

Proposed revised Oregon probate code  
APPORTIONMENT OF ESTATE TAXES  
2nd Draft  
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**Section 1. Definitions.** For purposes of this chapter:

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

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

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

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

(5) "Tax" means the federal estate tax and the Oregon estate tax provided by ORS \_\_\_\_\_ and interest and penalties imposed in addition to the tax;

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

**Section 2. Apportionment among interested persons; valuations; testamentary apportionment.** Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be

made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose. In the event the decedent's will directs a method of apportionment of tax different from the method described in this Act, the method described in the will shall control.

Section 3. Apportionment proceedings; jurisdiction; equitable apportionment; penalties and interest; charging fiduciary; court determination of amount of tax.

(1) The court in which the administration of the estate is proceeding may on petition for the purpose determine the apportionment of the tax;

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in section 2, because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest;

(4) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act, the

determination of the probate court in respect thereto shall be prima facie correct.

Section 4. Withholding of Tax; Recovery from Estate; Bond of Distributee.

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

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

Section 5. Exemptions; Allowance; Relationship of Donee;  
Foreign Taxes; Tax Credits; Property Includable in Computation.

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

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

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate shall inure to the proportionate benefit of all persons liable to apportionment;

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

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or bequest does not constitute an allowable deduction

for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in section 2 hereof, and to that extent no apportionment shall be made against the property. The sentence immediately preceding shall not apply to any case where the result will be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1954 of the United States, relating to deduction for state death taxes on transfers for public, charitable or religious uses.

Section 6. Income Interests; Life or Temporary Interests; Charging Corpus. No interest in income and no estate for years or for life or other temporary interest in any property or fund shall be subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder shall be chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

Section 7. Proceedings for Recovery of Tax; Commencement; Liability of Fiduciary; Apportionment of Amount Recovered. Neither the personal representative nor other person required to pay the tax shall be under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of three months next following final

determination of the tax. A personal representative or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the three months' period shall not be subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate, who are subject to apportionment.

Section 8. Foreign Fiduciaries and Estate; Tax Credits.

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

in the other state shall be prima facie correct.

Section 9. Construction. Sections 1 to 9 embody the Uniform Estate Tax Apportionment Act and shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

COMMENTS

This chapter embodies the Uniform Estate Tax Apportionment Act, with minor editorial changes. It provides for apportionment of the federal estate tax and the Oregon estate tax included in subsection (1) of ORS 118.100, unless the will provides for an apportionment of the taxes different from that prescribed by the act.

It was explained to the committees that 25 states now have apportionment statutes and that the tendency was toward equitable apportionment and not to put the whole burden on the residuary estate. It was the consensus of the committees that it was desirable to enact legislation which would provide a legal formula for apportioning these taxes and means of compelling contribution for payment of the taxes so apportioned. We might add that members of our subcommittee considering this subject differed on the application and interpretation of Beatty vs. Calk, 236 Or 498, 387 P2d 355, 242 Or 128, 406 P2d 419.

We find no conflict of the proposed chapter with ORS 118.110 as it applies to the Oregon estate tax.

Section 3 authorizes the court to determine apportionment and gives it discretion to direct apportionment of interest and penalties as it may find equitable if it is inequitable to apportion in the manner provided by section 2.

Section 4 authorizes the personal representative to withhold the amount of tax attributable to the interest distributable to a devisee. It also provides that the personal representative may recover a deficiency from such person and may require the distributee to provide security on a distribution prior to final apportionment.

Section 6 provides that income and temporary interests shall not be subject to apportionment as between such interests and the remainder, but that the tax shall be chargeable against the corpus of the property.

Section 7 provides that if a tax cannot be collected from a person interested in the estate the amount of the tax apportioned to such person shall be equitably apportioned among the other persons subject to apportionment.

Section 8 provides that a personal representative domiciled in another state may recover from a local devisee through the courts of this state the proportionate amount of taxes due from such devisee.