

Chapter 119

1981 REPLACEMENT PART

Gift Tax

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DEFINITIONS

119.005 Definitions and interpretation. As used in this chapter.

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

(a) A specific exemption in an amount determined with reference to the year in which the gifts are made in accordance with the following table, less the aggregate of the amounts claimed and allowed as a specific exemption for preceding calendar years.

Calendar year of gifts	Amount of specific exemption
1978	\$ 50,000
1979 and 1980	\$ 70,000
1981 and 1982	\$ 100,000
1983 and 1984	\$ 200,000
1985 and 1986	\$ 500,000

(b) The annual exclusions applicable with respect to each donee under ORS 119.031

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

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

(3) "Director" means the Director of the Department of Revenue. [1959 c 419 §§3, 4, 1969 c 520 §§24, 24a, 1973 c 344 §2, 1977 c 666 §17]

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. However, the tax shall not apply to any transfer of intangible personal property by a donor who is not domiciled in this state

(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 relinquishment or termination, other than by the donor's death, of any life estate or power to revest in the donor property heretofore transferred by the donor, is deemed a transfer by the donor by gift 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 §1, 1977 c 666 §18]

119.015 Tax not applicable to interspousal joint interest with right of survivorship. (1) The tax shall not apply where a joint interest is created by husband or wife, or by both husband and wife, upon creation of the joint interest in real or personal property, tangible or intangible, with right of survivorship held by husband and wife.

(2) The tax shall not apply where a joint interest in real or personal property held by husband and wife alone, with right of survivorship, is severed, if the interests in the real or personal property created by the severance are undivided one-half interests, as tenants in common, in each of the spouses who hold the property at the time of the severance. [1977 c 666 §21, 1979 c 448 §1]

119.020 Evaluating gift. (1) If the gift is made in property, the true cash 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 value thereof 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 §2, 1973 c 498 §2, 1977 c 666 §19]

119.022 Gift-splitting election by spouses. At the election of both spouses, a gift made by one spouse to any other person shall be considered as made one-half by each spouse for the purpose of computing the gift tax. The election shall be made by April 15 following the calendar year in which the gift is made. [1977 c 666 §21b]

119.025 [1959 c 419 §2, repealed by 1981 c 705 §8]

119.030 [Repealed by 1959 c 419 §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, to deduct annual exclusions amounting to the first \$3,000 of gifts made during each calendar year to each donee.

(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 ORS 118 010 (5).

(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 §5, 1965 c 357 §1, 1971 c 525 §1, 1977 c 666 §22]

119.035 Exempt gifts. There shall be excluded and exempted from the tax imposed by this chapter the amount of all gifts made during any calendar year to or for the use of or in trust for:

(1) The United States, any state, territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes.

(2) Any society, association, trust or corporation but only if such gifts are to be used exclusively for religious, charitable, scientific, literary or educational purposes. For purposes of this section, a nonprofit cemetery association and any corporation that meets the qualifications of ORS 317 080 (15) shall be considered as engaged in a charitable purpose. [1959 c 419 §6, 1961 c 456 §3, 1971 c 653 §1, 1973 c 793 §2, 1977 c 666 §23]

119.037 Political contributions exempt. Notwithstanding any other provision of ORS chapter 119, any political contribution, as defined in ORS 260 005, made on or after October 5, 1973, is exempt from any gift tax imposed by this chapter [1975 c 177 §3, 1979 c 190 §399]

119.040 [Repealed by 1959 c 419 §13]

119.041 Amount of tax. The tax under this chapter for each calendar year is the tax for the calendar year on the total net gifts [1959 c 419 §7, 1977 c 666 §24]

119.045 Tax on total net gifts. The tax for each calendar year on total net gifts is an amount equal to total net gifts for the year multiplied by the rate specified in ORS 119.051. [1959 c 419 §8, 1961 c 456 §4, 1977 c 666 §24a]

119.050 [Repealed by 1959 c 419 §13]

119.051 Tax rates on total net gifts. For the calendar years 1978 through 1986 the rate to be applied in ascertaining the tax on total net gifts is 12 percent. For the calendar year 1987, and for each calendar year thereafter, the rate to be applied in ascertaining the tax on total net gifts is zero. [1959 c 419 §9, 1977 c 666 §25]

119.055 [1959 c 419 §10, repealed by 1977 c 666 §36]

119.060 [Amended by 1957 c 158 §1, repealed by 1959 c 419 §13]

119.061 [1959 c 419 §11, 1973 c 703 §4, repealed by 1977 c 666 §36]

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.

(b) Any exemption or exclusion allowable.

(c) The total net gifts for each of the preceding calendar years.

(d) Such further information as may be required by rules adopted by the Director of the Department of Revenue pursuant to this chapter. [1959 c 419 §12, 1969 c 110 §1, 1977 c 666 §26]

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 §10]

119.080 Addition to tax for failure to file a return; interest. (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) Interest shall be collected on any unpaid tax and deficiency under this chapter, including cases where an extension pursuant to the provisions of ORS 119.120 or 119.310 is given, at the rate of one percent for each month or fraction of a month, computed from

the due date of the return to the date of payment

(4) Payments made on the tax shall be applied first to penalty and interest and then to the principal. [Amended by 1959 c 75 §1, 1975 c 593 §5, 1977 c 666 §27]

119.100 [1959 c 285 §2, 1963 c 67 §1, 1975 c 593 §6, 1975 c 762 §14, repealed by 1977 c 666 §36]

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 §6]

119.120 Time of payment; extension; delinquency penalty for nonpayment at expiration of extension. (1) In respect to transfers made during any 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 determined 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.

(3) The donor shall pay a delinquency penalty of five percent of the tax if the tax and interest are unpaid at the expiration of an extension. [Amended by 1957 c 159 §1, 1961 c 456 §5; 1971 c 653 §2, 1973 c 254 §11, 1977 c 666 §28]

119.130 [Amended by 1973 c 254 §18, 1975 c 593 §7, repealed by 1977 c 666 §36]

119.140 [Amended by 1961 c 456 §6, 1973 c 254 §19, 1975 c 593 §8, repealed by 1977 c 666 §36]

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 Department of Revenue has mailed to the taxpayer an order under ORS 305.115 and if the taxpayer files a petition in the Oregon Tax Court within the time prescribed in ORS 305.560 no credit or refund which is the subject of the department's order 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 which is the subject of the department's order, 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 §11, 1977 c 666 §29, 1977 c 870 §27]

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 §2]

ASSESSMENT AND COLLECTION OF TAX AND DEFICIENCIES

119.210 [Amended by 1973 c 254 §12, 1975 c 762 §15, repealed by 1977 c 870 §18 (119.211 enacted in lieu of 119.210)]

119.211 Applicability of ORS chapter 305 as to audits, deficiencies, assessments, refunds and appeals. The provisions of ORS chapter 305 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences, appeals to the director of the department and appeals to the Oregon Tax Court, and the procedures relating thereto, shall apply to the determination of gift taxes under this chapter, except where the context requires otherwise. [1977 c 870 §19 (enacted in lieu of 119.210)]

119.220 Period of limitation upon notice of deficiency; assessment and collection. (1) At any time within three years after the return of a gift is filed, the department may give notice of a deficiency as provided in ORS 305.265, except that no limitation applies to a deficiency resulting from a false or fraudulent return with intent to evade tax or where no return has been filed.

(2) 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 §1, 1973 c 254 §13, 1977 c 666 §30, 1977 c 870 §28]

119.230 [Repealed by 1975 c 762 §19]

119.240 [Repealed by 1977 c 870 §59]

119.250 [Amended by 1973 c 254 §14, repealed by 1975 c 762 §19]

119.260 [Repealed by 1975 c 762 §19]

119.270 [Amended by 1971 c 567 §12, 1973 c 254 §15, 1975 c 762 §16, repealed by 1977 c 666 §36 and 1977 c 870 §59]

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 §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 §9]

119.300 [Amended by 1973 c 254 §16, 1975 c 593 §10, repealed by 1977 c 666 §36]

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 [Amended by 1973 c 254 §20, 1975 c 593 §11, repealed by 1977 c 666 §36]

119.330 [Amended by 1973 c 254 §17, 1975 c 593 §12, repealed by 1977 c 666 §36]

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 do-

nor), 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) 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. [Amended by 1977 c 666 §31, 1977 c 870 §28a]

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.

ADMINISTRATION

119.510 [Repealed by 1981 c 705 §8]

119.515 Disclosure of return information. (1) It shall be unlawful for the department or any of its officers or employees to divulge or make known in any manner any particulars disclosed in any return or supporting data required under this chapter. Except for donors, donees and executors and beneficiaries of donor's estates, it shall be unlawful for any person who has acquired information pursuant to subsections (2) and (3) of this section, to divulge or make known such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or judicial order shall be issued compelling the department or its employees, or persons described in subsections (2) and (3) of this section, to divulge or make known any particulars disclosed in any such return or supporting data except where the liability for gift taxes is to be adjudicated by the Oregon Tax Court. Nothing in this section shall prohibit the publication of statistics so classified as to prevent the identification of particulars in any return or supporting data covered by this section. As used in this section, "officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or any former officer, employee or person, or an authorized representative of such former officer, employee or person.

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

(3) The department also may disclose and give access to information described in subsection (1) of this section to those persons, agencies or entities, described in ORS 314.840 (2)(b), (e), (f), (g) and (h) to the extent authorized by said paragraphs; and to the Secretary of State and the officers and employees thereof, for the uses and purposes described in ORS 297.060

(4) Each officer or employe of the department and each person described or referred to in subsection (3) of this section to whom disclosure or access to tax information is given, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of subsection (1) of this section and ORS 119.990 (3), and shall as a condition of employment or performance of duties involving such disclosure or access, be advised in writing of the provisions of subsection (1) of this section and ORS 119.990 (3), and shall as a condition of employment or performance of duties execute a certificate for the department, stating in substance that the person has read these provisions of law, that he has had them explained to him and that he is aware of the penalties for the violation of subsection (1) of this section [1979 c 690 §7]

119.520 [Repealed by 1959 c 273 §8]

119.525 Appraisal by department; costs. (1) If the department determines that the donor has not made an appraisal to meet the requirements of true cash value as provided by law, it may cause an appraisal to be made by a fee appraiser to insure compliance with ORS 119.020 (1).

(2) The cost of the appraisal including the appraiser's fee as a witness in the event of an appeal shall be paid out of the taxes collected under this chapter before the net revenue is credited to the General Fund as provided in ORS 118.510. [1979 c 516 §5]

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.

(5) Violation of ORS 119.515 is a Class C felony. If the offender is an officer or employe of the state the offender shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter. [Amended by 1953 c 703 §1, subsection (4) enacted as 1969 c 209 §1, 1975 c 762 §17, 1979 c 690 §8, 1981 c 724 §7]

