

# Chapter 119

## 1975 REPLACEMENT PART

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## DEFINITIONS

**119.005 Definitions and interpretation.** (1) As used in this chapter:

(a) "Net gifts to each donee" or "net gifts to such donee" means the total amount of gifts made during the calendar year to the particular donee, less the annual exclusions applicable with respect to the particular donee under ORS 119.031.

(b) "Son-in-law" includes the widower of a deceased daughter of the donor, and "daughter-in-law" includes the widow of a deceased son of the donor.

(c) "Total net gifts" means the total amount of gifts made during the calendar year, less the following:

(A) A specific exemption of \$15,000, less the aggregate of the amounts claimed and allowed as specific exemption for preceding calendar years beginning with the calendar year 1933.

(B) The annual exclusions applicable with respect to the particular donees under ORS 119.031.

(C) The gifts excluded and exempted by ORS 119.035.

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

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

(2) Any donee related to the donor by chain of relationship, any step or steps of which are created by legal adoption, shall, for the purposes of this chapter, 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 subject to tax under subsection (3) or (4) of ORS 119.061, as though such adoption had not taken place, and the annual exclusion under ORS 119.031 shall be computed during such three-year period as though the adoption had not taken place.

[1959 c.419 ss.3, 4; 1969 c.520 ss.24, 24a; 1973 c.344 s.2]

COMPUTATION OF TAX;  
RETURNS

**119.010 Taxable transfers.** (1) Each calendar year a tax shall be imposed upon the transfer during such calendar year by any individual resident or nonresident of property by gift.

(2) The tax applies to the transfer by gift of all property within the jurisdiction of the

state, whether real or personal, tangible or intangible, and whether owned by inhabitants of this state or not and whether the gift is direct or indirect in trust or otherwise.

(3) If property is transferred for less than an adequate and full consideration in money or money's worth, the amount by which the value of the property exceeded the value of the consideration is deemed a gift and shall be included in computing the amount of gifts made during the calendar year.

(4) The tax shall not apply to any transfer of property which is subject to an inheritance tax imposed by ORS 118.010; but the relinquishment or termination, other than by the donor's death, of any life estate or power to revert in the donor property heretofore transferred by the donor, is deemed a transfer by the donor by gift of the entire property subject to such life estate or power; and any payment of the income therefrom to a beneficiary other than the donor, shall be deemed a transfer by the donor of such income by gift.

(5) No election by husband and wife to come under and avail themselves of the provisions of chapter 440, Oregon Laws 1943, heretofore made, and no revocation of any such election, heretofore or hereafter made, shall be deemed a transfer of property by gift within the meaning of this chapter. [Amended by 1961 c.456 s.1]

**119.020 Evaluating gift.** (1) If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(2) The value of every limited 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 Gift Tax Regulation 25.2512-9 on December 1, 1970, except that the rate of interest on computing the present values shall be six percent per year.

(3) Notwithstanding subsection (2) of this section, if real property held by the entirety is conveyed by a husband and wife, or real property is conveyed to a husband and wife to hold as tenants by the entirety, and the transfer is subject to tax under this chapter, the tax thereon shall be determined in the same manner as though each of such tenants by the entirety gave or received an undivided one-half interest as tenants in common. [Amended by 1961 c.456 s.2; 1973 c.498 s.2]

**119.025 ORS 119.005 and 119.031 to 119.065 apply to gift taxes for calendar year 1959 and thereafter.** The provisions of ORS 119.005 and 119.031 to 119.065 apply to gift taxes for the calendar year 1959 and for each calendar year thereafter.

[1959 c.419 s.2]

**119.030**[Repealed by 1959 c.419 s.13]

**119.031 Annual exclusions; gifts to minors.** (1) Except as to gifts of future interest in property, the donor is entitled, in determining his total net gifts, and his net gifts to each donee, to deduct the following annual exclusions:

(a) The first \$5,000 of gifts made during each calendar year to each donee who bears to the donor the relationship of grandparent, parent, spouse, child or stepchild, or who is a lineal descendant of a child or stepchild of the donor.

(b) The first \$3,000 of gifts made during each calendar year to each donee who bears to the donor the relationship of brother, sister, uncle, aunt, niece or nephew, or any lineal descendant of the same, or son-in-law or daughter-in-law.

(c) The first \$1,000 of gifts made during each calendar year to each donee not referred to in paragraph (a) or (b) of this subsection.

(2) No part of a gift made after December 31, 1965, to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (1) of this section, if the property and the income therefrom:

(a) May be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(b) Will, to the extent not so expended, pass to the donee on his attaining the age of 21 years, and, in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment, as defined in subsection (5) of ORS 118.010.

(3) Where there has been a gift to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying subsection (1) of this section if no part of such interest will at any time pass to any other person.

[1959 c.419 s.5; 1965 c.357 s.1; 1971 c.525 s.1]

**119.035 Exempt gifts.** (1) There shall be excluded and exempted from the tax im-

posed by this chapter the amount of all gifts made during any calendar year to or for the use of:

(a) Any society, association or corporation 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) 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 gift; or

(c) 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) The State of Oregon or any political subdivision thereof; or

(e) 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.

[1959 c.419 s.6; 1961 c.456 s.3; 1971 c.653 s.1; 1973 c.793 s.2]

**119.037 Political contributions exempt.** Notwithstanding any other provision of ORS chapter 119, any political contribution, as defined in subsection (2) of ORS 260.005, made on or after October 5, 1973, is exempt from any gift tax imposed by ORS chapter 119.

[1975 c.177 s.3]

**119.040**[Repealed by 1959 c.419 s.13]

**119.041 Amount of tax.** The tax under this chapter for each calendar year is the sum of:

(1) The tax for the calendar year on the total net gifts; and

(2) The tax for the calendar year on the net gifts to each donee.

[1959 c.419 s.7]

**119.045 Tax on total net gifts.** The tax for each calendar year on the total net gifts is an amount equal to the excess of:

(1) A tax computed in accordance with the rate schedule set forth in ORS 119.051 on the aggregate sum of the net gifts for

such calendar year and for each of the preceding calendar years; over

(2) The tax computed in accordance with the rate schedule set forth in ORS 119.051 on the aggregate sum of the net gifts for each of the preceding calendar years.

(3) The provisions contained in this section shall be effective with respect to gifts for the calendar year 1959 and subsequent years.

[1959 c.419 s.8; 1961 c.456 s.4]

119.050 [Repealed by 1959 c.419 s.13]

**119.051 Tax rates on total net gifts.**

For the calendar year 1959, and for each calendar year thereafter, the rate schedule to be applied in ascertaining the tax on total net gifts is as follows:

On any amount exceeding	But not exceeding	Rate (in percent)
\$ 0	\$ 25,000	1
25,000	50,000	1 1/2
50,000	75,000	2
75,000	100,000	3
100,000	300,000	5
300,000	500,000	7
500,000		10

[1959 c.419 s.9]

**119.055 Tax on net gifts to each donee.** The tax for each calendar year on the net gifts to each donee is an amount equal to the excess of:

(1) A tax computed in accordance with the rate set forth in the applicable schedule in ORS 119.061 on the aggregate sum of the net gifts to such donee for such calendar year and for each of the preceding calendar years beginning with the calendar year 1959; over

(2) The tax paid and computed in accordance with the applicable rate schedule set forth in ORS 119.061 on the aggregate sum of the net gifts to such donee for each of the preceding calendar years beginning with the calendar year 1959.

[1959 c.419 s.10]

119.060 [Amended by 1957 c.158 s.1; repealed by 1959 c.419 s.13]

**119.061 Tax rates on net gifts to each donee.** (1) For the calendar year 1959, and for each calendar year thereafter, the rate to be applied in ascertaining the additional tax on the net gifts to each donee is as set out in this section.

(2) In the case of any gift to a donee who bears the relationship to the donor of grandparent, parent, spouse, child or stepchild, or

any lineal descendant of a child or stepchild of the donor, no additional tax is payable on the net gifts to any such donee.

(3) In the case of any gift to a donee who bears the relationship to the donor of brother, sister, uncle, aunt, niece or nephew, or any lineal descendant of the same, or son-in-law or daughter-in-law, the additional tax on the net gifts to each donee is as follows:

On any amount exceeding	But not exceeding	Rate (in percent)
\$ 0	\$ 3,000	1
3,000	5,000	2
5,000	10,000	4
10,000	30,000	7
30,000	50,000	10
50,000		15

(4) In the case of any gift to a donee not referred to in subsection (2) or (3) of this section, the additional tax on the net gifts to each donee is as follows:

On any amount exceeding	But not exceeding	Rate (in percent)
\$ 0	\$ 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

[1959 c.419 s.11; 1973 c.703 c.4]

**119.065 Returns; contents.** (1) Any individual who within the calendar year 1969, or any subsequent calendar year, makes any transfers by gift, except (a) those which are not in excess of the amount of the annual exclusion available for each particular donee under ORS 119.031 and (b) those which under ORS 119.035 are not to be included in the amount of taxable gifts for such calendar year, shall make a return under the penalties for false swearing and file such return with the Department of Revenue on or before April 15 following the close of the calendar year.

(2) The return required by subsection (1) of this section shall set forth:

(a) Each gift made during the calendar year which is to be included in computing the total net gifts or the net gifts to each donee.

(b) Any exemption or exclusion allowable.

(c) The total net gifts for each of the preceding calendar years, and the net gifts to each donee for each of the preceding calendar years.

(d) Such further information as may be required by regulations prescribed by the Director of the Department of Revenue pursuant to this chapter.

[1959 c.419 s.12; 1969 c.110 s.1]

### 119.070 Records and special returns.

(1) Every person liable for any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations as the department may prescribe.

(2) The department may require any person to make a return, furnish statements or maintain sufficient records to show whether or not such person is liable for a tax under this chapter.

[Amended by 1973 c.254 s.10]

### 119.080 Addition to tax for failure to file a return.

(1) In case of any failure to make and file a return required by this chapter, within the time prescribed by law or prescribed by the Director of the Department of Revenue in pursuance of law, there shall be added to the amount of tax required to be shown on the return a delinquency penalty of five percent 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 on the return a failure to file penalty of 20 percent of such tax. This penalty is in addition to the penalty imposed by subsection (1) of this section.

(3) The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax.

(4) 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.

[Amended by 1959 c.75 s.1; 1975 c.593 s.5]

**119.100 Reporting transfers taxable under inheritance tax law.** (1) Notwithstanding subsection (4) of ORS 119.010, the donor shall make a return reporting a transfer by gift which is not subject to tax under this chapter because of the provisions of subsection (4) of ORS 119.010 if:

(a) The donor expressly or impliedly reserves for his life an income or interest in the property transferred; and

(b) The total property transferred in one year, if to any one grandparent, parent, spouse, child or stepchild or any lineal descendant of the child or stepchild of the donor or grantor, has a value exceeding \$5,000 or if to any other donee, the value exceeds \$1,000; except that, no such transfer is required to be reported where the donee qualifies as an exempt beneficiary under the inheritance tax law.

(2) The return required by subsection (1) of this section shall be made as a part of the return required by ORS 119.065 or, if no return is required under that section, the return required by subsection (1) of this section shall be made and filed in the same manner as a return under ORS 119.065.

(3) In case of a failure to report the information required by this section within the time prescribed by ORS 119.065, a penalty equal to five percent of the inheritance tax liability resulting from such transfer shall be imposed and shall become due and payable upon the death of the donor, and if not paid within nine months following death, such penalty shall accrue interest at the rate of one percent per month or fraction of a month; except that, when such information is reported after such time and it is shown the failure to report it within the time prescribed was due to reasonable cause and not due to wilful neglect, no such penalty shall be imposed.

(4) This section applies only to transfers made on or after January 1, 1960.

[1959 c.285 s.2; 1963 c.67 s.1; 1975 c.593 s.6; 1975 c.762 s.14]

## PAYMENT OF TAX

**119.110 Payment and disposition of tax.** The tax shall be paid to the Department of Revenue for the use of the state. All money received by the department under this chapter shall be disposed of as provided in ORS 118.510.

[Amended by 1959 c.273 s.6]

### 119.120 Time of payment; extension.

(1) In respect to transfers made during the calendar year 1957 or any subsequent calendar year, the tax shall be paid by the donor on or before April 15 following the close of the calendar year.

(2) At the request of the donor, the department may extend the time for filing the return or payment of the amount deter-

mined as the tax by the donor, for a period not to exceed six months from the date prescribed under ORS 119.065 and this section. In such case regarding payment, the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of extension.

[Amended by 1957 c.159 s.1; 1961 c.456 s.5; 1971 c.653 s.2; 1973 c.254 s.11]

**119.130 Interest on extended payments.** If the time for payment of the amount determined as the tax by the donor is extended under the authority of ORS 119.120, there shall be collected as a part of such amount, interest thereon at the rate of one percent per month for each month or fraction of a month from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension.

[Amended by 1973 c.254 s.18; 1975 c.593 s.7]

**119.140 Additions to tax in case of nonpayment; application of payments thereafter.** (1) When the amount determined by the donor as the tax, or any part of such amount, is not paid on the due date, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of one percent per month for each month or fraction of a month from the due date until it is paid.

(2) When an extension of time for payment of the amount so determined as the tax by the donor has been granted, and the amount, the time for payment of which has been extended, and the interest thereon determined under ORS 119.130, is not paid in full prior to the expiration of the period of the extension, then, in addition to the interest provided for in subsection (1) of this section, a delinquency penalty of five percent of the tax shall be assessed and collected.

(3) Any payment made after accrual of interest on the tax shall be applied in the following order: First, to any penalty due; second, to the interest due; and third, to the principal amount of the tax due.

[Amended by 1961 c.456 s.6; 1973 c.254 s.19; 1975 c.593 s.8]

**119.150 Overpayment; refund and credits; judicial determination.** (1) When there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be credited against any gift tax then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer. The amount of the credit or refund shall not exceed the portion of the tax paid

during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the credit or refund. No such credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) If the Director of the Department of Revenue has mailed to the taxpayer a notice of deficiency under ORS 119.250 and if the taxpayer files a petition in the Oregon Tax Court within the time prescribed in subsection (1) of ORS 119.270 no credit or refund in respect of the tax for the calendar year in respect of which the director has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except:

(a) As to overpayments determined by a decision of the Oregon Tax Court which has become final;

(b) As to any amount collected in excess of an amount computed in accordance with the decision of the Oregon Tax Court which has become final; and

(c) As to any amount collected after the period of limitation upon the beginning of a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Oregon Tax Court which has become final, as to whether such period has expired before the notice of deficiency was mailed shall be conclusive.

(3) If the Oregon Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year of which the director determined the deficiency, the Oregon Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Oregon Tax Court has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax paid more than three years before the filing of the claim or the filing of the petition, whichever is earlier.

[Amended by 1971 c.567 s.11]

**119.160 Refunds and credits where gift taxable under inheritance tax law.** If a tax has been paid on any gift under this chapter and thereafter upon the death of the donor an inheritance tax is imposed upon the same gift by this state, there shall be credited against the inheritance tax resulting from

the inclusion of such gift in the computation of such inheritance tax an amount equal to the gift tax paid under this chapter for the year in which the gift was made resulting from the inclusion of such gift in the computation of the gift tax on gifts from such donor to the donee who received such gift. If the amount to be so credited exceeds the amount of the inheritance tax resulting from the inclusion of such gift in the computation of such inheritance tax, the amount of the excess shall be refunded, without interest, to the estate of the donor.

[1959 c.198 s.2]

### ASSESSMENT AND COLLECTION OF TAX AND DEFICIENCIES

**119.210 Determination of tax; computation of deficiency; notice; hearing.** (1) As soon as practicable after the return is filed, the department shall examine it and shall determine the correct amount of the tax.

(2) If the department determines that a deficiency exists from an examination of the return it shall compute the tax or if the donor has failed to file the return as required by this chapter 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 donor.

(3) The notice of a proposed tax deficiency shall give the donor 60 days from the date of mailing of such notice in which to pay the tax or file written objections to the proposed tax deficiency.

(4) The director shall hear and determine all questions involving any proposed tax deficiency to which an objection has been filed. Any tax deficiency found due after such hearing shall be assessed by the department within 60 days after the determination and notice of the determination shall be sent to the donor or the authorized representative by certified mail.

(5) In the absence of notice to the department under subsection (1) of ORS 119.340 of the existence of a fiduciary relationship, notice of a deficiency, if mailed to the donor at his last-known address, shall be sufficient for the purposes of this chapter even if such donor is deceased, or is under a legal disability.

[Amended by 1973 c.254 s.12; 1975 c.762 s.15]

**119.220 Period of limitation upon assessment and collection.** (1) Except as

provided in subsection (2) of this section, the amount of taxes imposed by this chapter shall be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes without assessment shall be begun after the expiration of three years from the date the return is filed.

(2) If no return of a gift is filed with the department, or in case of a false or fraudulent return with intent to evade tax, the department may determine and assess the correct amount of tax at any time after the facts are discovered, but in no event after the lapse of six years from the time the facts are discovered.

(3) Whenever the assessment of any tax imposed by this chapter has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by a proceeding in court, but only if begun within six years after the assessment of the tax.

[Amended by 1959 c.306 s.1; 1973 c.254 s.13]

**119.230**[Repealed by 1975 c.762 s.19]

**119.240 Definition of deficiency.** As used in this chapter in respect of the tax imposed by this chapter, the term "deficiency" means:

(1) The amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed, or collected without assessments, as a deficiency, and decreased by the amounts previously refunded or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the donor upon his return, or if no return is made by the donor, then the amount by which the tax exceeds the amounts previously assessed, or collected without assessment, as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously refunded or otherwise repaid in respect of such tax.

**119.250** [Amended by 1973 c.254 s.14; repealed by 1975 c.762 s.19]

**119.260**[Repealed by 1975 c.762 s.19]

**119.270 Judicial determination of deficiency; collection.** (1) The determination of any deficiency by the department may be appealed to the Oregon Tax Court, in the manner provided in subsection (1) of

ORS 314.460, by the donor, or anyone interested therein within 60 days after notice of the determination of the deficiency has been received as provided in ORS 119.210. The appeal shall be heard in the county in which the donor resides, or, in the case of a nonresident donor, in the county in which the property comprising the gift is located, or such place as the court shall direct. The Oregon Tax Court has jurisdiction to determine the correct amount of the deficiency, even if the amount so determined is greater or less than the amount of the deficiency of which notice has been mailed by the department, and even if determined upon grounds other or different from those asserted in the notice, provided that claim for such additional tax on other or different grounds is asserted by the department at or before the hearing or any rehearing of the case. In the event such other or different grounds are asserted by the department, the opposing party shall be allowed additional time, not less than 10 days, within which to amend or otherwise plead thereto, which additional time, however, may be waived by stipulation of the parties.

(2) If the donor files a complaint in the Oregon Tax Court, the entire amount, redetermined as a deficiency by the decision of the court which has become final, shall be assessed and shall be paid upon notice and demand from the department.

(3) If the donor does not file a complaint in the Oregon Tax Court within the time prescribed in subsection (1) of this section the deficiency, notice of which has been mailed to the donor, shall be assessed, and shall be paid upon notice and demand from the department.

[Amended by 1971 c.567 s.12; 1973 c.254 s.15; 1975 c.762 s.16]

**119.280 Enforcement of tax generally.** The provisions of this chapter shall be enforced by the Director of the Department of Revenue by suit in the Oregon Tax Court. The director and any other parties to any such suit or review of any deficiency may appeal to the Supreme Court in the manner that appeals are taken in suits tried in the tax court.

[Amended by 1971 c.567 s.13]

**119.290 Additions for fraudulent deficiency.** 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, in addition to such deficiency, shall be so assessed, collected and paid.

[Amended by 1975 c.593 s.9]

**119.300 Interest on deficiencies.**

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the department, and shall be collected as a part of the tax, at the rate of one percent per month for each month or fraction of a month from the due date of the tax to the date the deficiency is assessed.

[Amended by 1973 c.254 s.16; 1975 c.593 s.10]

**119.310 Extension of time for payment of deficiencies.** Except when deficiency is due to negligence, to intentional disregard of rules and regulations, or to defraud with intent to evade tax, where it is shown to the satisfaction of the Director of the Department of Revenue that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the donor, the director may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of 18 months, and in exceptional cases for a further period not in excess of 12 months. If an extension is granted, the donor shall furnish a bond in such amount, not less than double the amount of the deficiency, and with such sureties, as the director deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension.

**119.320 Interest on extended deficiency payments.** In case an extension for the payment of a deficiency is granted as provided in ORS 119.310, there shall be collected as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of one percent per month for each month or fraction of a month for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period.

[Amended by 1973 c.254 s.20; 1975 c.593 s.11]

**119.330 Additions to the tax in case of nonpayment of deficiency.** (1) When a deficiency, or any interest assessed in connection therewith under ORS 119.320, is not paid in full within 10 days from the date of notice and demand from the department, there shall be collected as part of the tax a delinquency penalty of five percent of the unpaid tax. The penalty provided in this subsection is in addition to any interest or other penalties provided by law.

(2) If the part of the deficiency, the time for payment of which is extended as provid-

ed in ORS 119.310, is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of one percent per month for each month or fraction of a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

[Amended by 1973 c.254 s.17; 1975 c.593 s.12]

**119.340 Effect of fiduciary relationship.** (1) Upon notice to the Director of the Department of Revenue that any person is acting in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties and privileges of the donor in respect of a tax imposed by this chapter (except as otherwise specifically provided and except that the tax shall be collected from the estate of the donor), until notice is given that the fiduciary capacity has terminated.

(2) Upon notice to the Director of the Department of Revenue that any person is acting in a fiduciary capacity for a person subject to the liability specified in ORS 119.350 the fiduciary shall assume, on behalf of such person, the powers, rights, duties and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(3) Notice under subsection (1) or (2) of this section shall be given in accordance with regulations prescribed by the Director of the Department of Revenue. In the absence of notice to the director under subsection (2) of this section of the existence of a fiduciary relationship, notice of liability enforceable under ORS 119.350, if mailed to the person subject to the liability at his last-known address, shall be sufficient for the purposes of this chapter even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

**119.350 Assessment and collection of the liability of a transferee of property of the donor or a fiduciary; definition of transferee.** (1) "Transferee", as used in this section and ORS 119.360, includes donee, heir, legatee, devisee and distributee.

(2) Except as provided in ORS 119.360, the amounts of the following liabilities shall be assessed, collected and paid in the same manner and subject to the same provisions

and limitations as in the case of a deficiency in the tax imposed by this chapter:

(a) The liability, at law or in equity, of a transferee of property of a donor, in respect of the tax imposed by this chapter, including interest, additional amounts and additions to the tax provided by law.

(b) The liability of a fiduciary in respect of the payment of any such tax or deficiency from the estate of the donor.

**119.360 Period of limitation for assessment of liability of transferee or fiduciary; prohibition against suit to restrain collection of assessment.** (1) The period of limitation for assessment of the liability mentioned in ORS 119.350 of a transferee or fiduciary shall be as follows:

(a) Within one year after the expiration of the period of limitation for assessment against the donor. If the donor is deceased, the period of limitation for assessment against the donor is the period that would be in effect had the death not occurred.

(b) If a court proceeding against the donor for the collection of the tax has been begun within the period provided in paragraph (a) of this subsection then within one year after return of execution in such proceeding.

(2) The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under ORS 119.250 to the transferee or fiduciary, be suspended for the period during which the Director of the Department of Revenue is prohibited from making the assessment in respect of the liability of the transferee or fiduciary and for 60 days thereafter.

(3) No suit shall be maintained in any court for the purpose of restraining the assessment or collection of the amount of the liability, at law or in equity, of a transferee of property of a donor in respect of any gift tax or the amount of the liability of a fiduciary in respect of any such tax.

**119.370 Compromise of tax liability.** Whenever the transfer or gift is of such a nature that the value thereof cannot, with reasonable certainty, be ascertained, or the liability for gift tax thereon is doubtful, the Director of the Department of Revenue may, with the written approval of the Attorney General, compromise with the donor, donees or their representatives, and compound the tax thereon.

**119.380 Lien for tax; personal liability of donee.** (1) The tax imposed by this chapter is a lien upon all gifts made during the calendar year, for six years from the time the gifts are made.

(2) If the tax is not paid when due, the donee of any gift is personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift sold by the donee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien therein imposed and the lien, to the extent of the value of such gift, shall attach to all the property of the donee, including after-acquired property, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

(3) If the Director of the Department of Revenue is satisfied that the tax liability has been fully discharged or provided for, he may, under regulations prescribed by him, issue his certificate releasing any or all of the property from the lien herein imposed.

## RULES AND REGULATIONS

**119.510 Rules and regulations.** The Director of the Department of Revenue shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

119.520 [Repealed by 1959 c.273 s.8]

## PENALTIES

**119.990 Penalties.** (1) Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any

records or supply any information, for the purposes of the computation, assessment or collection of any tax imposed by this chapter, who wilfully fails to pay such tax, make such return, keep such records or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(2) Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, upon conviction thereof be guilty of a felony and be fined not more than \$10,000 or imprisoned for not more than five years, or both, together with the costs of prosecution.

(3) Any person who wilfully aids or assists in, or procures, counsels or advises the preparation or presentation under, or in connection with any matter arising under, this chapter of a false or fraudulent return, affidavit, claim or other document shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such document, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(4) Any person who wilfully makes a false statement in a return required by ORS 119.065 shall be guilty of false swearing and upon conviction shall be punished as provided by law.

[Amended by 1953 c.703 s.1; subsection (4) enacted as 1969 c.209 s.1; 1975 c.762 s.17]

## 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,  
October 1, 1975.

Thomas G. Clifford  
Legislative Counsel

