

Chapter 118

1973 REPLACEMENT PART

Inheritance Tax

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**TAXABLE PROPERTY; DEDUCTIONS;
RATES**

118.005 Definitions. (1) Any person related to the decedent by a chain of relationship, any step or steps of which are created by legal adoption, shall, for the purposes of ORS chapter 118, be considered as related in the same degree as though all steps in the relationship were by natural blood; however, if the adopted person was 21 years of age or more at the time of the adoption, any transfer of property within three years after the adoption shall be treated as having been made in contemplation of death within the meaning of subsection (3) of ORS 118.010, and shall be subject to the additional tax provided by ORS 118.100 as though such adoption had not taken place.

(2) As used in ORS chapter 118:

(a) "Daughter-in-law" includes the widow of a deceased son of the decedent.

(b) "Son-in-law" includes the widower of a deceased daughter of the decedent.

(c) "Stepchild" means the child of a spouse or deceased spouse by a former marriage to a person other than the decedent.

(d) "Department" means the Department of Revenue.

(e) "Director" means the Director of the Department of Revenue.

(f) "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.

[1959 c.418 §7; 1969 c.520 §23; 1971 c.567 §4; 1973 c.344 §1]

118.010 Property, transfers and interests subject to tax. (1) All property and any interest therein, within the jurisdiction of the state, whether belonging to the inhabitants of this state or not, which passes or vests by survivorship, will or by statutes of inheritance of this, or any other state, or by reversion, repayment or settlement of any previously escheated estate or part thereof, or by the exercise or nonexercise of a general power of appointment as provided in subsection (5) of this section, or by deed, grant, bargain, sale or gift, or as an advancement or division of his or her estate, made in

contemplation of the death of the grantor or bargainor or intended to take effect in possession or enjoyment after the death of the grantor, bargainor or donor to any person or persons, or to 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 income thereof, is subject to tax at the rate specified in ORS 118.100, to be paid to the Department of Revenue for the use of the state.

(2) (a) Whenever property, other than real property held by the entirety, is held in the joint names of two or more persons, or deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving joint tenant or tenants, person or persons to the immediate ownership or possession and enjoyment of such property shall be deemed a taxable transfer in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased joint tenant or depositor and had been devised or bequeathed to the surviving joint tenant or tenants, person or persons, excepting therefrom such parts thereof as may be shown to have originally belonged to such surviving joint tenant or person, and never to have been acquired from the decedent for less than a fair consideration in money or money's worth, and if the property has been acquired from decedent for less than such fair consideration, there shall be excepted from the value of the property a portion equal to the amount of the consideration so furnished.

(b) Upon the death of one of the tenants of real property held by the entirety, the right of the surviving tenant to the immediate ownership or possession and enjoyment of such property shall be deemed a taxable transfer in the same manner as though one-half of the whole property to which such transfer relates belonged absolutely to the deceased tenant and had been devised or bequeathed to the surviving tenant.

(3) Any transfer of property made by a decedent by deed, grant, bargain, sale or gift, within three years prior to the decedent's death without a valuable and adequate consideration therefor, shall, unless shown to the contrary, be deemed to have been

made in contemplation of death within the meaning of ORS 118.005 to 118.840; but no such transfer made before such three-year period shall be treated as having been made in contemplation of death if:

(a) No gift taxes were payable under ORS chapter 119 on such transfer; or

(b) All gift taxes payable under ORS chapter 119 on such transfer were paid when due.

(4) In the event of death of one of the tenants of property held by the entirety, after sale thereof upon an executory or instalment contract, the transfer of the decedent's interest in the unpaid balance owing upon such contract at the time of death shall be deemed a taxable transfer in the same manner as under paragraph (b) of subsection (2) of this section.

(5) When, after August 3, 1955, property passes or vests subject to a general power of appointment, for the purposes of the taxes imposed by ORS 118.005 to 118.840 by reason of the death of the donor, the donee is deemed to have acquired the full taxable interest from the donor. For the purposes of the taxes imposed by ORS 118.005 to 118.840 by reason of the death of the donee of such a general power, an appointee, or beneficiary who takes where the power of appointment is not exercised is deemed to have acquired from the donee the full taxable interest of the property which passes or vests by reason of the exercise or non-exercise of the power by the donee. A general power of appointment is one which the donee may exercise in favor of himself, his estate, his creditors or the creditors of his estate, during lifetime or at death, and includes one under which the donee may convey or transfer ownership of the property to whomever he may choose. A power to consume, invade, or appropriate property for the benefit of the donee which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the donee shall not be deemed a general power of appointment.

[Amended by 1955 c.727 §1; 1959 c.418 §1; 1965 c.470 §1; 1969 c.591 §213]

118.020 Taxability of transfers to governmental units and certain private institutions. (1) A credit shall be allowed against the tax provided by this chapter for the amount apportioned to devises, bequests, legacies and gifts, if made:

(a) To any society, association or cor-

poration within this state, organized and existing exclusively for religious, charitable, scientific, literary, or educational purposes and actually engaged in carrying out the objects and purposes for which so organized or existing; or

(b) To a society, association or corporation to be organized exclusively for religious, charitable, scientific, literary, or educational purposes under the laws of this state pursuant to the terms of the instrument providing such devise, bequest, legacy or gift; or

(c) To a corporation, person or persons or association of persons within the State of Oregon in trust for religious, charitable, scientific, literary, or educational uses exclusively; or

(d) To the State of Oregon or any political subdivision thereof; or

(e) To any society, association or corporation operating exclusively for religious, charitable, scientific, literary, or educational purposes under the laws of or within a state or territory of the United States (other than Oregon).

(2) For purposes of this section, a non-profit cemetery association shall be considered a charitable purpose.

[Amended by 1961 c.455 §1; 1963 c.135 §1; 1971 c.652 §1; 1973 c.793 §1]

Note: Section 3, chapter 793, Oregon Laws 1973, provides:

Sec. 3. (1) The amendment to ORS 118.020 by section 1 of this Act applies to deaths occurring on and after January 1, 1974.

(2) The amendment to ORS 119.035 by section 2 of this Act applies to gifts made on and after January 1, 1974.

118.030 Taxes upon devises and bequests in lieu of commissions. Whenever a decedent appoints one or more executors or trustees, and in lieu of their allowance or commission, makes a bequest or devise of property to them, which would otherwise be liable to inheritance tax, or appoints them his residuary legatees, and such bequests, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts upon its own motion, or on the application of the Director of the Department of Revenue shall fix such compensation.

118.035 Deduction from taxation for surviving spouse. In lieu of the exemptions and deductions allowable under ORS 118.040 and 118.050 and the homestead deduction in

paragraph (g) of subsection (1) of ORS 118.070, a surviving spouse may claim a deduction in the amount of \$50,000 from taxation under the provisions of ORS 118.005 to 118.840 of assets passing to such surviving spouse.

[1973 c.759 §2]

118.040 Insurance included or exempt from taxation. (1) Subject to subsections (2) and (3) of this section, the gross value of the taxable estate shall include the value of:

(a) The amounts receivable by the estate or the executor or administrator of the estate of the decedent as insurance under policies on the life of the decedent.

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

(2) There is exempted from taxation under ORS 118.005 to 118.840 all proceeds of policies and contracts of life insurance issued at any time before January 1, 1960, on the life of the decedent and payable to a beneficiary or beneficiaries other than the estate or the executor or administrator of the estate of the deceased insured, whether payable directly or to or through a trustee, immediately or at future dates. Such exemp-

tions do not include any investment policy issued by a life insurance company which does not include in the policy the element of life insurance.

(3) There is exempted from taxation under ORS 118.005 to 118.840 the proceeds not exceeding \$75,000 in the aggregate of policies and contracts of life insurance issued at any time after December 31, 1959, on the life of the decedent and payable to any beneficiary or beneficiaries other than the estate or the executor or administrator of the estate of the deceased insured, whether payable directly or to or through a trustee, immediately or at future dates. Such exemptions do not include any investment policy issued by a life insurance company which does not include in the policy the element of life insurance. The exemption of \$75,000 shall be prorated among the beneficiaries of such policies to or for whose use they are payable in proportion to the benefits accruing to them respectively.

[Amended by 1959 c.418 §2]

118.050 Pension, retirement and social security benefits exempt from taxation. There shall be exempt from taxation under the provisions of ORS 118.005 to 118.840 the value of all benefits not exceeding the sum of \$20,000 payable to each beneficiary, other than to the estate or to the executor or administrator of the estate of a deceased person, under:

- (1) The National Social Security Act,
 - (2) The National Railroad Retirement Act,
 - (3) Any pension or retirement plan established by the federal or state government or any municipality or any political subdivision of the state, and
 - (4) Any pension or retirement plan or trust established by an employer which qualifies for income tax exemptions under the Federal Internal Revenue Code.
- [Amended by 1955 c.727 §2; 1963 c.392 §1; 1967 c.485 §1]

118.060 Reciprocal exemption of intangible personal property of nonresident decedent. Intangible personal property of a nonresident decedent upon which an inheritance tax is imposed by ORS 118.005 to 118.840, is not subject to the tax so imposed if a like exemption is made by the laws of the state or country of decedent's residence in favor of residents of this state.

118.070 Deductions from gross value of taxable estate. In ascertaining the net value of estates for the purpose of computing inheritance tax the following deductions, and no others, may be made from the gross value of the taxable estate:

(1) In probated estates:

(a) Claims allowed against the estate owing at the time of death and paid from property the value of which is included in the taxable estate.

(b) Mortgages or other liens owing at the time of death upon property, the value of which is included in the taxable estate, but not the proportionate part of mortgages or liens on entirety held property which is exempt from tax liability or deductible from the gross taxable estate.

(c) Expenses of funeral, and any amount not exceeding \$500 actually expended or to be expended for a monument or memorial.

(d) All state, county and municipal property taxes which were a lien against the property of the estate at the date of death, but not the proportionate part of taxes on entirety held property which is exempt from tax liability or deductible from the gross taxable estate.

(e) Income or gift taxes of the United States or the State of Oregon owing at the date of death, but not United States estate taxes.

(f) Ordinary expenses of administration, including fees allowed personal representatives under ORS 116.173 and reasonable fees for their attorneys, except to the extent that such expenses have been or will be claimed as deductions in calculating taxable income under the Personal Income Tax Act of 1969 by the personal representatives or beneficiaries entitled to the estate.

(g) The value of decedent's taxable interest in decedent's homestead when such interest passes to any grandparent, parent, spouse, child, stepchild or any lineal descendant of a child or stepchild of the decedent; provided that upon the death of such decedent, such homestead is the domicile of such grandparent, parent, spouse, child, stepchild or any other lineal descendant of a child or stepchild of the decedent. As used in this paragraph:

(A) "Homestead" means the principal dwelling owned by the decedent and included in the gross value of decedent's estate which was used by the decedent and family, and so much of the land under and surrounding it as is reasonably necessary for the use of the dwelling as a home, and may consist of a part

of a multidwelling or multipurpose building and a part of the land upon which it is built excluding therefrom any income producing property.

(B) "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.

(2) In unprobated estates:

(a) The deductions specified in paragraphs (b), (c), (d), (e) and (g) of subsection (1) of this section, and also debts of the decedent owing at the time of death that are properly paid or payable from property the value of which is included in the taxable estate.

(b) Expenses of last illness owing at date of death.

(c) Reasonable attorney's fees, reasonable appraisers' fees, and reasonable trustee's fees properly paid pursuant to a trust instrument, if paid in connection with the settlement of the estate except to the extent that such expenses have been or will be claimed as deductions in calculating taxable income under the Personal Income Tax Act of 1969 by the beneficiaries or trustees of an estate. [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]

118.075 Cooperative housing unit as "homestead" under ORS 118.070. (1) As used in paragraph (g) of subsection (1) of ORS 118.070, "homestead," in addition to any other property considered or defined as a homestead, shall include stock in a cooperative housing corporation that is held by a tenant-stockholder on the date of his death, if:

(a) At the date of the death of the tenant-stockholder the house or apartment was used as the abode of the tenant-stockholder; and

(b) At the date of the death of the tenant-stockholder such house or apartment is the domicile of the grandparent, parent, spouse, child, stepchild or any other lineal descendant of the tenant-stockholder to whom the stock passes.

(2) The definitions of "tenant-stockholder" and "cooperative housing corporation" utilized for the purposes of the Personal Income Tax Act of 1969 shall apply to this section.

[1963 c.435 §6; 1969 c.493 §75]

118.080 Credit for tax on property previously taxed within five years. There shall be allowed as a credit against the tax otherwise due under the provisions of ORS 118.005 to 118.840 a tax on the value of any property, as in this section limited, received by the decedent within five years prior to his death by inheritance, devise, bequest or gift where such property has been received from a grandparent, parent, spouse, child or stepchild, or any lineal descendant of a child or stepchild of the decedent, and passes to any person or persons within the foregoing relationships to the decedent, where such property can be identified as having been so received, and where the tax on such property shall, within such five years, have been imposed and accrued in this state under ORS 118.100 and 118.220, and the tax subsequently paid. This credit shall be limited to the value of and the actual tax paid on the property in the estate of the prior decedent or in the estate of the present decedent, whichever is the lower, and only as to taxes paid to the State of Oregon.

[Amended by 1959 c.418 §4; 1961 c.455 §3; 1973 c.703 §2]

118.085 Exemption of value of interests of less than fee in certain federal lands used for grazing. There shall be exempt from taxation under the provisions of ORS 118.005 to 118.840 the value of any leasehold or other interest or estate less than fee, other than a contract of sale, in real property held or occupied by a decedent and passing by reason of his death if:

(1) The real property was owned by the United States or any department or agency thereof and was not subject to assessment and taxation under the ad valorem tax laws of this state; and

(2) The interest or estate was held or occupied by the decedent primarily for the purpose of grazing livestock.
[1971 c.593 §2]

118.090 Deductions in case of foreign estate liable to pay tax. In case of any property belonging to a foreign estate, which estate in whole or in part is liable to pay an inheritance tax in this state, the tax shall be assessed upon the full and true value of the property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator or trustee of such foreign estate files with the

clerk of the court having ancillary jurisdiction and with the Department of Revenue, duly certified statements exhibiting the full and true value of the entire estate of the decedent owner, and the indebtedness for which the estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of the estate shall then be entitled to have deducted such proportion of the indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

[Amended by 1963 c.68 §1]

118.095 Proration of exemptions where property within and without state; method of obtaining exemptions. (1) Where there is property belonging to decedent both within and without the State of Oregon exemptions allowed under the inheritance tax provisions of ORS 118.005 to 118.840 shall be prorated, and that portion allowed in the State of Oregon shall be in that proportion that the value of the property within the state bears to all the property within and without the State of Oregon.

(2) In order to secure an exemption where the property is thus situated, the estate representative must file with the Inheritance and Gift Tax Division of the Department of Revenue a certified copy of the inventory of all the properties without this state, and upon his failure to do so, no exemptions will be allowed in this state, whether there is property within this state or without this state.
[1969 c.112 §1]

Note: ORS 118.095 was not added to and made a part of ORS chapter 118 or to ORS 118.005 to 118.840 by legislative action.

118.100 Rates of tax; additional tax. (1) The rates of tax on all estates shall be as follows:

On any amount exceeding	But not exceeding	Rate (in percent)
\$ 25,000	\$ 75,000	2
75,000	100,000	3
100,000	300,000	5
300,000	500,000	7
500,000		10

The above tax on the estate shall be in full for all inheritance tax on any devise, bequest, legacy, gift or beneficial interest to any property or income therefrom which shall pass to or for the use or benefit of any

grandparent, parent, spouse, child or stepchild or any lineal descendant of a child or stepchild of the deceased.

(2) When any inheritance, devise, bequest, legacy, gift or the beneficial interest to any property or income therefrom shall pass to or for the use or benefit of any brother, sister, uncle, aunt, niece, nephew or any lineal descendant of the same, or to a son-in-law or daughter-in-law, in every such case, in addition to the tax levied on such estate, such person shall pay an inheritance tax as follows:

On any amount exceeding	But not exceeding	Rate (in percent)
\$ 3,000	\$ 5,000	2
5,000	10,000	4
10,000	30,000	7
30,000	50,000	10
50,000		15

(3) In all other cases, in addition to the tax levied on such estate, such person, body politic or corporate shall pay an inheritance tax as follows:

On any amount exceeding	But not exceeding	Rate (in percent)
\$ 500	\$ 1,000	4
1,000	2,000	6
2,000	4,000	8
4,000	10,000	10
10,000	25,000	15
25,000		20

(4) In addition to the inheritance taxes imposed by this section, if a federal estate tax is payable and the inheritance tax payable to this state is less than the maximum state tax credit allowed by the federal estate tax law, a tax equal to the difference between the state inheritance tax and the maximum credit under the federal estate tax is imposed. Where a decedent leaves property in two or more states and the total of the taxes imposed by all of the states, excluding any additional or pickup tax from any state's tax, is less than the maximum state tax credit allowable under the federal estate tax law, the department shall by regulation determine the amount of the additional tax. If no inheritance tax is payable to this state in a case where a federal estate tax is payable, a tax equal to the maximum state tax credit allowed by the federal estate tax is hereby imposed.

(5) The additional tax provided for in subsection (4) of this section shall be paid to

the department at the same time at which the federal estate tax is payable and shall bear interest when delinquent at the rate provided by ORS 118.260.

(6) Payment, in whole or in part, from funds of an estate or trust on any benefit subject to tax under the provisions of 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.

[Amended by 1959 c.418 §5; 1971 c.732 §1; 1973 c.703 §3]

118.110 Tax rate applicable to net estate after allowing deductions; apportionment.

The rates of tax prescribed in subsection (1) of ORS 118.100 shall be applied to the entire net estate remaining after allowance of the deductions specified in ORS 118.070 and the tax thus computed shall be apportioned to each distributive share of the estate in the ratio which each distributive share bears to the net estate. However the proportion of such tax found to be apportionable to devises, bequests, legacies or gifts which are allowed as a credit under ORS 118.020 and to property previously taxed which is allowed as a credit under ORS 118.080, shall not be collected.

[Amended by 1953 c.704 §1; 1961 c.455 §4; 1973 c.268 §1]

118.150 Evaluating particular interests.

(1) The personal representative of the estate of a decedent shall inventory the property of the estate as provided in ORS 113.165; but when an interest is contingent, defeasible or of such a nature that its true cash value cannot sooner be ascertained, it shall be determined at the time when the value first becomes ascertainable, at its 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 theretofore upon the particular estates upon which the devise, bequest, legacy or gift may have been limited, except as to inter vivos transfers, where such gifts are determined to be in contemplation of death and subject to tax in the donor decedent's estate, the value shall be as of the date of death.

(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 the grantees or devisees took undivided halves of the real property as tenants in common.

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

(4) The value of a limited estate, income, interest or annuity dependent upon any life or lives in being or upon a specified period of time, and the value of an interest or estate remaining after a limited estate, income, interest or annuity shall be determined by tables adopted by the Internal Revenue Service as Estate Tax Regulation 20.2031-10 on December 1, 1970, except that the rate of interest on computing the present values shall be six percent per year.

[Formerly 118.640; 1971 c.652 §2; 1973 c.498 §1]

118.155 Valuation of property receiving assessment as farm use land. Interests in real property passing by reason of death that had received special assessment as farm use land under subsection (1) of ORS 308.370 for the tax year immediately preceding the date of death of the decedent shall be valued for the purposes of ORS 118.005 to 118.840 at its value for farm use determined by the assessor under subsection (1) of ORS 308.370 for the tax year immediately preceding the date of the death of the decedent.

[1973 c.503 §13]

118.160 Delivery to department of tax return and copy of inventory. (1) The executor, within 60 days after the date of his appointment, unless a longer time is granted by the court, shall deliver to the department an inventory of all of the property of the estate that has come into his possession or knowledge. The inventory shall show the estimates by the executor of the respective true cash values as of the date of the death of the decedent of the properties described in the inventory. The executor will deliver to the department a supplemental inventory within 30 days after the date of receiving possession or knowledge of any additional property.

(2) In every estate, whether or not subject to administration, the executor shall at such times and in such manner as required by regulations of the department, file with the department a return in a form provided by the department setting forth the name, age and relationship to the deceased of all persons entitled to any beneficial interests in

the estate, together with the true cash value of 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 any further data that the department requires to determine inheritance taxes under this chapter.

[Formerly 118.660; 1971 c.567 §5]

118.170 Examination of return; determination and assessment of deficiency. The department shall as soon as is practicable after receiving the return required by ORS 118.160, examine it, and if it appears that there is a deficiency in the tax as computed in the return, the tax shall be recomputed and notice of the proposed tax deficiency shall be given to the executor. Where the executor fails to file the return as required by ORS 118.160, the department may compute the tax according to the best of its information and belief, and notice of the proposed tax deficiency shall be given to the executor. The notice shall give the executor 60 days from the date of mailing of such notice in which to pay the additional tax or file written objections to the proposed tax deficiency. The director shall hear and determine all questions involving any proposed tax deficiency as to which an objection has been filed upon not less than 10 days' notice to the executor of the date of such hearing, and a final determination shall be made as quickly as practicable. Any tax deficiency found due after such hearing shall be assessed by the department within 60 days after the determination, and a notice of the determination shall be sent to the executor by certified mail.

[1969 c.591 §221; 1971 c.567 §6]

118.180 Filing objection to determination of tax; redetermination by court; appeal; effect of lesser liability; attorney fees; expenses. (1) Within 60 days after notice of the determination by the Director of the Department of Revenue of any tax imposed by ORS 118.005 to 118.840 has been sent to the executor as provided by ORS 118.170, the findings of the director and the determination concerning the tax deficiency shall be final unless the executor or other interested party files an appeal to the Oregon Tax Court in the manner provided in subsection (1) of ORS 314.460, and prays for a redetermination of the tax.

(2) Upon appeal being so filed, the court shall appoint a time for the hearing thereof, and cause notice of the hearing to be given by mail to the Department of Revenue, and to all other parties interested, at least 10 days before the hearing. At the time appointed in the notice, the court shall proceed to hear the objection and any evidence which may be offered in support thereof or opposition thereto. If, upon the hearing, the court finds that the determination by the Director of the Department of Revenue of any tax imposed by ORS 118.005 to 118.840 was erroneous, the court shall, by order, redetermine the tax.

(3) The Director of the Department of Revenue or anyone interested in the determination of the tax may appeal from the order of the court in the manner provided by ORS 305.445.

(4) If a redetermination of the tax by the tax court under subsection (2) of this section results in a lesser tax liability, the court may allow the executor or other interested party:

(a) Reasonable attorney fees for the proceeding under subsections (1) and (2) of this section and for any prior proceeding in the matter before the department; and

(b) Reasonable expenses as determined by the court. Expenses include accountant fees and fees of other experts incurred by the executor or interested party in preparing for and conducting the proceeding under subsections (1) and (2) of this section and any prior proceeding in the matter before the department.

[Formerly 118.700; 1971 c.567 §7; 1973 c.100 §1]

Note: Section 3, chapter 100, Oregon Laws 1973 provides:

Sec. 3. (1) Except as otherwise provided in subsection (2) of this section, the amendment of ORS 118.180 by section 1 of this Act shall apply to proceedings in which the complaints are filed in the tax court on or after the effective date of this Act [October 5, 1973] and to proceedings involving appeals by executors or other interested parties to the Department of Revenue in which the written objections are filed with the department on or after the effective date of this Act.

(2) Where an appeal under subsections (1) and (2) of ORS 118.180 is initiated on or after the effective date of this Act, no recovery shall be allowed under paragraphs (a) and (b) of subsection (4) of ORS 118.180 for any prior proceeding in the matter initiated in the department before the effective date of this Act.

118.190 Payment of fees or expenses under ORS 118.180 by Department of Revenue. Payment of any attorney fees or reasonable expenses under subsection (4) of ORS 118.180 shall be made by the Department of

Revenue in the manner provided by law for the payment of income tax refunds.

[1973 c.100 §2]

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 at the expiration of nine months from such death, except as otherwise provided in ORS 118.005 to 118.840, and except that taxes upon any devise, bequest, legacy or gift, limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof cannot be ascertained at or before the time when the taxes become due and payable, accrue and are due and payable when the person or corporation beneficially entitled thereto comes into actual possession or enjoyment thereof.

[Amended by 1973 c.254 §1]

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 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 nonresident deceased, if all inheritance taxes are not sued for within six years after the amount of such taxes is determined by the Department of Revenue, as provided in ORS 118.170, 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 Department of Revenue, the time limitation shall run only from the time of the reporting thereof. In estates of non-resident 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 Department of Revenue.

[Amended by 1969 c.591 §214]

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 within 30 days thereafter 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]

118.250 To whom tax payable; issuing and recording receipts; prerequisite to final accounting of representative or trustee. (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 as provided by ORS 293.290 or, if no tax is found by the department to be due, a certificate to that effect.

(3) Should the payment include a tax upon the transfer of real property situated in a county other than that of the administration of the estate, the receipt shall contain an identifying reference to such property. If the estate of the decedent will not be administered or probated, the receipt shall indicate upon what real property transfers the tax was paid.

(4) Such receipts may be recorded in the office of the recorder of deeds of the county

in which such property is situated, in a book to be kept by him for that purpose, which shall be labeled "Transfer Tax."

(5) No personal representative or trustee is entitled to a final accounting of an estate unless he produces such a receipt or copy thereof certified by the department, or unless a bond has been filed, as prescribed by ORS 118.300.

(6) The department shall, upon the payment of \$2, 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. No charge for copies of a receipt shall be made by the department at the time of issuance of the original. The sum paid to the department for copies of receipts shall be disposed of as provided in ORS 118.510.

[Amended by 1965 c.727 §4; 1971 c.652 §3; 1973 c.254 §3]

118.260 Interest; failure to file return; deposit where tax not determined. (1) If no return has been filed as required by this chapter and more than 60 days have passed after a written request by the department to an executor or personal representative to file such return, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount of tax required to be shown as tax on the return a penalty of five percent of the amount of such tax if the failure is not for more than one month, with an additional five percent for each additional month or fraction thereof during which failure continues, not exceeding 25 percent of the aggregate.

(2) If the tax imposed by ORS 118.005 to 118.840 is not paid within nine months from the accruing thereof, interest shall be charged and collected thereon at the rate of two-thirds of one percent per month for each month or fraction of a month from the time when the tax became due and payable.

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

(4) 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.

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

[Amended by 1971 c.732 §2; 1973 c.332 §1]

118.270 From what property 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 118.100 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 such decedent even though such property was situated outside of the state.

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 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 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 Attorney General under ORS 118.370.

(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, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment, if the case requires, of the sum to be paid into his hands by such legatee or beneficiary, and for such further order relative thereto as the case may require.

[Amended by 1961 c.455 §5]

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 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 double the amount of the tax, with such sureties as the Director of the Department of Revenue 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 made to the Director of the Department of Revenue within six months from the date of transfer thereof, as in this section provided. Such bond must be renewed every five years.

[Amended by 1969 c.591 §216]

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 Transfer of stock by representative or trustee; consent of department to transfer prior to payment. No personal

representative or trustee of any resident decedent's estate shall assign or transfer any stock of any corporation of this state or of any national banking association located in this state, standing in the name of a decedent, or in the joint names of a decedent and one or more other persons, or in trust for a decedent, subject to the inheritance tax imposed by law, until such tax has been paid, unless the department consents to such transfer prior to such payment in the manner provided by ORS 118.340.

[Amended by 1969 c.178 §1; 1973 c.254 §4]

118.330 Corporation executing transfer; examination of transfer books; liability for unauthorized transfer. (1) No corporation of this state or national banking association located in this state shall transfer any stock of such corporation or association, standing in the name of a resident decedent, or in the joint names of a resident decedent and one or more persons, or in trust for such decedent, unless the Department of Revenue has filed with the corporation or association a certificate that the inheritance tax on the transfer of such stock has been fully paid, or otherwise consents thereto in writing. The Director of the Department of Revenue, either personally or by representative, may examine the shares of stock of such decedent at the time of such transfer and also the transfer books of the corporation or association showing such transfer.

(2) Any such corporation or association making any transfer of stock in violation of the provisions of this section, is liable for the payment of the amount of the taxes to which the property so transferred is subject, which liability for such tax and interest shall be enforced in an action of debt in the name of the state, brought by the Director of the Department of Revenue thereof, and the same when recovered shall be paid into the treasury of the state for the use of the state.

(3) However, nothing in ORS 118.320 to 118.340 shall affect stock properly assigned and held as collateral security.
[Amended by 1969 c.178 §2]

118.340 Consent of department to transfer; certificate of payment of tax. Whenever the inheritance tax imposed upon the transfer of the stock of any corporation of this state, or national banking association located in this state, standing in the name of a decedent, resident or nonresident, or in the joint

names of the decedent and one or more persons, or in trust for such decedent, has been paid, the department shall, upon the request of any interested party or of the corporation or association or upon its own motion, file with the corporation or association a certificate of such payment. The department is empowered to consent to the transfer of such stock prior to the payment of the taxes whenever it deems such transfer may be so made without prejudice or peril to the rights of the state.

[Amended by 1973 c.254 §5]

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 Director of the Department of Revenue may, with the written approval of the Attorney General setting forth the reasons therefor, compromise with the beneficiaries or representatives of such estate, and compound 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 Director of 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 director 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 director 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 director in such proceedings, and the director 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 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 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. [Amended by 1969 c.591 §217; 1971 c.567 §8]

118.360 Refund of tax erroneously paid; limitations. When any tax imposed by ORS 118.005 to 118.840 is erroneously paid, wholly or in part, the person paying the same is entitled to a refund of that amount. However, all applications for such refunding shall be made within three years from the payment of the tax. [Amended by 1959 c.273 §2]

118.370 Duty of director to apply for citation to collect unpaid taxes; action for tax. (1) If the Director of the Department of Revenue has reason to believe that any tax is due and unpaid under ORS 118.005 to 118.840, after the refusal or neglect of the persons liable therefor to pay the same, he shall apply to the Oregon Tax Court for a citation citing the persons liable to pay such tax to appear before the court on the day specified, not more than 30 days from the date of such citation, unless the court, for good cause shown, grants a longer time, and show cause why the tax should not be paid. The court, upon such application, and whenever it appears that any such tax accruing under ORS 118.005 to 118.840 has not been paid as required by law, shall issue such citation. The service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon, shall conform as nearly as may be to the provisions of the probate practice; provided, that where no provision is made for manner of such service or proof of same, the court or judge, at the time such order or citation is issued, shall direct the manner of giving notice and proof of the same.

(2) Whenever it appears from a determi-

nation of the Oregon Tax Court that any tax is due and payable under the provisions of ORS 118.005 to 118.840, in addition to any other remedy, the director may, in the name of the state, sue for and enforce the collection of the tax. All taxes so collected shall be credited as provided in ORS 118.510.

(3) The Attorney General shall appear for and represent the director in connection with such citation, hearing, action or suit. [Amended by 1955 c.727 §5; 1959 c.273 §3; 1971 c.567 §9]

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 Notice to department by depositories before permitting access to receptacle; notice by any person before delivering or transferring any securities or other property. (1) No person, safe deposit company, trust company, corporation, bank or other institution engaged in the business of renting safe deposit boxes or other receptacles of similar character shall rent any such receptacle without first requiring all persons given access thereto to agree in writing to notify the depository from whom such receptacle is rented of the death of any person having the right of access thereto, before securing access to the receptacle after the death of such person. All persons having the right of access to any such receptacle, upon the death of any other person having access thereto, before securing access to the receptacle must notify the depository from whom the receptacle is rented of the death of such person.

(2) No person, safe deposit company, trust company, bank, corporation or other institution having in possession or under control, custody or partial custody any safe

deposit box or similar receptacle, shall permit access thereto by any one after knowledge or notice of the death of any person who at the time of his death had the right or privilege of access thereto either as a principal, deputy, agent or cotenant, or deputy or agent of a deceased principal unless notice in writing of the time and place when such access is to be given is served on the department at least five days prior to the time such access is permitted.

(3) No person, safe deposit company, trust company, bank, corporation or other institution, or corporation in which the decedent at the time of his death owned any stock, having in possession or under control or custody or under partial control or partial custody, securities, deposits, assets or property belonging to or standing in the name of the decedent, who was a resident or nonresident, or belonging to or standing in the joint names of such decedent and one or more other persons, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer provided in this section shall, after notice of death of the deceased, deliver or transfer the same to the executors, administrators, legal representatives or to any other persons, or to the survivors when held in the joint names of a decedent and one or more other persons, or upon their order or request, unless notice of the time and place of such intended transfer is served upon the department in writing at least 10 days prior to the transfer. The department may examine the securities, deposits or assets prior to the time of such delivery or transfer. If upon such examination the department deems it necessary in the enforcement of the inheritance tax laws that delivery or transfer of such securities or assets be deferred, he may forthwith notify, in writing, such person, company, bank or institution to defer delivery or transfer thereof for a period not to exceed 60 days from the date that an inheritance tax return as required by subsection (2) of ORS 118.160 is filed or until a release in writing of such securities or assets is given by the department. Thereupon the party notified shall defer such delivery until the time stated in such notice, or until the revocation thereof within such 60 days or until such release is granted.

(4) Failure to serve the notices provided for in this section or to allow such examination or to defer the delivery of such securi-

ties or assets as required, shall render such person, safe deposit company, trust company, corporation, bank or other institution liable to the payment of the tax imposed by ORS 118.005 to 118.840 on any securities or assets contained in such receptacle or so transferred; however, this section does not apply to deposits in banks or shares, accounts and certificates in savings and loan associations standing in the joint names of such decedent and one or more other persons where the balance of such deposit does not exceed the sum of \$1,000.

[Amended by 1961 c.455 §6; 1973 c.338 §1]

118.450 Department to furnish copies of release or consent to transfer. The department shall, upon the payment of \$2, issue to any person demanding the same, a copy of any consent issued pursuant to the provisions of ORS 118.005 to 118.840 to transfer, or release, shares of corporate stock, mutual funds, insurance proceeds, bonds, securities, deposits, assets, property or safe deposit boxes belonging to or standing in the name of the decedent, who was a resident or nonresident, or belonging to or standing in the joint names of such decedent, and one or more other persons. No charge shall be made at the time of the original issuance for the requested consent, release or copies.

[1967 c.161 §1; 1973 c.254 §7]

118.460 Reports by county clerks and custodians of deeds. (1) Each county clerk shall, on the first day of January, April, July and October of each year, make a report to the Department of Revenue upon forms furnished by the department, containing the name, residence and date of death of the decedent upon whose estate an application has been made for the issue of letters of administration, letters testamentary or ancillary letters; the estimated value of the property of such decedent; the amount of the property of any such decedent as shown by the inventory and appraisal thereof; the names and places of residence and relationship to the decedent of the heirs at law; the names and places of residence of the legatees, devisees and other beneficiaries in any will of such decedent; the amount of each legacy; and the name and address of the administrator or executor and of his attorney.

(2) The county officer having custody of records of deeds shall, at the same time, make a report to the Department of Revenue containing a statement of any conveyance

filed or recorded in his office of any property which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with name and place of residence of the vendor and vendee, and a description of the property transferred, as shown by such instrument.

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 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 Representative or trustee to notify of passage of real estate in trust. Whenever any of the real estate of which any decedent died seised passes to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, the executor, administrator or trustee of such decedent shall give information thereof in writing to the Department of Revenue within three months after they undertake the execution of their expected duties, or, if the fact is not known to them within that period, then within one month after the same comes to their knowledge.

118.490 Compensation of officers. Except as otherwise provided in ORS 118.005 to 118.840, no officer, by reason of any duties imposed by ORS 118.005 to 118.840, shall receive any additional compensation to that allowed him by law.

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 and ORS chapter 119 (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]

118.520 [Repealed by 1959 c.273 §8]

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 his domicile 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 his domicile 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 he 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 him, 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 his 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 he died testate, or if he died intestate, a list of his heirs and next of kin, 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 decree such accounting, and upon the accounting being filed and approved shall decree 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.

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 his state 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 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 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]

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 Director of 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 director, 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 decedent 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 accord-

ance 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 director 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]

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 subsection (1) of ORS 118.865 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 his 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 chairman.

(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. Subpenas 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 his 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 employes 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 six percent per annum of the amount of the death taxes found to be due.

[1959 c.573 §6]

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 deceased 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 wilfully makes a false statement in a report required by ORS 118.660 is subject to the penalties provided by subsection (3) of ORS 162.140.

[Amended by 1961 c.455 §8; subsection (2) enacted as 1969 c.210 §1; 1969 c.591 §223; 1973 c.254 §9]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on November 1, 1973.

Thomas G. Clifford
Legislative Counsel

