time the return and inventory are filed, the commissioner shall proceed with the appraisal and investigation of the estate as hereinabove provided, and upon the completion thereof, shall make an assessment of any additional amounts found to be due, giving notice of the representative as hereinabove required.

BASIS OF APPRAISAL

Sec. 30-1621. All property, real and personal, shall be appraised at its full and true value at the date of death of the decedent.

Stocks and bonds listed on recognized exchanges shall be appraised by ascertaining their quoted value on the date of death of the decedent, or on the nearest business day of such exchange to such date.

LIEN FOR TAXES--ENFORCEMENT--PERIOD OF LIMITATION

Sec. 30-1622. The tax imposed by 30-1601--30-1637 shall be and remain a lien upon the property transferred, and upon all property acquired by the representative of the estate, or transferees, in exchange or substitution therefor, from the date of decedent's death, until the same is paid, but such lien shall not follow personal property after it has passed to a bona fide purchaser for value provided, however, that the provisions of this section shall not authorize any transfer without the consent of the commissioner, if such consent be a prerequisite to the transfer thereof.

The lien upon all real estate transferred, or any portion thereof, may be discharged by the payment of such amount of tax as the commissioner may specify and require, provided, the lien shall expire and be void unless action is brought for its enforcement within two and one-half (2 1/2) years from the date of administration, and within four (4) years from the death of the decedent where no administration was granted.

Delaware--Law

DETERMINATION OF TAX DUE; SUSPENSION
PENDING LITIGATION; NOTICE

Sec. 1330. (a) The Tax Department shall, within 14 months after the death of the donor, grantor, devisee, or intestate, compute and determine all taxes assessable under this chapter. In case an estate shall, before the expiration of said period, become involved in litigation the determination of which may affect the computation of the tax imposed by this chapter, the Tax Department may suspend the computation and determination of taxes assessable under this chapter on the disputed items, until the conclusion of the litigation.

(b) Immediately upon the determination of all taxes assessable under this chapter, the Tax Department shall give notice to the parties in interest, or to their attorneys of record, by posting the same in its offices and by registered mail.

EXTENSION OF TIME FOR DETERMINATION OF
TAX; ASSESSMENT OF DEFICIENCY

Sec. 1331. (a) No limitation of time upon the making of any assessment of inheritance tax shall limit the Tax Department in making any assessment if the information necessary to compute and determine the true and proper tax has not been furnished to the Tax Department within the time prescribed by law or if any report, inventory, list and statement, or schedule of deductions has not been filed within the time prescribed by law.

(b) If the Tax Department discovers from information submitted to it or obtained in any other manner subsequent to the assessment of the inheritance tax under this chapter, that any property of any estate or any portion thereof or any taxable interest therein has not been included or has been included in an amount substantially less than the market value of the property in any inheritance tax report filed with the Tax Department, it may at any time within 3 years after the date of any previous assessment of tax make an assessment of tax and/or an assessment of additional tax and give notice of such assessment in the same manner as is provided by law for original assessments.

REVIEW BY TAX BOARD; HEARINGS

Sec. 1332. (a) Within 30 days after the date of mailing of the notice required by subsection (b) of section 1330 of this title, any person aggrieved by the determination of tax by the Tax Department, may apply to the Tax Board, which may make such corrections of the taxes as it may determine proper.

(b) The Tax Board and the Tax Commissioner may hold hearings, summon witnesses and take testimony relative to the determination of tax under this chapter.

APPEALS FROM DECISIONS OF TAX COMMISSIONER AND OF TAX BOARD; PROCEDURE

Sec. 1333. (a) In all cases arising under this chapter the executor, administrator or taxable, may appeal to the Tax Board from the decisions or rulings of the Tax Commissioner. The Tax Board may affirm, modify, or reverse such decisions or rulings of the Tax Commissioner.

(b) Hearings may be informal but a record shall be made of the decisions reached. If the informal hearings shall prove unsatisfactory to the complainant, or to the Tax Commissioner, such complainant or the Tax Commissioner may, within 30 days ask for a formal hearing for the completion of the record and may, within 30 days after notice of a decision upon such formal hearing, appeal to the Superior Court from the determination of the Tax Board as to the amount of taxes to be paid under the provisions of this chapter.

(c) The Superior Court for the several counties of the State is vested with jurisdiction to hear and determine all such appeals from the determination of the Tax Board and may by proper rulings prescribe the procedure to be followed in such appeals. Every such appeal shall be determined by the court without the aid of a jury. In any such appeal the court shall determine what part of the costs shall be paid by the State and what part shall be paid by the executor, administrator or taxable as to it may appear just and equitable.

(d) The Tax Commissioner shall notify the Attorney General whenever such appeal is taken by the executor, administrator or taxable and the Attorney General, or one of his deputies, shall represent the State in the hearings on the appeal.

DATE DUE AND PAYABLE; LIEN ON
PROPERTY

Sec. 1341. All taxes imposed by this chapter shall be due and payable within 30 days after the amount of tax has been finally determined in accordance with the provisions of this chapter. Every such tax shall be and remain in lien upon the property subject to the tax until paid.

INTEREST ON UNPAID TAXES

Sec. 1342. From 15 months after date of death, and until paid, the taxes determined to be due shall bear interest at the rate of 6% per annum. Where an estate becomes involved in litigation referred to in section 1330 of this title, no interest shall be charged until one month after adjudication.

EXTENSION OF TIME FOR FILING REPORT
OR PAYMENT OF TAX

Sec. 1343. The Tax Board upon written request may, by agreement in meeting or by written assent, extend the time for the filing of any report which may include inventory, list and statement or schedule of deductions, and for the payment of any tax. Such extension shall extend the time within which any assessment and any payment of tax may be made for a period equal to the time so extended and all such extensions shall be recorded in the minutes of the Tax Board. The extension for payment of tax shall be conditioned upon the payment of interest upon the tax at the rate of 6% per annum as otherwise provided by law. The request and allowance of any extension of time under the provisions of this section shall in no way relieve any executor, administrator, beneficiary or other person in interest from the payment of the tax.

Minnesota--Law

DETERMINATION OF TAX
[Representative to File Return]

Sec. 291.09. Subdivision 1. (a) Every representative at the time of filing with the probate court a verified inventory and appraisal of the probate assets of the decedent as prescribed in chapter 525 shall submit to the court a true and complete schedule of non-probate assets, on a form prescribed by the commissioner.

(b) Every representative shall file with the commissioner, on a form prescribed by the commissioner, an inheritance tax return showing the values contained in the inventory and appraisal and schedule of non-probate assets and deductions and exemptions claimed by the representative, and containing a computation of the inheritance tax due under the provisions of this chapter. The representative shall file a true copy of such return with the probate court.

(c) Except as hereinafter provided, such inheritance tax return shall be conclusive as to the valuation of both probate and non-probate assets and as to all other matters relating to the taxability of probate assets, unless, within 90 days after such filing, the commissioner, the representative or any other person from whom any portion of such tax is due has filed with the probate court written objections to any such matter reflected in such return. Upon the filing of such objections, the probate court shall fix the time and place of a hearing thereon and shall give 30 days mailed notice thereof to the commissioner, to the representative and to each person from whom any portion of such tax is due. At such hearing the court shall hear such objections and shall make its order determining the matter so objected to.

(d) If the probate court upon a hearing on a representative's account allows a deduction different in amount than that used in the determination of the inheritance tax return as provided in the preceding subparagraph (b), or if the probate court in its decree assigning the property:

(i) assigns such property to a person or persons other than the person or persons reported on the inheritance tax return; or

(ii) distributes such property to the person or persons reported on the inheritance tax return in amounts or shares different than those reported thereon; or

(iii) determines the relationship between the decedent and any person to whom property is assigned as other than the relationship reported on the inheritance tax return,

the commissioner not later than 90 days after receipt of a copy of the court's order or decree adjusting, settling or allowing the account or assigning the property may issue an order adjusting the computation of the inheritance tax due in accordance therewith.

(c) The probate court may waive the filing of any inheritance tax return required by subparagraph (b) where it appears that no inheritance tax is due, but such waiver shall

not limit the right of the commissioner to file a return pursuant to subdivision 3 hereof.

[Others to File Returns]

Subdivision 2. (a) When no representative has been appointed by the probate court, every person from whom a tax is due under the provisions of this chapter shall file with the commissioner, on forms prescribed by the commissioner, a schedule of non-probate assets listing the transfers on account of which such tax is due and an inheritance tax return showing the values contained in such schedule and all claimed deductions and exemptions and containing a computation of such tax.

(b) When no representative has been appointed by the probate court, and in cases where a representative has been appointed, as to matters reflected in the inheritance tax return which are not to be determined as prescribed in subdivision 1, subparagraph (c) hereof, the tax as computed on the return shall be the inheritance tax imposed by this chapter upon the transfers reported therein unless within 90 days after such filing the commissioner or any other person from whom any portion of such tax is due mails a written notice to the commissioner, to the person so filing such return, and to each person from whom any part of such tax is due, objecting to such matters and fixing the time and place of a hearing thereon at least 30 days subsequent to the date of such notice. At such hearing the commissioner shall hear such objections, and within 30 days after such hearing, shall make his order determining the inheritance tax imposed by this chapter.

(c) The filing of an inheritance tax return shall not be required under the preceding subparagraph (a) where the transfers resulting in the tax were included in a schedule of non-probate assets and an inheritance tax return previously filed with the commissioner.

[Commissioner to File Return]

Subdivision 3. Where any inheritance tax return required by the preceding provisions of this section has not been filed within 18 months after the decedent's death, the commissioner may make and file such return including a computation of the tax resulting from the transfers therein reported and at the time of such filing shall mail copies of such return to the representative, if any, and to each person from whom any portion of such tax is due. Such return may be objected to and a hearing held on such objections in the manner elsewhere provided in this section where the return is not made by the commissioner.

[Filing Other Documents]

Subdivision 4. In all cases where a federal estate tax return is filed, a true copy thereof shall be filed with the commissioner at the time of filing the original and likewise any changes, corrections, assessments of deficiency or amendments made therein after filing shall be promptly reported to the commissioner. The probate court shall file, with the commissioner, promptly upon their entry, true copies of all orders adjusting, settling or allowing any representative's intermediate, final or other account and all decrees of descent or partial or final distribution and all interlocutory decrees entered by it in any case where it has not waived the filing of an inheritance tax return pursuant to this section. Every representative at the time of filing any intermediate, final or other account with the probate court shall file a true copy thereof with the commissioner unless the filing of an inheritance tax return has been waived.

[Determination of Values]

Subdivision 5. Notwithstanding other provisions of this chapter, when agreed in writing between the commissioner and the representative, values for purposes of the inheritance tax on both probate and non-probate assets shall be the same as those finally determined for purposes of the federal estate tax on a decedent's estate.

[Tax Imposed]

Subdivision 6. Except as otherwise provided, the tax as determined and adjusted by the commissioner under the provisions of this chapter shall be the tax imposed thereunder.

MAINTENANCE OF FAMILY IN INHERITANCE TAX CASES

Sec. 291.10. In determining the value of any estate subject to an inheritance tax, the amount deducted for the maintenance of the family shall not be greater than the amount allowed by the probate court for one year, and which is reasonably required or actually expended for their support during the settlement of the estate, not exceeding in any event the sum of \$5,000.

TIME EFFECTIVE

Upon Death

Sec. 291.11. Subdivision 1. (a) All taxes imposed by this chapter shall take effect at and upon the death of the person from whom the transfer is made and shall be due and payable at the expiration of 18 months from such death, except as otherwise provided in this chapter.

(b) (A) ~~False return--in the case of a false or fraudulent return with the intent to evade tax, any additional tax resulting therefrom may be assessed at any time.~~

(B) ~~No return--in the case of failure to file a return, the tax may be assessed at any time.~~

(C) ~~Omissions--in the case where there is omitted from the estate items subject to tax under this chapter the tax on such omitted items may be assessed at any time.~~

In determining the items omitted, there shall not be taken into account any item which has been disclosed in the return or in a statement attached to the return in a manner adequate to apprise the commissioner of the nature and amount of such item.

(c) ~~Where, before the expiration of the time prescribed in this chapter for the determination or adjustment of the tax, the commissioner and the taxpayer shall consent in writing to the extension of time for such determination or adjustment the tax may be determined at any time prior to the expiration agreed upon and in the manner agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.~~

(d) ~~The estate tax prescribed in section 291.34, notwithstanding the period of limitations prescribed for determination of the inheritance tax in this chapter shall be determined by the commissioner not later than 90 days following the filing of the Minnesota estate tax return with the commissioner, together with a copy of the federal audit report or the closing letter accepting the federal return as originally filed.~~

Proposed revised Oregon probate code
RIGHTS OF NONRESIDENT ALIEN TO TAKE PROPERTY
BY SUCCESSION OR TESTAMENTARY DISPOSITION
1st Draft
October 3, 1966

This draft is based primarily on a draft of a subcommittee consisting of Mr. Allison, Miss Lisbakken, Mr. Lovett, Mr. Barrie and Mr. Schwabe.

Section 1. Deposits for nonresident alien distributees.

(1) If, at the time of distribution of an estate, the court finds that a distributee is an alien not residing within the United States who would not receive the benefit, use or control of property due him, the court shall order the personal representative to convert the property into cash and deposit the money due the alien distributee to the credit of the alien distributee at interest in a savings account in a bank or banks in this state. Sale of the property shall be in the manner provided by law for the sale of other property of the estate.

(2) Before money is deposited as provided in subsection (1) of this section, there shall be deducted therefrom the expenses of any sale of the property and amounts the court may allow for the services of the personal representative, his attorney and the attorney in fact representing the alien distributee in the conversion and deposit proceeding.

(3) The pass book or other evidence of the deposit shall be delivered to the clerk of the court, who shall be custodian thereof until it is needed for withdrawal of the money deposited as provided in section 2 or 3.

(4) The money deposited and interest accrued thereon may be withdrawn and paid or disposed of only as provided in section 2 or 3. The deposit and interest are not subject to the Uniform Disposition of Unclaimed Property Act (ORS 98.302 to 98.436 and 98.991).

Section 2. Payment of deposits to nonresident alien distributees. (1) At any time within 10 years after the date of the court order to deposit money due an alien distributee as provided in section 1, the alien distributee or, if he is deceased, the personal representative of his estate appointed by a court of this state may file with the court that ordered the deposit a petition requesting withdrawal of the money deposited and interest accrued thereon and payment thereof to the petitioner or his attorney in fact. The petition shall be filed and all proceedings thereon shall be had under the register number of the estate proceeding in which the court order to deposit was made, but the estate need not be reopened for the purpose of the withdrawal proceeding.

(2) If a petition filed as provided in subsection (1) of this section is denied by the court, a subsequent petition so filed requesting withdrawal of the same money deposited and interest shall allege the particulars of new or changed circumstances occurring after that denial that justify withdrawal and payment.

(3) The court, upon the filing of the petition, shall fix a time and date certain for a hearing on the petition, and shall

order that written notice of the hearing be given not less than 30 days before the date thereof to the clerk of the State Land Board, the bank or banks in which the money is deposited and the consular representative of the country of which the alien distributee is or, if deceased, was a citizen.

(4) If it appears to the court at the hearing that the alien distributee or, if deceased, his heirs or beneficiaries would receive the benefit, use or control of the money deposited, the court shall order that the money deposited and interest accrued thereon be withdrawn and paid to petitioner or his attorney in fact, after deduction therefrom of the costs and expenses of the withdrawal proceeding allowed by the court.

Section 3. Payment of nonresident alien distributee deposits to other distributees; escheat. (1) If the money due an alien distributee deposited as provided in section 1 and interest accrued thereon is not withdrawn and paid as provided in section 2, the court that ordered the deposit shall order that the money deposited and interest be withdrawn and paid to any distributee of the estate, other than the alien distributee, who files with the court a petition requesting the withdrawal and payment within one year after the expiration of the 10-year period specified in section 2 and who is found by the court to be eligible to receive the money. The petition shall be filed and all proceedings thereon shall be had under the register number of the estate proceeding in which the court order to deposit was made, but the estate need

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1st Draft
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Page 4

not be reopened for the purpose of the withdrawal proceeding.

(2) If the money deposited and interest accrued thereon is not withdrawn and paid as provided in section 2 or subsection (1) of this section, the money and interest shall be disposed of as escheated property.

References: Advisory Committee Minutes:
12/17, 18/65 pp. 1 to 4
2/18, 19/66 pp. 3 to 9

Lundy's memorandum dated February 7, 1966
3/18, 19/66 pp. 3 to 6
4/15, 16/66 pp. 3 to 6

ORS 111.070

Section 4. Repeal of existing statute. ORS 111.070 is repealed.

ROUGH DRAFT

Section 1. Deposits for nonresident alien distributees. (1) If, at the time of distribution of an estate, the court finds that a distributee is an alien not residing within the United States who would not receive the benefit, use or control of property due him, the court shall order the personal representative to convert the property into cash and deposit the money due the alien distributee to the credit of the alien distributee at interest in a savings account in a bank or banks in this state. Sale of the property shall be in the manner provided by law for the sale of other property of the estate.

(2) Before money is deposited as provided in subsection (1) of this section, there shall be deducted therefrom the expenses of any sale of the property and amounts the court may allow for the services of the personal representative, his attorney and the attorney in fact representing the alien distributee in the conversion and deposit proceeding.

(3) The pass book or other evidence of the deposit shall be delivered to the clerk of the court, who shall be custodian thereof until it is needed for withdrawal of the money deposited as provided in section 2 or 3.

(4) The money deposited and interest accrued thereon may be withdrawn and paid or disposed of only as provided in section 2 or 3. The deposit and interest are not subject to the Uniform Disposition of Unclaimed Property Act (ORS 98.302 to 98.435 and 98.991).

Section 2. Payment of deposits to nonresident alien distributees.

(1) At any time within 10 years after the date of the court order to deposit

money due an alien distributee as provided in section 1, the alien distributee or, if he is deceased, the personal representative of his estate appointed by a court of this state may file with the court that ordered the deposit a petition requesting withdrawal of the money deposited and interest accrued thereon and payment thereof to the petitioner or his attorney in fact. The petition shall be filed and all proceedings thereon shall be had under the register number of the estate proceeding in which the court order to deposit was made, but the estate need not be reopened for the purpose of the withdrawal proceeding.

(2) If a petition filed as provided in subsection (1) of this section is denied by the court, a subsequent petition so filed requesting withdrawal of the same money deposited and interest shall allege the particulars of new or changed circumstances occurring after that denial that justify withdrawal and payment.

(3) The court, upon the filing of the petition, shall fix a time and date certain for a hearing on the petition, and shall order that written notice of the hearing be given not less than 30 days before the date thereof to the clerk of the State Land Board, the bank or banks in which the money is deposited and the consular representative of the country of which the alien distributee is or, if deceased, was a citizen.

(4) If it appears to the court at the hearing that the alien distributee or, if deceased, his heirs or beneficiaries would receive the benefit, use or control of the money deposited, the court shall order that the

money deposited and interest accrued thereon be withdrawn and paid to petitioner or his attorney in fact, after deduction therefrom of the costs and expenses of the withdrawal proceeding allowed by the court.

Section 3. Payment of nonresident alien distributee deposits to other distributees; escheat. (1) If the money due an alien distributee deposited as provided in section 1 and interest accrued thereon is not withdrawn and paid as provided in section 2, the court that ordered the deposit shall order that the money deposited and interest be withdrawn and paid to any distributee of the estate, other than the alien distributee, who files with the court a petition requesting the withdrawal and payment within one year after the expiration of the 10-year period specified in section 2 and who is found by the court to be eligible to receive the money. The petition shall be filed and all proceedings thereon shall be had under the register number of the estate proceeding in which the court order to deposit was made, but the estate need not be reopened for the purpose of the withdrawal proceeding.

(2) If the money deposited and interest accrued thereon is not withdrawn and paid as provided in section 2 or subsection (1) of this section, the money and interest shall be disposed of as escheated property.

COMMENT

Section 1

Subsection (1) of section 1 refers to a court finding "at the time of distribution of an estate." Is this reference sufficiently specific? Also, should the manner in which the occasion for the court finding is initiated be specified; for example, on petition by the personal representative or a person interested in the estate or by the court on its own motion? Should provision be made for hearing and notice thereof in connection with the conversion and deposit order?

"Distributee" is used in subsection (1), and elsewhere in the draft, instead of "heir, legatee, devisee or distributee." It is contemplated that the proposed revised Oregon probate code will contain a definition of "distributee," to be applicable throughout the code, that will encompass persons entitled to any property of a decedent under his will or under the statutes of intestate succession. See, for example, the definitions of "distributee" in section 3, 1963 Iowa Probate Code, and section 3, Model Probate Code (1946).

Subsection (1) refers to "United States," rather than "United States or its territories." ORS 174.100(5) defines "United States" as including "territories, outlying possessions and the District of Columbia" generally for purposes of the statute laws of this state.

Subsection (1) uses "property" instead of "money or other property," and "convert the property into cash" instead of "sell and convert said property into cash." It is hoped that the terminology used satisfactorily avoids specific provisions distinguishing between the treatment of property that already is cash and property that must be sold for cash.

Subsection (1) provides for deposit in a "bank or banks." Is it contemplated that the money due a particular alien distributee be deposited in more than one bank? Also, should deposits in trust companies, as well as banks, be authorized? "Bank or trust company" appears to be common terminology in the Oregon banking statutes. See, for example, ORS 708.015 and 708.025.

Subsection (4) refers to the Uniform Disposition of Unclaimed Property Act (ORS 98.302 to 98.436 and 98.991). For the purpose of exempting deposits under the draft from that Act, a reference to ORS 98.306 only may be sufficient.

The present Oregon statute on inheritance by nonresident aliens (i.e., ORS 111.070) specifies that the burden to establish the fact of existence of

reciprocal rights set forth therein is upon the nonresident alien. Should the draft contain a comparable provision as to the burden of establishing the fact of an alien distributee receiving the benefit, use or control of property or money deposited due him?

Section 2

Subsection (1) of section 2 provides that the estate need not be reopened for the purpose of the withdrawal proceeding. The wording "estate need not be reopened" appears to imply that the estate may be reopened in appropriate cases, is this intended? Also, is it necessary or desirable that it be specified that the personal representative of the estate need not be made a party to the withdrawal proceeding?

Subsection (3) provides for hearing and notice thereof on a petition to withdraw on the "day certain" approach. Is this approach preferable to hearing and notice on the "appearance" approach? Some hearings with notice involved in estate proceedings, such as that for sale or lease of property (see ORS 116.745), employ the "appearance" approach. It is possible that the proposed revised Oregon probate code will contain general provisions applicable to the various hearings with notice involved in estate proceedings. Perhaps such general provisions might be written in such a way as to be appropriate for deposit and withdrawal proceedings under the draft, thus facilitating reference thereto in the draft instead of specific provisions in the draft on this matter.

Subsection (4) refers to "costs and expenses of the withdrawal proceeding allowed by the court." Is this reference sufficiently specific? For example, whose "costs and expenses"? And, does "costs and expenses" contemplate something different than the customary "costs and disbursements" allowed in actions and suits? Perhaps the proposed revised Oregon probate code should contain some general provision on this subject, also.

Section 3

Subsection (1) of section 3 provides for withdrawal of deposits on petitions of distributees other than alien distributees after the 10-year period has expired. Should provision be made for hearing and notice thereof on such petitions? Also, should eligible distributees other than a petitioner be permitted to intervene in the proceeding, and should the court be permitted to order withdrawal and payment to eligible distributees other than the petitioner?

Generally

Should the draft make any provision for nonresident aliens who are

beneficiaries under testamentary trusts?

Should the draft make any specific provision for property due non-resident aliens in circumstances involving present and future estates; that is, where the alien's interest is a present estate, with the future estate in someone else, or where the alien's interest is a future estate, with the present estate in someone else? Perhaps conversion into cash of the property due the alien under subsection (i) of section 1 encompasses these situations.

Should the draft be made applicable only to estates of persons dying after the effective date of the draft? Under present Oregon law, for example, title to real property of a decedent vests in his heirs immediately on his death. Does title vest immediately in other heirs if a nonresident alien heir is found ineligible under ORS 111.070? If the answer to this question is affirmative, and if such a vesting occurred before the effective date of the draft but distribution was not made until after that date, might the application in this situation of the deposit and withdrawal proceedings under the draft be considered an unconstitutional deprivation of vested property rights?

Proposed revised Oregon probate code
ESTATES OF ABSENTEES
1st Draft
April 21, 1967

This draft is based primarily on a draft by Stanton Allison distributed at the March 1967 meeting and the action by the committee at the February 17, 18, 1967 and March 17, 18, 1967 meeting.

Section 1. Contents of petition for letters of administration of estate of an absentee. Administration may be had upon the estate of an absentee. A petition for letters of administration shall state, in addition to the applicable facts required by ORS _____;

(1) Whether the absentee, when last heard from, was a resident or nonresident of this state;

(2) The address of the absentee at his last known domicile;

(3) That, to the best knowledge of the petitioner, and after diligent search, the whereabouts of the absentee is and has been unknown for a period of three years.

Section 2. Administration when circumstances indicate death probable. Administration may also be had upon the estate of an absentee when the petition therefor alleges, in addition to the applicable facts required by ORS _____, that his accidental death at a stated time, location and circumstance is probable but the fact of the death may be in doubt solely by reason of failure to find or identify the remains of the absentee.

Section 3. Hearing on petition; notice to absentee.

Upon filing the petition for letters of administration the clerk of court shall set a day for hearing not less than 30 days from the date of filing the petition unless the court shall set an earlier day. A copy of the notice of the hearing shall be sent:

(1) To the absentee at his last known address by registered mail and by postage prepaid letter to be forwarded through the United States Social Security Administration to his last address available to that agency;

(2) To the heirs named in the petition.

The court may order that additional notice of the hearing be given by publication or by other means. Proof of mailing may be made by the petitioner by affidavit.

Section 4. Appointment of person to represent absentee.

The court may appoint some disinterested person as guardian ad litem to appear at the hearing for the absentee. The court may direct the petitioner or the guardian ad litem to make search for the absentee in any manner which the court may deem advisable, including any or all of the following methods:

(1) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(2) By notifying officers of justice and public welfare

agencies in appropriate locations of the disappearance of the absentee;

(3) By engaging the services of an investigation agency.

Section 5. Hearing; findings of court conclusive-exceptions. (1) Upon the hearing the court shall determine the fact and date of death and whether the deceased died testate or intestate and shall grant letters accordingly, or, on proper grounds, may deny the petition.

(2) The finding of the fact of death shall be conclusive as to the absentee only if:

(a) The notice of the hearing on the petition for probate or for the appointment of a personal representative is sent by registered mail addressed to the absentee at his last known address; and

(b) The court finds that the search was made as ordered by the court.

Section 6. Mode of procedure, generally. Upon the entry of the order establishing death of the absentee, administration of the estate of such absentee, whether testate or intestate, shall proceed as provided for the estates of other decedents except as otherwise provided in this chapter.

Section 7. Revocation of letters; settlement of account upon revocation. The court shall revoke letters of administration at any time upon proof that the absentee is in fact alive. Acts of a personal representative taken prior to

revocation of letters shall be valid for all purposes, but after revocation the personal representative shall have no further power in the capacity of personal representative. The personal representative shall pay claims allowed and proved and shall settle an account of his administration for the period of time preceding revocation and shall transfer any property in his hands to the person for whose estate he acted or to the duly authorized agent of that person. In the event a sale of property has been conducted by the personal representative, the absentee shall have no right, title, or interest in or to the property sold but only to the proceeds realized therefrom or so much thereof as may remain in the hands of the personal representative upon the closing of the estate of the absentee. The absentee shall have, for a period of five years after distribution of the estate, a right to recover from the distributees any estate or proceeds of any estate of the absentee that remains in their hands but there shall be no right of recovery from purchasers of property sold by the distributees.

Section 8. Substitution of parties--absentee for personal representative. (1) After revocation of letters of administration the absentee may be substituted as plaintiff in actions and suits brought by the personal representative. The absentee may be substituted as defendant upon his own application or that of the plaintiff. If the absentee is

substituted as defendant he shall not be compelled to go to trial within less than three months from the date of the substitution in actions and suits brought against the personal representative.

(2) A judgment or decree against the personal representative shall constitute a judgment or decree against the absentee if he is alive, but the judgment or decree may be vacated upon application of the absentee made within three months after the absentee has knowledge of the existence thereof. The application of the absentee to vacate a judgment or decree shall be accompanied by an affidavit denying material facts upon which the right of suit or action was based or alleging facts which would constitute a defense.

Section 9. Costs when letters granted. The costs, expenses and charges attending the issuance of letters of administration or their revocation shall be paid out of the estate of the absentee.

Section 10. Costs when letters of administration not issued. If the petition for letters is not granted the applicant shall pay the costs, expenses and charges.

Proposed revised Oregon probate code
MISSING PERSONS GENERALLY
1st Draft
April 19, 1967

Section 1. ORS 127.010 is amended to read:

127.010. Petition that property of missing person requires attention. Whenever any person[, resident or non-resident of this state,] who owns or is entitled to the possession of any [real or personal] property situate in this state[,] is missing or his whereabouts is unknown [for 90 days], upon presentation of a verified petition of a member of his family, business associate or friend to the court [having probate jurisdiction] in the county of the residence of [such] the missing person, or in the county in which the property, or the major portion thereof, of the missing person is situate, representing that his whereabouts has been for such time and still is unknown and that his property requires attention, supervision and care, the court shall appoint a day for hearing, [not less than 15 days from the date of the order directing such hearing.] the matter.

Section 2. ORS 127.020 is amended to read:

127.020. Notice of hearing; publication. Upon the filing of [such] the petition, the clerk of the court shall cause to be published prior to the date of hearing in a newspaper published in the county, [once a week for two successive weeks,] a notice that [such] the petition will be heard at the court room of the court at the time appointed

MISSING PERSONS GENERALLY

1st Draft

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by the court. The court may direct [further] other notice of the application to be given in [such] the manner and to [such] the persons as it may deem proper. Proof of publication shall be by affidavit filed with the clerk of the court. The notice requirements of this section shall not apply where accidental death of the owner of property is probable but the fact of death may be in doubt solely by reason of failure to find or identify the remains.

Section 3. ORS 127.030 is amended to read:

127.030. Hearing by court; appointment of trustee of property. At the time designated for the hearing, or at any subsequent time to which the hearing may be postponed, the court shall hear the petition and the evidence offered in support of or in opposition thereto, and, [if] after the hearing if the court is satisfied that the allegations [thereof] of the petition are true and that [such] the person remains missing and his whereabouts unknown, the court shall appoint some suitable person to take charge and possession of all of the property of the missing person, to manage and control it under the direction of the court.

Section 4. ORS 127.040 is amended to read:

127.040. Qualification and bond of trustee. (1)

The trustee appointed pursuant to ORS 127.030 shall be a

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1st Draft
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resident of the county in which the application is filed and shall have all the qualifications prescribed by law for [an administrator or executor] a personal representative of an estate of a deceased person. The preference for the appointment shall be the same declared by law for [administrators.] personal representatives.

(2) Every trustee appointed under the provisions of ORS 127.010 to 127.190 shall give bond in a sum to be fixed by the court with either two or more competent personal sureties or a qualified corporate surety, conditioned that the trustee will at all times obey the orders of the court and faithfully account for all moneys and property of the trust.

Section 5. ORS 127.050 is amended to read:

127.050. Inventory and appraisal of property. The trustee shall, within 15 days after his appointment, or within such further time as the court may allow, make and file with the clerk of the court an inventory [verified by his own oath of all the real and personal] of the property, moneys, notes, choses in action and accounts owned by or due to the missing person[, specifying each item separately,] which shall come to his possession or knowledge, and shall cause all of [such] the property to be separately appraised at its true cash value by three disinterested and competent

persons, appointed by the court irrespective of the situs of the property[, who shall each take and subscribe an oath to be filed with the inventory to the effect that he will impartially appraise the property of the missing person according to the best of his knowledge and ability].

Section 6. ORS 127.060 is amended to read:

127.060. Duties and powers of trustee. The trustee shall:

(1) Take possession of the property within this state of the missing person and shall collect and receive the rents, income and profits thereof; [and]

(2) Collect all debts, dues and credits owned by the missing person[,] ; [and]

(3) Pay the expenses thereof out of the trust funds;

(4) Pay all indebtedness of the missing person if and when authorized by the court;

(5) Operate the property of the missing person if operation thereof is advisable, and pay all expenses of such operation;

(6) Sell all or any portion of the property of the missing person, when authorized by the court, in the manner provided in ORS 127.090 to 127.130, and may mortgage and hypothecate the [real and personal] property of the missing person when duly authorized so to do by the court. The

court may direct the trustee to pay to the person or persons constituting the dependent members of the family of the missing person [such] any sum or sums of money for family expenses and support from the income of the estate, or from the proceeds of the sale or hypothecation of the property of the estate, as it may from time to time determine.

Section 7. ORS 127.070 is amended to read:

127.070. Contract by missing person to convey realty; deed by trustee. If any missing person was, at the time of his or her disappearance, a party to a bond for a deed or other enforceable contract requiring the missing person to convey real estate, the interest and title of the missing person may be conveyed by the trustee appointed under the terms of ORS 127.010 to 127.190 upon full compliance with the terms and conditions of [such] the bond or contract by the other party thereto, and a deed so made shall transfer the same title as though made by the missing person.

Section 8. ORS 127.080 is amended to read:

127.080. Borrowing of money by trustee; security.

A trustee appointed under the terms of ORS 127.010 to 127.190 may, with the consent of the court making the appointment, borrow money upon any property belonging to the estate and execute a mortgage thereon as security for the loan at [such] the rate of interest and upon [such] the terms as the court shall prescribe, for the purpose of funding the

indebtedness against the missing person or for the purpose of paying interest on outstanding obligations that are liens upon the premises to be mortgaged, or for the purpose of securing funds for the payment of the expenses of administration, taxes or indebtedness of the missing person, or for the purpose of securing funds to support the dependent members of the family of the missing person, when it is shown by verified petition to the satisfaction of the court to be necessary, whether the property has or has not before that time been mortgaged by the missing person.

Section 9. 127.090. Sale of corpus by order of court. When the rents, income and profits of operation of the property of the missing person are exhausted or insufficient to pay the charges, expenses, claims and indebtedness and the support of the dependent members of the family of the missing person, the trustee may sell the property of the estate, or so much thereof as may be necessary for that purpose; provided, that whenever it appears to the satisfaction of the court that it is for the best interests of the estate of the missing person that the property, or any part thereof, should be sold, the court may order the property, or any part thereof, to be sold for the purpose of reducing the property into cash.

Section 10. 127.100. Petition for sale of property; citation of interested persons. Upon the filing of a petition for the sale of property, a citation shall issue

directed to each dependent member of the family of the missing person and to every person who would be an heir at law of the missing person if he were dead, and, if it appears that the missing person left a will, to each legatee and devisee mentioned in the will, and to all other persons, if any, interested in the property of the estate to appear within 10 days from the date of the service of such citation if served within the county wherein the proceeding is pending, or within 20 days if served within any other county in this state if personally served, or, if served by publication or personal service without the state, within 28 days from the date of the first publication thereof or date of service of the citation without the state, to show cause, if any exists, why an order of sale should not be made as prayed for in the petition.

Section 11. ORS 127.110 is amended to read:

127.110. Order of sale; filing of additional undertaking by trustee. If, upon the hearing, the court finds that it is necessary or expedient that any portion of the property be sold, it shall make the order accordingly and prescribe the terms of the sale, whether cash or credit, or both. Unless it appears to the satisfaction of the court that the amount of the undertaking of the trustee previously given is equal to the probable value of the property ordered sold, the court must require the trustee to give an additional undertaking in such sum as it may fix, to be void upon the condition that the trustee accounts for and

disposes of the proceeds of the sale according to law. Before proceeding to sell any property of the missing person under [such] an order of sale, the trustee [must] shall file with the clerk of the court any additional undertaking so required of him, duly approved by the court.

Section 12. ORS 127.120 is amended to read:

127.120. Notice of sale; mode of selling. If the sale is of personal property, notice thereof shall be given in the manner and for and during the time prescribed by law for sales of personal property upon execution. If the sale is of real property, [such] the property shall be sold at public auction as like property is sold on execution, after giving notice once a week for four weeks successively in a newspaper published in the county in which the property to be sold is situate, which notice shall state the terms of sale and that the same is subject to confirmation by the court.

Section 13. ORS 127.130 is amended to read:

127.130. Report of sales by trustee; confirmation; conveyance of property. The trustee shall report to the court [such] any sale or sales of the property of the missing person and if the court is satisfied that the proceedings are regular and that the sum for which the property was sold is not disproportionate to the value thereof, the court shall confirm [such] the sale or sales and direct the trustee to make a proper bill of sale of the personal

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property and a proper conveyance of the real property to the purchaser or purchasers thereof.

Section 14. 127.140. Accounting by trustee. The trustee, on the first Monday in April and the first Monday in October of each year, shall file with the court a semi-annual account exhibiting all receipts and expenditures during the preceding six-months' period and shall show therein the condition of all the property of the missing person.

Section 15. ORS 127.150 is amended to read:

127.150. Return of missing person; accounting by trustee. In the event the missing person returns, the court, upon the application of [such] the missing person or upon its own motion, shall require the trustee to render and file a verified account of the administration of the trust. The provisions of the law relating to final accounts of [administrators and executors] personal representatives shall apply with reference to the form and contents of [such] the final account.

Section 16. ORS 127.160 is amended to read:

127.160. Delivery of property in possession of trustee. Upon settlement of the accounts of the trustee, the court shall order the property of the missing person remaining in the hands of [such] the trustee to be delivered to the owner thereof.

Section 17. 127.170. Appointment of successor trustee.

In the event of the death, resignation, removal or disability of the trustee, the court shall have the power, upon petition, to appoint a successor trustee without notice or formal hearing.

Section 18. ORS 127.180 is amended to read:

127.180. Trustee's duties upon commencement of administration of estate of missing person as being that of a decedent. If, during the existence of a trust provided for in ORS 127.010 to 127.190, administration of the estate of [such] the missing person is instituted under the provisions of the law relative to the administration of the estates of deceased persons, the court shall require an accounting as provided in ORS 127.150 and shall order the property of the missing person remaining in the hands of the trustee to be delivered to the [administrator or executor of the estate] personal representative.

Section 19. ORS 127.190 is amended to read:

127.190. Exhaustion of property; settlement of estate. Whenever all the property of the missing person has been exhausted in the payment of debts, charges of administration, taxes and support of family dependents, the trustee shall file a final account and close the trust estate in the same manner and form, including notice, as provided by law for settlement of estates of [deceased persons] decedents.

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Section 20. 127.310. Appointment of conservator to care for absentee's estate. Whenever a person, hereafter in ORS 127.310 to 127.350 referred to as an absentee, has been reported or listed as missing, or missing in action, or interned in a neutral country, or beleaguered, besieged or captured by an enemy, has an interest in any form of property in this state and is a legal resident of this state and has not provided an adequate power of attorney authorizing another to act in his behalf in regard to such property or interest, then the court having probate jurisdiction in the county of the absentee's legal domicile or of the county where the property is situated, upon petition alleging the foregoing facts and showing the necessity for providing care of the property of the absentee, made by any person who would have an interest in the property of the absentee were the absentee deceased, or on the court's own motion, after notice to or receipt of proper waivers from all the heirs or next of kin of the absentee as provided by law for the administration of an estate, and upon good cause being shown, may, after finding the facts to be as aforesaid, appoint a conservator to take care of the absentee's estate, under the supervision and subject to the orders of the court.

Section 21. ORS 127.320 is amended to read:

127.320. Bond and reports of conservator; powers.

The court has discretionary authority to appoint any suitable person as [such] a conservator and may require the conservator to post an adequate bond and make such reports as the court may deem necessary. The conservator shall have the same powers and authority as the guardian of the property of an infant or incompetent and shall be considered an officer of the court.

Section 22. 127.330. Support for dependents. The court is authorized to order the conservator to provide support for any person dependent upon the absentee for support or for the wife and minor children of the absentee, out of the assets of the absentee's estate.

Section 23. ORS 127.340 is amended to read:

127.340. Appointment of attorney; fees. In case of legal controversy involving the [absentee's] estate of the absentee or any part thereof, the court is authorized to appoint an attorney to appear and represent the interests of the absentee therein. The attorney [ad litem so appointed] shall stand in the relation of attorney for the absentee, and reasonable fees for service rendered may by the court be ordered paid from the estate by the conservator.

Section 24. ORS 127.350 is amended to read:

127.350. Termination of conservatorship; death of absentee. At any time, upon petition signed by the absentee, or on petition of an attorney in fact acting under an

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adequate power of attorney granted by the absentee, the court shall direct the termination of the conservatorship and the transfer of all property held thereunder to the absentee or to the designated attorney in fact. [Likewise, if] At any time subsequent to the appointment of a conservator if it appears that the absentee has died and [an executor or administrator] a personal representative has been appointed for the estate, the court shall direct the termination of the conservatorship and the transfer of all property of the deceased absentee [held thereunder to such executor or administrator] to the personal representative.

References: Advisory Committee Minutes:
 2/16, 17/67 p. 9
 3/17, 18/67 pp. 6 to 10