

Proposed revised Oregon probate code  
INHERITANCE TAX  
2nd Draft  
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Prepared by  
Stanton W. Allison

INHERITANCE TAX

Section 1. ORS 118.230 is amended to read:

118.230 Lien of tax; liability for payment; limitation.

(1) Every tax imposed by ORS 118.005 to 118.840 is a lien upon the property embraced in any inheritance, devise, [bequest, legacy] or gift until paid, and the person to whom such property is transferred, and the [administrators, executors] personal representatives and trustees of every estate embracing such property are personally liable for such tax until its payment, to the extent of the value of such property.

(2) However, in all estates, excepting those of non-resident deceased, if all inheritance taxes are not sued for within six years after the amount of such taxes is determined by the [probate court and the notice of such determination has been served upon the] State Treasurer, as provided in [ORS 118.690,] ORS \_\_\_\_\_, they are conclusively presumed to be paid and cease to be a lien against the estate, or any part thereof, except that as to property not previously reported to the State Treasurer, the time limitation shall run only from the time of the reporting thereof. In estates of nonresident deceased, such limitation period shall not apply until one year has elapsed after official notice of the death of

the nonresident deceased, with description and probable value of the estate, has been filed with the State Treasurer.

Section 2. ORS 118.280 is amended to read:

118.280 Power to sell for payment of tax; tax lien transferred to proceeds when property of estate sold or mortgaged. (1) Every [executor, administrator or trustee] personal representative has power to sell as much of the property embraced in any inheritance [,] or devise [Bequest or legacy,] as will enable him to pay the tax imposed by ORS 118.005 to 118.840, in the same manner as he is authorized to do for the payment of the debts of a decedent.

(2) Any part of the gross estate sold [pursuant to an order of the court or by virtue of a power conferred by will] for the payment of claims against the estate and expenses of administration, for the payment of the tax imposed by ORS 118.005 to 118.840, or for purposes of distribution, shall be divested of the lien of such tax, and such lien shall be transferred to the proceeds of such sale. A mortgage on property executed [pursuant to an order of court or by virtue of a power conferred by will] for payment of claims against the estate and expenses of administration and for payment of the tax imposed by ORS 118.005 to 118.840 shall constitute a lien upon said property prior and superior to the inheritance tax lien, which inheritance tax lien shall attach to the proceeds of such mortgage.

Section 3. ORS 118.300 is amended to read:

118.300 Deferred payment; bond. Any person or corporation beneficially interested in any property chargeable with a tax under ORS 118.010, and [executors, administrators] personal representatives and trustees thereof, may elect, within six months from the death of the decedent, not to pay such tax until the person or persons beneficially interested therein shall come into actual possession or enjoyment thereof. If it is personal property, the person or persons so electing shall give a bond to the state in the penalty of three times the amount of such tax, with such sureties as the [probate judge of the proper county] State Treasurer may approve, conditioned for the payment of such tax and interest thereon, at such time and period as the person or persons beneficially interested therein may come into actual possession or enjoyment of such property, which bond shall be executed and filed, and a full return of such property [upon oath] made to the [probate court] State Treasurer within six months from the date of transfer thereof, as in this section provided. Such bond must be renewed every five years.

Section 4. ORS 118.350 is amended to read:

118.350 Compromise and compounding tax; approval by court; proceedings in case of actions or suits involving title to real property. (1) Whenever an estate, devise, legacy or beneficial interest therein, charged or sought to be charged with the inheritance tax is of such nature or is so disposed

that the liability of the same is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the State Treasurer may, with the written approval of the Attorney General setting forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; [but the settlement must be approved by the court having jurisdiction of the estate,] and [after such approval] the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

(2) In any suit or action in the circuit court of the state involving the title to real property only, in which it appears, by the pleadings or otherwise, that an inheritance tax is or might be payable to the State of Oregon by reason of the death of any person whose estate has not been administered in Oregon, such circuit court shall direct that a copy of the pleadings in such cause be served upon the State Treasurer, such service to be made as summons is served in any cause in the circuit court of this state. Thereupon, further proceedings in the cause shall be suspended until the State Treasurer has had an opportunity to appear therein, such appearance to be made within the time that is required by the service of summons upon a private person or corporation. The State Treasurer shall appear in the cause and present the claims of the state, if any, to an inheritance tax, and it is the duty

of the Attorney General of the state to represent the state and the State Treasurer in such proceedings, and the State Treasurer may, with written approval of the Attorney General setting forth the reasons therefor, compromise and compound the tax claimed to be due upon the passing of such real property. Such settlement and compromise shall be entered of record in the journal of the proceedings of such court. Thereafter the payment of the amount of taxes so agreed upon shall discharge the inheritance tax lien against the property. If a compromise is not effected, the amount of tax, if any, due upon the passing of the real property shall be determined by the circuit court as are other questions involved in such litigation, and subject to the same right of appeal to the Supreme Court. The decree of the circuit court or of the Supreme Court, if there is an appeal, is conclusive as to the amount of taxes due upon the passing of the real property and payment thereof shall discharge the lien against the property.

Section 5. ORS 118.640 is amended to read:

118.640 Evaluating particular interests. (1) [Every inheritance, devise, bequest, legacy or gift, upon which a tax is imposed under ORS 118.005 to 118.840, shall be appraised at its full and true value immediately upon the death of the decedent, or as soon thereafter as may be practicable] The personal representative of the estate of a decedent shall

inventory the property of the estate as provided in ORS \_\_\_\_\_;  
provided, that when [such] the interest is contingent, defeasible  
or of such/nature that its [full and] true cash value cannot  
be ascertained at the date [of decedent's death] the inventory  
is filed it shall be appraised at the time when [such] the  
value first becomes ascertainable, at its [full and] true cash  
value as of the date of decedent's death and without diminution  
for or on account of any valuation made or tax paid thereto-  
fore upon the particular estates upon which the devise [, be-  
quest, legacy] or gift may have been limited.

(2) Whenever a gift or devise of real property which is  
subject to inheritance tax passes to or vests in a husband  
and wife as tenants by the entirety, the inheritance tax  
thereon shall be determined in the same manner as though  
[each of such tenants by the entirety took an undivided one-  
half of the property as tenants in common] the grantees or  
devisees took undivided halves of the real property as tenants  
in common.

(3) Whenever any estate or interest is so limited that  
it may be divested by the act or omission of the devisee [or  
legatee, such] the estate or interest shall be taxed as [if]  
though there were no possibility of such divesting.

(4) The value of [every] a limited estate, income, interest  
or annuity dependent upon any life or lives in being shall be  
determined by the rules or standards of mortality and of value  
used by the "Actuaries' or Combined Experience Tables,"

except that the rate of interest on computing the present value of all [such] limited estates, incomes, interests or annuities shall be four percent per year. The value of the interest or estate remaining after [such] the limited estate, income, interest or annuity shall be determined by deducting the amount found to be the value of [such] the limited estate, income, interest or annuity from the value of the entire property in which [such] the limited estate, income, interest or annuity exists.

Section 6. ORS 118.660 is amended to read:

118.660 Delivery to State Treasurer of tax return and copy of inventory and appraisalment. (1) Every [executor, administrator or trustee] personal representative of any estate subject to an inheritance tax under the laws of this state, whether or not any such tax may be payable, [as soon as practicable after the appraisalment or reappraisalment of the estate and] before the court authorizes any [payment or] distribution to the [legatees or to any parties entitled to a beneficiary interest therein] devisees, shall deliver to the State Treasurer a copy of each inventory and appraisalment duly certified to be such by the clerk of the court, or by the [executor, administrator] personal representative [or trustee personally] or [by] his attorney of record, and shall file with the clerk proof of [such] the delivery.

(2) Every [such executor, administrator or trustee] personal representative, or, if the estate is not administered, a trustee or heir of the decedent acceptable to the State Treasurer, shall, as soon as practicable, [make and] file with the State Treasurer a [schedule, list or statement,] verified return [by his oath and] in a form to be prescribed by the State Treasurer, which [schedule] shall include a statement of the name, age and relationship to the deceased of each person entitled to any [beneficiary] beneficial interest in the estate, together with the [full and] true cash value of [such] the interest, a list and description of all transfers of property, in trust or otherwise, made by the decedent in his lifetime as a division or distribution of his estate in contemplation of death or intended to take effect at or after his death, [and] such other data as the State Treasurer deems appropriate in the determination of inheritance taxes, and a computation of any tax payable. [If the estate of the decedent is subject to a tax, whether or not any such tax may be payable, but the estate will not be probated or administered, an heir of decedent, acceptable to the State Treasurer, shall file with the State Treasurer a like schedule, list or statement, containing also therein a description of the assets and the properties of the estate, the full and true values

thereof, and the items that may properly be deducted in the determination of inheritance taxes due therefrom as provided in ORS 118.070.]

Section 7. Determination of tax by State Treasurer; notice. The State Treasurer shall examine the return, and, if a copy is delivered to him, the inventory and appraisement, and shall determine the amount of the tax to which the estate is liable. If he determines that there is a deficiency in the amount of the tax as computed by the return, he shall give notice of the deficiency to the personal representative, trustee or heir who filed the return.

Section 8. ORS 118.700 is amended to read:

118.700. Filing objections to determination of tax; re-determination by court; appeal. (1) Within 60 days after the [assessment and] determination by the [probate court] State Treasurer of any tax imposed by ORS 118.005 to 118.840, or within such additional time thereafter as may be fixed by written stipulation of the parties or as may be allowed by the court, [the State Treasurer, or] any person interested therein, may file with the court objections thereto in writing, and pray for a [reassessment and] redetermination of [such] the tax.

(2) Upon [any objection] objections being so filed, the [probate] court shall appoint a time for the hearing thereof,

and cause notice of [such] the hearing to be given by mail to the State Treasurer, and to all other parties interested, at least 10 days before the hearing [thereof]. At the time appointed in [such] the notice, the court shall proceed to hear [such objection,] the objections and any evidence which may be offered in support thereof or opposition thereto. All evidence [heard on such reappraisalment] shall be reduced to writing and filed with the clerk of court. [If, after such hearing, the court finds the amount at which the property is appraised is its full and true value, and the appraisalment was made fairly and in good faith, it shall approve such appraisalment; but if it finds that the appraisalment was made at a greater or smaller sum than the full and true value of the property, or that the same was not made fairly or in good faith, it shall, by order, set aside the appraisalment and determine such value.] If, upon the hearing, the court finds that the determination by the State Treasurer of any tax imposed by ORS 118.005 to 118.840 was erroneous the court by order shall, /redetermine the tax.

(3) The State Treasurer [,] or anyone interested in the [property appraised, may appeal to the circuit court from the judgment, order and decree of the county court in the premises, and] determination of the tax may appeal to the Supreme Court from the order, [judgment, or decree] of the [circuit] probate court in the [same] manner [as is]

Inheritance Tax  
2nd Draft, 3/21/68  
Page 10

provided by law [for appeals from the county and circuit courts]. All appeals taken from the [judgment or decree] order of the court shall be had and tried on appeal in the same manner and with like effect as appeals in suits in equity are heard and tried.

Section 9. Repeal of existing statutes. ORS 118.420, 118.480, 118.500, 118.610, 118.620, 118.630, 118.650, 118.670, 118.680 and 118.690 are repealed.

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COMMENTS

The proposed amendments and repeals of the present Inheritance Tax chapter are purely procedural. No change is proposed in the present sections on taxable property, deductions, or rates. Similarly, no changes are proposed in the chapter covering lien; payment; or compromise of tax, except as follows: in addition to purely editorial amendments, ORS 118.230 is amended to reflect the proposed determination of the tax by the State Treasurer rather than by the probate court. ORS 118.280 is amended to conform to the power of sale granted to the personal representative without court order except in certain cases.

The section on Administration of Inheritance Tax Act is not amended. However, it is proposed that ORS 118.420, 118.480, and 118.500 be repealed. ORS 118.460 now provides that full information on estates filed be furnished the State Treasurer. The need for ORS 118.420 would be eliminated by the proposed provision that the determination of the tax be made by the administrative agency and not by the probate court. The provision for applying for letters in the chapter on Initiation of Probate would permit the State Treasurer to make application as an interested person. The present provisions for furnishing information to the State Treasurer would make ORS 118.480 unnecessary. ORS 118.500 would not be applicable under the

proposed code since all probate jurisdiction is vested in the Circuit Court.

The only portion of the Inheritance Tax chapter on which substantial amendment is proposed is that headed Appraisal and Judicial Approval. The proposed amendments would provide for filing inheritance tax returns directly with the State Treasurer and for an administrative determination of the tax in the first instance by the State Treasurer and not by the Probate Court. The Probate Court would not be involved in the determination of the tax unless objections were filed to the taxes found owing by the administrative agency. The proposed amendments would provide that if objections were made to the determination of the tax by the administrative agency the matter would be set for hearing by the probate court upon due notice to the State Treasurer and to interested parties, and the court would then make a redetermination of the amount of the inheritance tax. Appeal would be from the determination by the circuit court as is now provided.

It is proposed to repeal ORS 118.610, 118.620, 118.630, and 118.650, covering inventory and appraisement, since the same subject matter is covered by Sections 9 to 14 inclusive of the chapter on Powers and Duties of the Personal Representative.

The amendments to ORS 118.640 are purely editorial.

The amendment of ORS 118.660, in addition to editorial changes, such as using the word "return" in place of "schedule,

Inheritance Tax  
2nd Draft, 3/21/68  
Comments  
Page 3

list or statement", provides that the return shall include a computation of the tax payable. ORS 118.670, 118.680 and 118.690 can be repealed because the determination of the tax would be made in the first instance by the administrative agency and not by the probate court.

Section 7 provides for a determination of the amount of the tax by the State Treasurer and for giving notice to the party filing the return if the State Treasurer finds that a deficiency exists in the tax as computed in the return.

ORS 118.700 is amended to provide for filing objections to the tax determined by the State Treasurer and for hearing and redetermination of the tax by the probate court.