

Chapter 118

2007 EDITION

Inheritance Tax

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GENERAL PROVISIONS

118.005 Definitions for ORS 118.005 to 118.840. As used in ORS 118.005 to 118.840, unless the context requires otherwise:

(1) “Beneficiary” means the recipient of a beneficial interest in property or the income therefrom transferred in a manner taxable under ORS 118.005 to 118.840.

(2) “Department” means the Department of Revenue.

(3) “Director” means the Director of the Department of Revenue.

(4) “Executor” means the executor, administrator, personal representative, fiduciary, or custodian of property of the decedent, or, if there is no executor, administrator, fiduciary or custodian appointed, qualified and acting, then any person who is in the actual or constructive possession of any property includable in the estate of the decedent for inheritance tax purposes whether or not such estate is subject to administration.

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

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

(7) “Passes” includes any case where for the purposes of ORS 118.005 to 118.840 a taxable transfer takes place or is deemed to take place.

(8) “Personal representative” means personal representative as defined in ORS 111.005.

(9) “Resident decedent” means an individual who is domiciled in Oregon at the time of death.

(10) “Transfer” or “transfer of property” means a transfer that is subject to the federal estate tax imposed under subtitle B, chapter 11 of the Internal Revenue Code. [1959 c.418 §7; 1969 c.520 §23; 1971 c.567 §4; 1973 c.344 §1; 1975 c.762 §1; 1977 c.666 §1; 1997 c.99 §6]

118.007 Connection to federal law; meaning of terms. Any term used in ORS 118.005 to 118.840 has the same meaning as when used in a comparable context in the laws of the federal Internal Revenue Code relating to federal estate taxes, unless a different meaning is clearly required or the term is specifically defined in ORS 118.005 to 118.840. Any reference in ORS 118.005 to 118.840 to the Internal Revenue Code means the federal Internal Revenue Code as amended and in effect on December 31, 2000, except where the Legislative Assembly has specifically provided otherwise. [2003 c.806 §2]

Note: Section 3, chapter 806, Oregon Laws 2003, provides:

Sec. 3. (1) Section 2 of this 2003 Act [118.007] applies to decedents dying on or after January 1, 1998, and to inheritance taxes imposed on transfers of property occurring due to decedents dying on or after January 1, 1998.

(2) Except where the Legislative Assembly has provided otherwise, the effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Taxpayer Relief Act of 1997 (P.L. 105-34) and the Internal Revenue Service Restructuring and Reform Act of 1998 (P.L. 105-206), apply for purposes of ORS 118.005 to 118.840, to the extent they can be made applicable, in the same manner as they are applied under the Internal Revenue Code and related federal law. [2003 c.806 §3]

118.009 Legislative findings. The Legislative Assembly finds that significant recent changes have been made in federal estate tax laws. The Legislative Assembly further finds that an unintended consequence of these federal law changes has been to create difficulties in the administration and enforcement of the Oregon inheritance tax. The Legislative Assembly declares that ORS 118.007 and section 3, chapter 806, Oregon Laws 2003, and the amendments to ORS 118.010, 118.160 and 118.230 by sections 6, 7 and 8, chapter 806, Oregon Laws 2003, are needed to ensure that the level of tax compliance with the Oregon inheritance tax is at the level that Oregonians expect from a fair and balanced tax system. [2003 c.806 §1a]

118.010 Imposition and amount of tax in general; out-of-state property; nonresident decedents; rules. (1) A tax is imposed upon a transfer of property and any interest therein, within the jurisdiction of the state, whether belonging to the inhabitants of this state or not, which passes to or vests in any person or persons, or any body or bodies politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectation, to any property or interest therein or income thereof.

(2) The tax imposed under this section shall equal the maximum amount of the state death tax credit allowable against the federal estate tax under section 2011 of the Internal Revenue Code.

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

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

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

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

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

(7) If the federal taxable estate is determined by making an election under section 2032 or 2056 of the Internal Revenue Code or another provision of the Internal Revenue Code, or if a federal estate tax return is not required under the Internal Revenue Code, the Department of Revenue may adopt rules providing for a separate election for state inheritance tax purposes. [Amended by 1955 c.727 §1; 1959 c.418 §1; 1965 c.470 §1; 1969 c.591 §213; 1975 c.685 §3; 1977 c.666 §2; 1997 c.99 §7; 2003 c.806 §6]

118.013 Taxable estate adjustment for Oregon special marital property; rules. (1) For purposes of computing the tax imposed under ORS 118.010, the taxable estate to be used for computing the maximum amount of the state death tax credit allowable under section 2011 of the Internal Revenue Code shall be the taxable estate determined for federal estate tax purposes, reduced by the value on the date of death of the decedent of all Oregon special marital property in the estate.

(2) Oregon special marital property consists of any trust or other property interest, or a portion of a trust or property interest:

(a) In which principal or income may be accumulated or distributed to or for the benefit of only the surviving spouse of the decedent during the lifetime of the surviving spouse;

(b) In which a person may not transfer or exercise a power to appoint any part of the trust or other property interest to a person other than the surviving spouse during the lifetime of the surviving spouse; and

(c) For which the executor of the estate of the decedent has made the election described in ORS 118.016 (1).

(3) If a trust or other property interest would qualify as Oregon special marital property under subsection (2) of this section except that the trust or other property interest allows principal or income to be distributed to other persons in addition to the surviving spouse, the executor may elect to set aside a share of the trust or other property interest as a separate share of the trust or property interest or as a separate trust, which shall qualify as Oregon special marital property if:

(a) The executor makes the election described in ORS 118.016 (1);

(b) Each beneficiary who is living at the time the election is made and who may be entitled to a distribution from the share during the lifetime of the surviving spouse makes the election described in ORS 118.016 (2);

(c) The surviving spouse makes the election described in ORS 118.016 (2); and

(d) All elections are attached to the inheritance tax return filed with respect to the estate of the decedent, or are filed or maintained as records as otherwise prescribed by the Department of Revenue by rule. [2005 c.124 §2]

118.016 Oregon special marital property election; rules; form. (1) The executor of an estate containing property that the executor seeks to qualify as Oregon special marital property under ORS 118.013 shall make an election under this subsection in order for the property to be Oregon special marital property. The election shall be made:

(a) By attaching a statement to the inheritance tax return for the estate of the decedent that identifies the trust or other property interest that constitutes Oregon special marital property and that affirms that the identified property meets the requirements of Oregon special marital property under ORS 118.013 and will be administered as required under ORS 118.013; or

(b) In such other manner as the Department of Revenue prescribes by rule.

(2) For a trust or other property interest described in ORS 118.013 (3), in order for any portion of the trust or other property interest to be Oregon special marital property, in

addition to the election of the executor described in subsection (1) of this section, the surviving spouse and each beneficiary who is living at the time of the election and who may be eligible for a distribution from the trust or other property interest during the lifetime of the surviving spouse shall make an election and written consent that is in substantially the following form:

CONSENT TO ESTABLISHMENT OF
OREGON SPECIAL MARITAL PROPERTY

(a) **ELECTION TO BE SIGNED BY ALL BENEFICIARIES EXCEPT THE SURVIVING SPOUSE:** Each of the undersigned acknowledge and consent to a portion of the _____ (name of trust or other property interest) being set aside as a separate share or trust in order to qualify for the Oregon special marital property election in accordance with ORS 118.013, for the primary purpose of reducing or eliminating the Oregon inheritance tax due on the estate of _____ (name of decedent). The undersigned together with the surviving spouse constitute all of the persons living on the date of this election who may be entitled to a distribution during the lifetime of the surviving spouse from the _____ (name of trust or other property interest). Each of the undersigned, both on behalf of the undersigned and on behalf of the unborn lineal descendants of the undersigned, irrevocably agrees to release all rights to distributions from the Oregon special marital property during the lifetime of the surviving spouse. Each of the undersigned agrees that all other provisions of the _____ (name of trust or other property interest) shall remain in effect and that, upon the death of the surviving spouse, any remaining Oregon special marital property shall be distributed as otherwise provided in the trust or other property interest.

Signature of: _____ (beneficiary)
Signature of: _____ (beneficiary)

(b) **ELECTION TO BE SIGNED BY THE SURVIVING SPOUSE:** I am the surviving spouse of _____ (name of decedent). I acknowledge and consent to a portion of the _____ (name of trust or other property interest) being set aside as a separate share or trust in order to qualify as Oregon special marital property under ORS 118.013, for the primary purpose of reducing or eliminating the Oregon inheritance tax due on the estate of _____ (name of decedent). I, together with all of the other individuals ex-

ecuting the election in accordance with ORS 118.013, constitute all of the persons living on the date of this election who may be entitled to a distribution from the Oregon special marital property to which this election applies and who might be entitled to a distribution during my lifetime. I agree that all other terms, conditions and provisions that apply to the _____ (name of trust or other property interest) shall apply to the Oregon special marital property to which this election applies, and that upon my death, any remaining Oregon special marital property shall be distributed as otherwise provided in the trust or other property interest.

Signature of: _____
(surviving spouse)

SUBSCRIBED AND SWORN TO before
me this _____ day of _____, 2_____.

Notary Public of Oregon
My commission expires: _____

(3) Elections made under this section are irrevocable.

(4) The custodial parent or court appointed guardian of a minor beneficiary may sign the election on behalf of the minor beneficiary and the unborn lineal descendants of the minor beneficiary. [2005 c.124 §3]

Note: Section 5, chapter 124, Oregon Laws 2005, provides:

Sec. 5. (1) An Oregon inheritance tax return that is filed with respect to a death occurring on or after January 1, 2002, and before the effective date of this 2005 Act [November 4, 2005], may be amended to make the elections described in sections 2 [118.013] and 3 [118.016] of this 2005 Act on or before the later of:

(a) December 31, 2006; or

(b) The deadline otherwise prescribed by law for the filing of an amended inheritance tax return.

(2) An inheritance tax return that is originally filed on or after the effective date of this 2005 Act may be amended to make the elections described in sections 2 and 3 of this 2005 Act as otherwise prescribed by law.

(3)(a) If a refund is made as the result of the filing of an amended return that is allowable because of the date for filing amended returns under subsection (1)(a) of this section, the refund may not bear interest, unless the refund is made on or after March 1, 2007.

(b) A refund described in paragraph (a) of this subsection that is made on or after March 1, 2007, and attributable to the elections described in sections 2 and 3 of this 2005 Act shall bear interest as prescribed in ORS 305.220, for the period beginning March 1, 2007, and ending on the date the refund is made.

(4) Once made, an election described in sections 2 and 3 of this 2005 Act is irrevocable. [2005 c.124 §5]

118.019 Gross estate of surviving spouse; Oregon special marital property adjustment. For purposes of computing the tax imposed under ORS 118.010, the gross

estate of a decedent who was a surviving spouse with respect to property that is Oregon special marital property under ORS 118.013 shall include the Oregon special marital property, valued as of the date of death of the surviving spouse. [2005 c.124 §4]

118.020 [Amended by 1961 c.455 §1; 1963 c.135 §1; 1971 c.652 §1; 1973 c.793 §1; 1977 c.666 §3; 1987 c.293 §67; repealed by 1997 c.99 §24]

118.025 [1987 c.646 §12; 1989 c.625 §80; repealed by 1997 c.99 §24]

118.030 [Repealed by 1997 c.99 §24]

118.035 [1973 c.759 §2; 1975 c.685 §4; 1977 c.666 §4; 1989 c.224 §8; repealed by 1997 c.99 §24]

118.037 [1975 c.685 §2; repealed by 1977 c.666 §36]

118.040 [Amended by 1959 c.418 §2; 1977 c.666 §5; repealed by 1997 c.99 §24]

118.050 [Amended by 1955 c.727 §2; 1963 c.392 §1; 1967 c.485 §1; 1975 c.687 §1; 1977 c.666 §6; repealed by 1997 c.99 §24]

118.060 [Repealed by 1997 c.99 §24]

118.070 [Amended by 1955 c.727 §3; 1959 c.418 §3; 1961 c.455 §2; 1963 c.283 §1; 1965 c.470 §2; 1969 c.493 §74; 1973 c.132 §1; 1973 c.299 §1; 1973 c.703 §1; 1975 c.762 §2; 1977 c.666 §7; 1983 c.632 §1; repealed by 1997 c.99 §24]

118.075 [1963 c.435 §6; 1969 c.493 §75; repealed by 1977 c.666 §36]

118.080 [Amended by 1959 c.418 §4; 1961 c.455 §3; 1973 c.703 §2; 1975 c.762 §3; 1977 c.666 §8; repealed by 1997 c.99 §24]

118.085 [1971 c.593 §2; repealed by 1997 c.99 §24]

118.090 [Amended by 1963 c.68 §1; 1977 c.666 §16; repealed by 1997 c.99 §24]

118.095 [1969 c.112 §1; repealed by 1977 c.666 §36]

118.100 Time for paying tax; refunds; effects of change in federal estate tax return or special valuation disqualification.

(1) The tax provided for in ORS 118.010 shall be paid to the Department of Revenue on the date the federal estate tax is payable. If interest is paid on federal estate tax installments resulting in a reduction of the federal estate tax, and the department determines, pursuant to an amended return or refund claim, that the amount of tax imposed by ORS 118.010 is less than the amount theretofore paid, the excess tax shall be refunded by the department with interest at the rate established by ORS 305.220 for each month or fraction thereof during a period beginning on the date the amended return or refund claim is filed to the time the refund is made.

(2) If the amount of federal estate tax reported on a United States estate tax return is changed or corrected by the Internal Revenue Service or other competent authority, resulting in a change in the maximum state death tax credit allowable under the federal estate tax law, the executor shall report the change or correction in federal estate tax to the department. If the federal change or correction results in a reduction of the allowable state death tax credit, the report of the change or correction shall be treated by the

department as a claim for refund pursuant to ORS 305.270 and, notwithstanding the limitations of ORS 305.270, shall be deemed timely if filed with the department within two years after the federal correction was made. If the change or correction results in an increase in the state death tax credit allowable on the federal estate tax return, the department may issue a notice of deficiency within two years after the federal change or correction was made or within two years after receiving a report of the federal change or correction, whichever is the later. Any executor filing an amended federal estate tax return shall also file an amended return with the department within 90 days thereafter.

(3)(a) In the case of an estate that contains property that is valued under section 2032A of the Internal Revenue Code for federal estate tax purposes (relating to the valuation of certain farm or other property) and that ceases to qualify for valuation under section 2032A, an additional tax under ORS 118.005 to 118.840 shall be imposed. The additional tax shall equal the amount of any increase in the state death tax credit allowable under section 2011 of the Internal Revenue Code that is attributable to the change in the value of the estate resulting from the imposition of additional federal estate tax under section 2032A.

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

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

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

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

(5) The executor shall, upon request of the department, supply a copy of the United States estate tax return which the executor has filed or may file with the federal government, or a copy of any federal agent's report upon any audit or adjustment of the United States estate tax return. [Amended by 1959 c.418 §5; 1971 c.732 §1; 1973 c.703 §3; 1975 c.685 §6; 1977 c.666 §9; 1979 c.582 §1; 1987 c.646 §4; 1989 c.626 §1; 1997 c.99 §8]

118.110 [Amended by 1953 c.704 §1; 1961 c.455 §4; 1973 c.268 §1; 1975 c.685 §5; 1977 c.666 §10; 1979 c.582 §2; repealed by 1997 c.99 §24]

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

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

(b) An additional federal estate tax is imposed with respect to the qualified family-owned business interest for the reasons stated in section 2057(f) of the Internal Revenue Code.

(2)(a) The additional tax imposed under this section shall equal the amount of any allowable increase in the state death tax credit under section 2011 of the Internal Revenue Code if the applicable percentage of the family-owned business interest that is being disqualified under section 2057(f) of the Internal Revenue Code were added to the taxable estate for federal estate tax purposes.

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

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

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

(5) The other provisions of ORS 118.005 to 118.840 and ORS chapter 305 shall apply to the additional tax imposed under this section in the same manner in which those provisions apply to the tax imposed under ORS 118.010. [1999 c.90 §27]

118.140 Exclusion of value of natural resource or commercial fishing property from gross estate; rules. (1) As used in this section, “natural resource property” means real property, as defined in ORS 307.010, lawfully qualified, at the decedent’s death, for designation as:

(a) Farm use, as defined in ORS 308A.056, or as one or more farm use homesites, as defined in ORS 308A.250, related to that real property; or

(b) Forestland, as defined in ORS 321.201, or as one or more forestland homesites, as defined in ORS 308A.250, related to that real property, not to exceed 5,000 acres.

(2) For purposes of computing the tax imposed under ORS 118.010, the gross estate of a decedent may not include the value of:

(a) Natural resource property, to the extent the value of natural resource property does not exceed \$7.5 million; or

(b) Property used in commercial fishing operations and any property used in processing or marketing of the product of those commercial fishing operations, to the extent the value of the property described in this paragraph does not exceed \$7.5 million.

(3) Subsection (2) of this section applies only if the property that is excluded from the value of the gross estate under subsection (2) of this section is transferred to:

(a) The spouse of the decedent;

(b) A natural or adopted child of the decedent;

(c) A natural or adopted grandchild of the decedent;

(d) A natural or adopted brother or sister of the decedent; or

(e) A natural or adopted niece or nephew of the decedent.

(4)(a) For each calendar year beginning on or after January 1, 2009, the Department of Revenue shall recompute the maximum excluded value of the gross estate provided for in subsection (2) of this section by the change in the cost of living, if any. The computation shall be as follows:

(A) Divide the average U.S. City Average Consumer Price Index for the 12 consecutive months ending January 1 of the calendar year prior to the calculation by the average U.S. City Average Consumer Price Index for the calendar year 2007.

(B) Multiply \$7.5 million by the indexing factor determined as provided in subparagraph (A) of this paragraph.

(b) As used in this subsection, “U.S. City Average Consumer Price Index” means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(c) If any change in the maximum excluded value of the gross estate determined under paragraph (a) of this subsection is not a multiple of \$500, the change shall be rounded to the nearest \$500.

(5)(a) If property initially excluded from the value of a gross estate as natural resource property under this section is not then used as natural resource property for at least five out of the eight calendar years following the decedent's death or is disposed of by the transferee other than by disposition to another family member who is eligible for the exclusion allowed under this section, an additional tax under ORS 118.005 to 118.840 shall be imposed.

(b) The additional tax liability shall be an amount that is no greater than the amount of additional taxes that would have been due had the property been included in the gross estate, but at least the amount of such additional taxes multiplied by ((five minus the number of years the property was used as natural resource property) divided by five). The additional tax liability shall be apportioned to the estate for any time period prior to transfer and apportioned to the transferee for any time period thereafter.

(c) Prior to the transfer of property treated as natural resource property under this section, the executor or the decedent shall notify the transferee of the potential for tax consequences to the transferee if the transferee fails to meet the conditions of paragraph (a) of this subsection. The transferee's written acknowledgment of this notice shall be attached to the inheritance tax return.

(6) The Department of Revenue shall adopt rules consistent with those adopted under section 2032A of the Internal Revenue Code, as that section was amended and in effect on December 31, 2006, to administer this section. [2007 c.843 §68]

Note: Section 69, chapter 843, Oregon Laws 2007, provides:

Sec. 69. Section 68 of this 2007 Act [118.140] applies only to decedents who die on or after January 1, 2007. [2007 c.843 §69]

118.150 [Formerly 118.640; 1971 c.652 §2; 1973 c.498 §1; 1975 c.762 §4; 1977 c.666 §11; 1985 c.761 §1; repealed by 1997 c.99 §24]

118.155 [1973 c.503 §13; 1975 c.762 §5; 1977 c.666 §11a; 1979 c.553 §12; 1981 c.804 §70; 1991 c.459 §341; repealed by 1997 c.99 §24]

118.160 When tax return is required; lists of property transfers and other data.

(1) Except as provided in subsection (2) of this section:

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

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

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

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

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

(D) January 1, 2006, unless the value of the gross estate is \$1 million or more.

(2) In every estate, whether or not subject to administration and whether or not a federal estate tax return is required to be filed, the executor shall at such times and in such manner as required by rules of the Department of Revenue, file with the department a return in a form provided by the department setting forth a list and description of all transfers of property, in trust or otherwise, made by the decedent in the lifetime of the decedent as a division or distribution of the estate of the decedent made within the three-year period ending on the date of death or intended to take effect at or after death and any further data that the department requires to determine inheritance tax under this chapter. [Formerly 118.660; 1971 c.567 §5; 1977 c.666 §12; 1985 c.565 §10a; 1987 c.646 §5; 2003 c.806 §7]

Note: Sections 9 and 10, chapter 806, Oregon Laws 2003, provide:

Sec. 9. (1) In the case of a decedent who dies on or after January 1, 2002, and before January 1, 2004, the Department of Revenue may extend the time for the filing of a return and for the payment of any tax due under ORS 118.005 to 118.840 for a reasonable period not to exceed four years from the date otherwise fixed for the filing of a return and the payment of the tax due.

(2) The department may prescribe rules and forms for granting an extension under this section. [2003 c.806 §9]

Sec. 10. Notwithstanding any other provision of ORS 118.005 to 118.840, in the case of decedents dying on or after January 1, 2002, and before January 1, 2003:

(1) A return under ORS 118.005 to 118.840 is not required and no tax is due under ORS 118.005 to 118.840 if the taxable estate of the decedent is less than \$1 million; and

(2) If a return is required under subsection (1) of this section, the tax due under ORS 118.005 to 118.840 shall be determined under the Internal Revenue Code as amended and in effect on December 31, 2000, using a unified credit that does not exceed \$192,800. [2003 c.806 §10]

118.170 [1969 c.591 §221; 1971 c.567 §6; repealed by 1977 c.870 §16 (118.171 enacted in lieu of 118.170)]

118.171 Application of ORS chapter 305. The provisions of ORS chapter 305 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences and appeals to the Oregon Tax Court, and the procedures relating thereto, shall apply to the determination of inheritance taxes under this chapter, except where the context re-

quires otherwise. [1977 c.870 §17 (enacted in lieu of 118.170, 118.180 and 118.360); 1995 c.650 §50]

118.180 [Formerly 118.700; 1971 c.567 §7; 1973 c.100 §1; 1975 c.762 §6; repealed by 1977 c.870 §16 (118.171 enacted in lieu of 118.180)]

118.190 [1973 c.100 §2; repealed by 1977 c.870 §59]

LIEN; PAYMENT; COMPROMISE OF TAX

118.210 Liability for tax. All heirs, legatees, devisees, administrators, executors and trustees, and any grantee or donee under a conveyance or gift made during the grantor's or donor's life if the conveyance or gift is subject to tax under ORS 118.010, are, respectively, liable for any and all taxes mentioned in ORS 118.010, with interest thereon, until the same have been paid as in ORS 118.005 to 118.840 provided.

118.220 When tax accrues and is payable. All taxes imposed by ORS 118.005 to 118.840 take effect at and accrue upon the death of the decedent, and are due and payable on the date the decedent's federal estate tax is due and payable, except as otherwise provided in ORS 118.005 to 118.840. [Amended by 1973 c.254 §1; 1975 c.762 §7; 1977 c.666 §13; 1997 c.99 §9]

118.225 Extension of time for payment. (1) Upon application of the executor and the securing of all taxes that are payable by bond, deposit or other good collateral acceptable to the Department of Revenue, the department may extend the time for payment of any part of the amount imposed by ORS 118.005 to 118.840.

(2) The extension under this section shall be for a period not in excess of 14 years from the date prescribed by ORS 118.220 for payment of the tax.

(3) Under rules prescribed by the department, the department may extend the time for the payment of any deficiency of a tax imposed by ORS 118.005 to 118.840 for a reasonable period not to exceed four years from the date otherwise fixed for the payment of the deficiency. [1977 c.666 §13d; 1997 c.99 §10]

118.230 Lien of tax; liability for payment; assessment and collection of taxes.

(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 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) Taxes imposed under ORS 118.005 to 118.840 may be assessed and collected by the Department of Revenue in the same manner as income taxes are assessed and collected

under ORS chapter 314. The department may issue a warrant as provided in ORS 314.430 and record the warrant in the County Clerk Lien Record maintained under ORS 205.130. A warrant issued under this section has the same force and effect as a warrant issued under ORS 314.430. [Amended by 1969 c.591 §214; 1975 c.762 §8; 1977 c.870 §26; 1985 c.85 §4; 1987 c.758 §5; 2003 c.806 §8]

118.240 Delivery of property prior to collection of tax by personal representative or trustee prohibited. Any personal representative or trustee having in charge, or in trust, any property for distribution, embraced in or belonging to any inheritance, devise, bequest, legacy or gift, subject to inheritance tax shall deduct the tax therefrom, and pay the same to the Department of Revenue, as provided in ORS 118.005 to 118.840. If such property is not in money, the personal representative or trustee shall collect the tax on such inheritance, devise, bequest, legacy or gift upon the appraised value thereof from the person entitled thereto. The personal representative or trustee shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, bequest, legacy or gift, subject to tax under ORS 118.005 to 118.840, to any person until it has collected the tax thereon. [Amended by 1973 c.254 §2; 1997 c.99 §11]

118.250 To whom tax payable; issuing receipts. (1) The taxes imposed by ORS 118.005 to 118.840 are payable to the Department of Revenue.

(2) The department shall give the personal representative, trustee or other person paying such tax, a receipt.

(3) The department shall issue to any interested person demanding the same a copy of a receipt that may have been given by such department for the payment of tax under ORS 118.005 to 118.840. [Amended by 1965 c.727 §4; 1971 c.652 §3; 1973 c.254 §3; 1975 c.593 §1; 1975 c.762 §9; 1977 c.666 §13a; 1985 c.565 §10b; 1987 c.646 §6]

118.260 Penalties for delinquency; failure to file and fraud; interest; deposit where tax not determined. (1) If no return has been filed as required by this chapter, there shall be added to the amount of tax required to be shown on the return a delinquency penalty of five percent of the amount of such tax.

(2) If the failure to file a return continues for a period in excess of three months after the due date, there shall be added to the amount of tax required to be shown as tax on the return a failure to file penalty of 20 percent of the amount of such tax. This penalty is in addition to the delinquency penalty imposed by subsection (1) of this section.

(3) If any part of any deficiency is due to fraud with intent to evade tax, then 100 percent of the total amount of the deficiency shall be assessed and collected.

(4) Except for a deferral of payment pursuant to an extension granted under ORS 118.225 or a timely election made under ORS 118.300, if the taxes imposed by ORS 118.005 to 118.840 are not paid on or before the date on which payment of the tax is required to be made under ORS 118.220, there shall be added to the amount of tax required to be shown on the return a delinquency penalty of five percent of the amount of such tax.

(5)(a) Except as provided in subsection (6) of this section and paragraph (b) of this subsection, if the tax imposed by ORS 118.005 to 118.840 is not paid on or before the date on which payment of the tax is required to be made under ORS 118.220, interest shall be charged and collected thereon at the rate established under ORS 305.220 for each month or fraction thereof from the time when the tax became due and payable.

(b) If payment of the tax or deficiency is extended under ORS 118.225, interest shall be charged and collected on any amount for which extension is granted from the date the tax or deficiency is otherwise due and payable to the date of payment at the rate established under ORS 305.220 for each month or fraction thereof.

(6) In all cases in which a bond is given, under the provisions of ORS 118.300, interest shall be charged at the rate established under ORS 305.220 for each month or fraction thereof from the time when the tax became due and payable, until the date of payment.

(7) If the tax has not been determined, a deposit may be made to avoid interest. Should the amount of such payment exceed the sum subsequently determined to be due, the Department of Revenue shall refund the excess.

(8) Payments made on the tax shall be applied first to penalty and interest and then to the principal.

(9) For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be lawfully claimed upon the return. [Amended by 1971 c.732 §2; 1973 c.332 §1; 1975 c.593 §2; 1977 c.666 §13b; 1982 s.s.1 c.16 §3; 1993 c.726 §1; 1997 c.99 §12]

118.270 Property from which tax is collectible. Except as to real property located outside of the state passing in fee from the decedent owner, the tax imposed under ORS 118.010 shall be assessed against and be

collected from property of every kind, which, at the death of the decedent owner is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distributive purposes, or which was owned by any decedent domiciled within the state at the time of the death of the decedent even though the property was situated outside of the state. [Amended by 1997 c.99 §13]

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 has power to sell as much of the property embraced in any inheritance, devise, bequest or legacy, as will enable the executor, administrator or trustee to pay the tax imposed by ORS 118.005 to 118.840, in the same manner as the executor, administrator or trustee is authorized to do for the payment of the debts of a decedent.

(2) Any part of the gross estate sold 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 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. [Amended by 1957 c.362 §1; 1969 c.591 §215]

118.290 Duty of recipient when legacy payable out of property; legacy for limited period. (1) If any bequest or legacy is charged upon or payable out of any property, the heir or devisee shall deduct such tax therefrom and pay such tax to the administrator, executor or trustee, and the tax shall remain a lien or charge on such property until paid. The payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the bequest or legacy is enforced, or by the Department of Revenue in the same manner as income taxes are collected under ORS chapter 314.

(2) If any bequest or legacy is given in money for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount; but, if it is not in money, the administrator, executor or trustee shall make application to the court having jurisdiction of an accounting by the administrator, executor or trustee to make an apportionment, if the case requires, of the sum

to be paid by such legatee or beneficiary, and for such further order relative thereto as the case may require. [Amended by 1961 c.455 §5; 1985 c.85 §5]

118.300 Deferred payment election; bond or letter of credit. Any person or corporation beneficially interested in any property chargeable with a tax under this chapter and personal representatives and trustees, may elect, on or before the date on which the inheritance tax is due and payable under ORS 118.220, not to pay the 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 or irrevocable letter of credit to the state in double the amount of the tax, with such sureties or issued by such insured institution as defined in ORS 706.008 as the Director of the Department of Revenue may approve, conditioned for the payment of the 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 the property, which bond shall be executed and filed, and a full return of the property made to the Director of the Department of Revenue within six months from the date of transfer thereof, as in this section provided. The bond or letter of credit must be renewed every five years. [Amended by 1969 c.591 §216; 1975 c.762 §10; 1977 c.666 §14; 1991 c.331 §34; 1997 c.99 §14; 1997 c.631 §406]

118.310 Transfer of stock or obligations by foreign representative or trustee; payment of tax prior to transfer. If a foreign executor, administrator or trustee assigns or transfers any stock or obligations in this state standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the Department of Revenue on or before the transfer thereof, and no such assignment or transfer is valid unless such tax is paid.

118.320 [Amended by 1969 c.178 §1; 1973 c.254 §4; 1975 c.762 §11; 1985 c.85 §6; repealed by 1987 c.646 §9]

118.330 [Amended by 1969 c.178 §2; repealed by 1975 c.762 §19]

118.340 [Amended by 1973 c.254 §5; repealed by 1975 c.762 §19]

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 Department of Revenue may compromise with the beneficiaries or representatives of such estate, and com-

pound the tax thereon. 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 involving the title to real property, 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, the circuit court shall direct that a copy of the pleadings in such cause be served upon the Department of Revenue, 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 department 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 department 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 department in such proceedings, and the department may 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 register 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 court as are other questions involved in such litigation, and subject to the same right of appeal to the Court of Appeals. The judgment of the court or of the Court of Appeals, 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. [Amended by 1969 c.591 §217; 1971 c.567 §8; 1979 c.562 §6; 1985 c.540 §29; 1987 c.758 §8; 2003 c.576 §381]

118.360 [Amended by 1959 c.273 §2; repealed by 1977 c.870 §16 (118.171 enacted in lieu of 118.360)]

118.370 [Amended by 1955 c.727 §5; 1959 c.273 §3; 1971 c.567 §9; repealed by 1985 c.85 §13]

118.380 [Amended by 1959 c.273 §4; 1967 c.162 §1; repealed by 1971 c.652 §4]

118.390 [Amended by 1971 c.296 §1; 1971 c.621 §24; repealed by 1973 c.254 §6]

ADMINISTRATION OF INHERITANCE TAX ACT

118.410 Jurisdiction of tax cases. The Oregon Tax Court has sole jurisdiction to hear and determine all questions arising under the provisions of ORS 118.005 to 118.840, and to any act in relation thereto authorized by law to be done by such court in other

matters or proceedings coming within its jurisdiction. [Amended by 1971 c.567 §10]

118.420 [Amended by 1963 c.68 §2; 1967 c.132 §1; repealed by 1969 c.591 §305]

118.440 [Amended by 1961 c.455 §6; 1973 c.338 §1; 1979 c.516 §1; repealed by 1985 c.565 §10c]

118.450 [1967 c.161 §1; 1973 c.254 §7; 1975 c.593 §3; repealed by 1997 c.99 §24]

118.460 [Amended by 1975 c.762 §12; repealed by 1979 c.516 §6]

118.470 Representative or trustee to furnish additional reports on demand. Personal representatives or trustees of the estates subject to inheritance tax shall when requested by the Department of Revenue furnish certified copies of reports, and upon failure to comply with such requests, the department may obtain copies and transcripts from the clerk of the court with the costs therefor to be charged against the estate. [Amended by 1955 c.727 §6; 1973 c.254 §8]

118.480 [Repealed by 1975 c.762 §19]

118.490 [Repealed by 1981 c.705 §8]

118.500 [Repealed by 1969 c.591 §305]

118.510 Disposition of revenues. The net revenue from the taxes imposed by ORS 118.005 to 118.840 (including temporary payments under ORS 118.260 and fees, taxes, interest and penalties), after deduction of refunds, shall be credited to the General Fund to be available to meet any expense or obligation of this state lawfully incurred. [Amended by 1959 c.273 §1; 1969 c.479 §4; 1997 c.99 §15]

118.520 [Repealed by 1959 c.273 §8]

118.525 Disclosure of return information. (1) It shall be unlawful for the Department of Revenue or any of its officers or employees to divulge or make known in any manner any particulars disclosed in any return or supporting data required under this chapter. Except for executors or beneficiaries and their authorized representatives, it shall be unlawful for any person or entity who has acquired information pursuant to subsections (3) and (4) of this section to divulge or make known such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or judicial order shall be issued compelling the department, or its officers or employees, or persons described in subsections (3) and (4) of this section, to divulge or make known any particulars disclosed in any such return or supporting data except where the liability for inheritance taxes is to be adjudicated by the Oregon Tax Court. Nothing in this section shall prohibit the publication of statistics so classified as to prevent the identification of particulars in any return or supporting data covered by this section.

(2) As used in this section:

(a) "Officer," "employee" or "person" includes an authorized representative of the

officer, employee or person, or former officer, employee or person, or an authorized representative of such former officer, employee or person.

(b) "Particulars" includes, but is not limited to, a taxpayer's name, address, telephone number, Social Security number and the amount of refund claimed by or granted to a taxpayer.

(3) Notwithstanding subsection (1) of this section, the department may permit, for tax purposes only, the Commissioner of Internal Revenue or authorized representatives, or an officer or employee of any state or the District of Columbia which has a provision of law which meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality to inspect any return or supporting data referred to in subsection (1) of this section. The department may disclose to the executor or beneficiary of any estate, or an authorized representative thereof, any information or particulars otherwise made confidential by this section, if the department determines that the executor or beneficiary has a material interest which will be affected by such information or particulars.

(4) The department may disclose a taxpayer's name, address, telephone number, Social Security number, refund amount or tax due to the extent necessary in connection with collection activities or the processing or mailing of returns, correspondence or forms with respect to the tax imposed under this chapter.

(5) The department also may disclose and give access to information described in subsection (1) of this section to those persons, agencies or entities, described in ORS 314.840 (2)(e), (f), (g) and (h) to the extent authorized by said paragraphs; and to any agency of the State of Oregon or any person, or any officer or employee of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State and the officers and employees thereof, for the uses and purposes described in ORS 297.060.

(6) Each officer or employee of the department and each person described or referred to in subsection (5) of this section to whom disclosure or access to tax information is given, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of subsection (1) of this section and ORS 118.990 (3), and shall as a condition of employment or performance of duties execute a certificate for the department, stating in substance that the person has read these provisions of law, that the

person has had them explained and that the person is aware of the penalties for the violation of subsection (1) of this section. [1979 c.690 §4; 1983 c.633 §1; 1985 c.565 §10d; 1987 c.158 §18; 1987 c.646 §6a; 1993 c.726 §51]

118.535 Appraisal by department; costs. (1) If the Department of Revenue determines that the executor has not made an appraisal that is needed in order to comply with the provisions of ORS 118.005 to 118.840, the department may cause an appraisal to be made by a fee appraiser to so ensure compliance.

(2) The cost of the appraisal including the appraiser's fee as a witness in the event of an appeal shall be paid out of the taxes collected under this chapter before the net revenue is credited to the General Fund as provided in ORS 118.510. [1979 c.516 §3; 1997 c.99 §16]

Note: 118.535 was added to and made a part of ORS chapter 118 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

118.610 [Amended by 1967 c.131 §1; repealed by 1969 c.591 §305]

118.620 [Repealed by 1969 c.591 §305]

118.630 [Amended by 1963 c.68 §3; repealed by 1969 c.591 §305]

118.640 [Amended by 1961 c.455 §7; 1969 c.591 §218; renumbered 118.150]

118.650 [Amended by 1959 c.273 §5; 1963 c.68 §4; 1967 c.133 §1; repealed by 1969 c.591 §305]

118.660 [Amended by 1955 c.727 §7; 1963 c.68 §5; 1969 c.111 §1; 1969 c.591 §219; renumbered 118.160]

118.670 [Repealed by 1969 c.591 §305]

118.680 [Amended by 1963 c.68 §6; repealed by 1969 c.591 §305]

118.690 [Repealed by 1969 c.591 §305]

118.700 [Amended by 1963 c.68 §7; 1969 c.198 §58; 1969 c.591 §222; renumbered 118.180]

ENFORCEMENT OF FOREIGN DEATH TAXES

118.810 Application, construction and definition. (1) The provisions of ORS 118.810 to 118.840 apply to the estate of any nonresident decedent if the laws of the state of domicile of the nonresident decedent contain a provision, of any nature or however expressed, whereby this state is given reasonable assurance of the collection of its inheritance or death taxes, interest and penalties, from the estates of decedents dying domiciled in this state in cases where the estates of such decedents are being administered by the probate court of such other state, or if the state of domicile of the nonresident decedent does not grant letters in nonresident estates until after letters have been issued by the state of domicile.

(2) The provisions of ORS 118.810 to 118.840 shall be construed liberally in order to insure that the state of domicile of any

decedent shall receive any death taxes, together with interest and penalties thereon, due to it.

(3) For the purpose of ORS 118.810 to 118.840, the words, "state of domicile" or "domiciliary state" include any territory of the United States, the District of Columbia and any foreign country.

118.820 Duty to file proof of death taxes due domiciliary state of nonresident decedent. At any time before the expiration of 18 months after the qualification in any probate court of this state of any executor of the will of, or administrator of the estate of, any nonresident decedent, such executor or administrator shall file with the clerk of the court in which the executor or administrator qualified proof that all death taxes, together with interest or penalties thereon, which are due to the state of domicile of such decedent, or to any political subdivision thereof, have been paid or secured, or that no such taxes, interest or penalties are due, as the case may be, unless it appears that letters of administration or letters testamentary have been issued in the state of domicile.

118.830 Form and requisites of proof; petition for accounting by tax officials of domiciliary state. The proof required by ORS 118.820 may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state but if such proof is not filed within the time limit set out in ORS 118.820, the clerk of the court forthwith shall notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws thereof with respect to such estate, and shall state in such notice as far as is known to the clerk, the name, date of death and last domicile of such decedent; the name and address of each executor or administrator; a summary of the values of the real estate, tangible personalty and intangible personalty, wherever situated, belonging to such decedent at the time of death; and the fact that such executor or administrator has not filed theretofore the proof required in ORS 118.820. The clerk shall attach to such notice a plain copy of the will and codicils of such decedent, if the decedent died testate, or if the decedent died intestate, a list of heirs and next of kin of the decedent, so far as is known to such clerk. Within 60 days after the mailing of such notice, the official or body charged with the administration of the death tax laws of the domiciliary state may file with the court in this state a petition for an accounting in such estate. Such official or body of the domiciliary state shall be deemed a party interested for the purpose of petitioning the

court for such accounting. If such petition is filed within the period of 60 days, the court shall order the accounting, and upon the accounting being filed and approved shall enter a judgment requiring the remission to the fiduciary appointed by the domiciliary probate court of the balance of the intangible personalty after the payment of creditors and expenses of administration in this state. [Amended by 2003 c.576 §382]

118.840 Final accounting or discharge of executor or administrator. Unless the provisions of either ORS 118.820 or 118.830 have been complied with, no such executor or administrator shall be entitled to a final accounting or discharge in any court in this state.

DISPUTES RESPECTING DOMICILE OF DECEDENT

118.855 Definitions for ORS 118.855 to 118.880. For the purposes of ORS 118.855 to 118.880:

(1) "Board" means board of arbitration.

(2) "Death tax" means any tax levied by a state on account of the transfer or shifting of economic benefits in property at death, or in contemplation thereof, or intended to take effect in possession or enjoyment at or after death, whether denominated an "inheritance tax," "transfer tax," "succession tax," "estate tax," "death duty," "death dues," or otherwise.

(3) "Executor" means an executor of the will or administrator of the estate of the decedent, but does not include an ancillary administrator nor an administrator with the will annexed if an executor named in the will has been appointed and has qualified in another state.

(4) "Interested person" means any person who may be entitled to receive or who has received any property or interest which may be required to be considered in computing the death taxes of any state involved in the dispute.

(5) "State" means the District of Columbia and any state, territory or possession of the United States.

(6) "Taxing official" means the Director of the Department of Revenue and the designated authority of a reciprocal state charged with the duty of collecting its death taxes.

(7) "This state" means the State of Oregon. [1959 c.573 §1]

118.860 Election to invoke provisions of ORS 118.855 to 118.880 where dispute exists as to domicile of decedent for purpose of death taxes. When the taxing official of this state and the taxing official of one or more other states each claims that

the state of the official respectively was the domicile of the decedent for the purpose of death taxes, at any time prior to the commencement within this state of suit or action for determination of the decedent's domicile for death tax purposes, or within 60 days thereafter, the executor or the taxing official of any such state may elect to invoke the provisions of ORS 118.855 to 118.880. Such executor or taxing official shall send a notice of such election by registered or certified mail, receipt requested, to the taxing official of each such state and to each executor, ancillary administrator, and interested person. Within 40 days after the receipt of such notice of election the executor may reject such election by sending a notice of rejection by registered or certified mail, receipt requested, to all persons to whom the notice of election is required to be sent. When an election has been rejected by the executor no further proceedings shall be had under ORS 118.855 to 118.880. If such election is not rejected within the 40-day period, the dispute in respect of the domicile of the decedent for death tax purposes shall be settled solely as provided in ORS 118.865 to 118.880 and no other or additional proceedings to determine or redetermine the domicile of the decedent for death tax purposes shall thereafter be instituted in any court of this state or otherwise. [1959 c.573 §2; 1991 c.249 §16]

118.865 Settlement agreement fixing amount of taxes due each state involved in dispute. (1) In any case in which an election is made and not rejected, as provided in ORS 118.860, the Department of Revenue may enter into a written agreement with the other taxing officials involved and with the executor to accept a sum certain in full payment of any death taxes, together with interest and penalties, which may be due this state, provided the agreement fixes the amount of death taxes with interest and penalties to be paid to the other states involved in the dispute.

(2) Notwithstanding the commencement of a legal action for determination of domicile within this state or the commencement of an arbitration proceeding as provided in ORS 118.870, the department, at any time prior to the conclusion of such action or proceeding, may in any case enter into a written agreement with the other taxing officials involved and with the executor to accept a sum certain in full payment of any death tax, together with interest and penalties, which may be due this state, provided the agreement fixes the amount of death taxes with interest and penalties to be paid the other states involved in the dispute. Upon the filing of the agreement with the authority which would have jurisdiction to assess the death taxes of this state if the de-

cedent died domiciled in this state, an assessment shall be made as provided in such agreement, and such assessment shall finally and conclusively fix the amount of death taxes due this state. If the aggregate amount payable under such agreement or under an agreement made in accordance with the provisions of subsection (1) of this section to the states involved in the dispute is less than the minimum credit allowable to the estate against the United States estate tax imposed with respect thereto, the executor forthwith shall also pay to the department the same percentage of the difference between such aggregate amount of such credit as the amount payable to the department under such agreement bears to such aggregate amount. [1959 c.573 §§3,5; 1987 c.758 §9]

118.870 Arbitration procedure. When it appears by the written admission of the executor and the tax official of each state involved in the dispute that an agreement contemplated in ORS 118.865 (1) cannot be reached or, in all events, if one year has elapsed from the date of the election without such an agreement having been reached, the domicile of the decedent at the time of death shall be determined solely for death tax purposes as follows:

(1) When this state and one other state only are involved in the dispute, the Director of the Department of Revenue and the taxing official of the other state shall each appoint a member of a board of arbitration and those members shall appoint the third member of the board. If this state and more than one other state are involved, the taxing officials thereof shall agree upon the authorities charged with the duty of administering death tax laws in three states not involved in the dispute and each of these authorities shall appoint one member of the board of arbitration. The board shall select one of its members as chairperson.

(2) The board shall hold hearings at such places as it deems necessary, upon reasonable notice to the executor, ancillary administrators, all interested persons and the taxing officials of the states involved, all of whom are entitled to be heard.

(3) The board may administer oaths, take testimony, subpoena witnesses and require their attendance; require the production of books, papers and documents and issue commissions to take testimony. Subpoenas may be issued by any member of the board. Failure to obey a subpoena of the board may be punished by any court of record in the same manner as if the subpoena had been issued by such court.

(4) Whenever practicable the board shall apply the rules of evidence then prevailing in

the federal courts under the federal rules of civil procedure.

(5) The board, by the decision of its majority, shall determine the domicile of the decedent at the time of death. The decision of the board is final and conclusive and binds this state and all of its judicial and administrative officials on all questions concerning the domicile of the decedent for death tax purposes. If the board does not render a decision within one year from the time that it is fully constituted, all authority of the board shall cease and the bar to court proceedings set forth in ORS 118.860 shall no longer exist.

(6) The decision of the board and the record of its proceeding shall be filed with the authority having jurisdiction to assess death taxes in the state determined to be the domicile of the decedent and with the authorities which would have had jurisdiction to assess death taxes in each of the other states involved if the decedent had been found to be domiciled therein.

(7) The reasonable compensation and expenses of the members of the board and its employees shall be agreed upon among such members, the taxing officials involved, and the executor. If such an agreement cannot be reached, the compensation and expenses shall be determined by such taxing officials and, if they cannot agree, by the appropriate probate court of the state determined to be the domicile of the decedent. Such amount so determined shall be borne by the decedent's estate and shall be deemed an administration expense thereof. [1959 c.573 §4]

118.875 Limit on amount of interest and penalties. When the board of arbitration determines that a decedent died domiciled in this state, the total amount of interest and penalties for nonpayment of the tax during the period commencing with the date of the election and ending with the date of the final determination of the board shall not exceed one percent per month or fraction of a month of the amount of the death taxes found to be due. [1959 c.573 §6; 1975 c.593 §4]

118.880 Reciprocal statutes required in other states; resolving conflicts between statutes. (1) ORS 118.855 to 118.880 shall be applicable only to cases in which each of the states involved in the dispute has in effect therein a statute substantially similar to ORS 118.855 to 118.880, or has in effect therein a statute empowering one or more of its officials to voluntarily enter into a binding arbitration or compromise agreement respecting disputed liability for death taxes and such an agreement with each of the other states involved in the dispute and the executor is entered into prior to the appointment

of the board of arbitration as provided in ORS 118.870.

(2) Any procedural conflict between ORS 118.855 to 118.880 and the statute of a reciprocal state involved in the dispute shall be resolved by the decision of the majority of the board. If there is a statutory conflict relating to the number of board members to be selected or the manner of their selection, the appropriate provision of whichever of the conflicting statutes is designated by the executor shall govern and control. [1959 c.573 §7]

PENALTIES

118.990 Penalties. (1) Failure, neglect or refusal by any person in possession or control of any record, file or paper containing information relating to the estate of a de-

ceased person or any interest therein to exhibit the same upon the written request of the department specifying and describing such instrument is a misdemeanor.

(2) Any person who willfully makes a false statement in a report required by ORS 118.160 shall be guilty of false swearing and upon conviction, shall be punished as provided by law.

(3) Violation of ORS 118.525 is a Class C felony. If the offender is an officer or employee of the state the offender shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter. [Amended by 1961 c.455 §8; subsection (2) enacted as 1969 c.210 §1; 1969 c.591 §223; 1973 c.254 §9; 1975 c.762 §13; 1979 c.690 §5; 1981 c.724 §6]
