Chapter 116

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ALLOCATION OF INCOME

116.003 [1969 c.591 §168; 1973 c.506 §36; repealed by 1975 c.717 §14 (116.007 enacted in lieu of 116.003)]

116.005 [Repealed by 1969 c.591 §305]

116.007 Allocation of income. (1) Unless the will otherwise provides and subject to subsection (2) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under ORS 129.005 to 129.125 and this section and distributed as follows:

(a) To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income, excluding taxes on capital gains, which accrue during the period of administration.

(b) To all other legatees and devisees, except legatees of pecuniary bequests that are not in trust and that do not qualify for the marital deduction provided for in section 2056 of the Internal Revenue Code of 1954 (26 U.S.C. 2056), the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income, excluding taxes on capital gains, which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) of this section shall be treated as income of the trust. [1975 c.717 §15 (enacted in lieu of 116.003)]

116.010 [Repealed by 1969 c.591 §305]

PARTIAL DISTRIBUTION

116.013 Petition and order for partial distribution. Upon petition by the personal representative or other interested person, and after such notice and hearing as the court may prescribe, the court may order the personal representative to distribute, prior to final settlement and distribution, property of the estate to the person or persons who would be entitled to the property under the will or under intestate succession on final distribution, if the court finds that:

(1) After the distribution sufficient assets will remain to pay support of spouse and children, expenses of administration, unpaid claims and all known unpaid creditors of the decedent or of the estate; and

(2) The distribution may be made without loss to creditors or injury to the estate or to any interested person. [1969 c.591 §169; 1987 c.646 §1]

116.015 [Repealed by 1969 c.591 §305]

116.020 [Amended by 1957 c.352 §1; repealed by 1969 c.591 §305]

116.023 Undertaking of distributee. The court may require a bond or other security of any distributee for the protection of creditors and other interested persons who might suffer loss or injury because of the distribution of property under ORS 116.013. [1969 c.591 §170]

116.025 [Repealed by 1969 c.591 §305]

116.033 Discharge of personal representative. The distribution of property in accordance with the order of the court under ORS 116.013 is a full discharge of the personal representative in respect to all property embraced in the order, except as otherwise provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117. [1969 c.591 §171]

116.043 Petition and order for refund by distributee. If, after the distribution of property under ORS 116.013, it appears that all or any part of the property distributed is required for the payment of claims and expenses of administration, including determined and undetermined state and federal tax liability, the personal representative shall petition the court to order the return of the property. Notice of the hearing on the petition shall be given as provided in ORS 111.215. Upon the hearing the court may order the distributee to return the property distributed or any part thereof, or to pay its value as of the time of distribution, and may specify the time within which the return or payment must be made. If the property is not returned or the payment is not made within the time ordered, the person failing to return the property or pay the value may be adjudged in contempt of court and judgment may be entered against the person and the sureties of the person, if any. [1969 c.591 §172]

ACCOUNTING AND DISTRIBUTION

116.063 Liability of personal representative. A personal representative may be liable for and is chargeable in the accounts of the personal representative with:

(1) All of the estate of the decedent that comes into the possession of the personal representative at any time, including the income therefrom.

(2) All property not a part of the estate if:

(a) The personal representative has commingled the property with the assets of the estate; or

(b) The property was received under a duty imposed on the personal representative by law in the capacity of personal representative.

(3) Any loss to the estate arising from:

(a) Neglect or unreasonable delay in collecting the assets of the estate.

(b) Neglect in paying over money or delivering property of the estate.

(c) Failure to pay taxes as required by law or to close the estate within a reasonable time.

(d) Embezzlement or commingling of the assets of the estate with other property.

(e) Unauthorized self-dealing.

(f) Wrongful acts or omissions of copersonal representatives that the personal representative could have prevented by the exercise of ordinary care.

(g) Any other negligent or willful act or nonfeasance in the administration of the estate by which loss to the estate arises. [1969 c.591 §173]

116.073 Nonliability of personal representative. A personal representative is not liable for or chargeable in the accounts of the personal representative with:

(1) Debts due the decedent or other assets of the estate that remain uncollected without the fault of the personal representative.

(2) Loss by the decrease in value or destruction of property of the estate if the loss is caused without the fault of the personal representative. [1969 c.591 §174]

116.083 Accounting by personal representative. (1) A personal representative shall make and file in the estate proceeding a verified account of the personal representative's administration:

(a) Unless the court orders otherwise, annually within 30 days after the anniversary date of the personal representative's appointment.

(b) Within 30 days after the date of the personal representative's removal or resignation or the revocation of the personal representative's letters.

(c) When the estate is ready for final settlement and distribution.

(d) At such other times as the court may order.

(2) Each account shall include the following information:

(a) The period of time covered by the account.

(b) The total value of the property with which the personal representative is chargeable according to the inventory, or, if there was a prior account, the amount of the balance of the prior account.

(c) All money and property received during the period covered by the account.

(d) All disbursements made during the period covered by the account. Vouchers for disbursements shall accompany the account, unless otherwise provided by order or rule of the court, or unless the personal representative is a trust company or national bank that has complied with ORS 709.030, but that personal representative shall:

(A) Maintain the vouchers for a period of not less than one year following the date on which the order approving the final account is entered;

(B) Permit interested persons to inspect the vouchers and receive copies thereof at their own expense at the place of business of the personal representative during the personal representative's normal business hours at any time prior to the end of the one-year period following the date on which the order approving the final account is entered; and

(C) Include in each annual account and in the final account a statement that the vouchers are not filed with the account but are maintained by the personal representative and may be inspected and copied as provided in subparagraph (B) of this paragraph.

(e) The money and property of the estate on hand.

(f) Such other information as the personal representative considers necessary to show the condition of the affairs of the estate or as the court may require.

(3) When the estate is ready for final settlement and distribution, the account shall also include:

(a) A statement that all Oregon income, inheritance and personal property taxes, if any, have been paid, or if not so paid, that payment of those taxes has been secured by bond, deposit or otherwise.

(b) A petition for a decree authorizing the personal representative to distribute the estate to the persons and in the portions specified therein.

(4) If the distributees consent thereto in writing and all creditors of the estate have been paid in full, the personal representative, in lieu of the final account otherwise required by this section, may file a verified statement that includes the following:

(a) The period of time covered by the statement.

(b) A statement that all creditors have been paid in full.

(c) The statement and petition referred to in subsection (3) of this section.

Notice of time for filing objections to the verified statement is not required. [1969 c.591 §175; 1973 c.506 §37; 1985 c.304 §1]

116.093 Notice for filing objections to final account and petition for distribution. (1) Upon filing the final account and petition for decree of distribution, the personal representative shall fix a time for filing objections thereto in a notice thereof. Not less than 20 days before the time fixed in the notice, the personal representative shall cause a copy of the notice to be mailed to:

(a) Each heir at the last-known address of the heir, if the decedent died intestate.

(b) Each devisee at the last-known address of the devisee, if the decedent died testate.

(c) Each creditor who has not received payment in full and whose claim has not otherwise been barred.

(d) Any other person known to the personal representative to have or to claim an interest in the estate being distributed.

(2) The notice need not be mailed to the personal representative.

(3) Proof of the mailing to those persons entitled to notice shall be made by affidavit and filed in the estate proceeding at or before approval of the final account.

(4) If the Adult and Family Services Division or its authorized agent has presented a claim under ORS chapters 411 to 415 and ORS 416.010 to 416.270, 416.310 to 416.340 and 416.510 to 416.990 or 417.010 to 417.080, or the Mental Health and Developmental Disability Services Division or its authorized agent has presented a claim under ORS 179.620 (3), and the claim has not been settled or paid in full, the personal representative shall cause to be mailed to the division or department a copy of the final account at the same time, and shall make proof of the mailing in the same manner, as the notice provided for in this section. [1969 c.591 §176; 1969 c.597 §280; 1989 c.348 §14]

116.103 Objections to final account and petition. Any person entitled to notice under ORS 116.093 may, within the time fixed for the filing, file in the estate proceeding objections to the final account and petition for distribution, specifying the particulars of the objections. Upon the filing of objections the court shall fix the time for hearing thereon. [1969 c.591 §177]

116.105 [Repealed by 1969 c.591 §305]

116.110 [Repealed by 1969 c.591 §305]

116.113 Decree of final distribution. (1) If no objections to the final account and petition for distribution are filed, or if objections are filed, upon the hearing, the court shall give its decree of final distribution. In its decree the court shall designate the persons in whom title to the estate available for distribution is vested and the portion of the estate or property to which each is entitled under the will, by agreement approved by the court or pursuant to intestate succession. The decree shall also contain any findings of the court in respect to:

(a) Advancements.

(b) Election against will by the surviving spouse.

(c) Renunciation.

(d) Lapse.

(e) Adjudicated controversies.

(f) Partial distribution, which shall be confirmed or modified.

(g) Retainer.

(h) Claims for which a special fund is set aside, and the amount set aside.

(i) Contingent claims that have been allowed and are still unpaid.

(j) Approval of the final account in whole or in part.

(2) The personal representative is not entitled to approval of the final account until Oregon income and personal property taxes, if any, have been paid and appropriate receipts, releases and clearances therefor have been filed, or until payment of those taxes has been secured by bond, deposit or otherwise, provided, however, that no such receipts, releases or clearances shall be required with regard to damages accepted upon settlement of a claim or recovered on a judgment in an action for wrongful death as provided in ORS 30.010 to 30.100.

(3) If, by agreement approved by the court, property is distributed to persons in whom title is vested by the decree of final distribution otherwise than as provided by the will or pursuant to intestate succession, the decree operates as a transfer of the property between those persons.

(4) The decree of final distribution is a conclusive determination of the persons who are the successors in interest to the estate

and of the extent and character of their interest therein, subject only to the right of appeal and the power of the court to vacate the decree. [1969 c.591 §178; 1987 c.646 §2; 1989 c.921 §1]

116.115 [1961 c.674 §4; 1969 c.175 §11; renumbered 97.295]

116.120 [Repealed by 1969 c.591 §305]

116.123 Effect of approval of final account. To the extent that the final account is approved, the personal representative and the surety of the personal representative, subject to the right of appeal, to the power of the court to vacate its final orders and to the provisions of ORS 116.213, are relieved from liability for the administration of the trust. The court may disapprove the account in whole or in part, surcharge the personal representative for any loss caused by any breach of duty and deny in whole or in part the right of the personal representative to receive compensation. [1969 c.591 §179]

116.125 [Repealed by 1969 c.591 §305]

116.130 [Repealed by 1969 c.591 §305]

116.133 Distribution; order in which assets appropriated; abatement. (1) If the will expresses an order of abatement, or the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (2) of this section, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(2) Except as provided in ORS 112.405 as to the shares of pretermitted children, and in ORS 114.105 as to the share of the surviving spouse who elects to take against the will, shares of distributees abate without any preference or priority as between real and personal property in the following order:

(a) Property not disposed of by the will.

(b) Residuary devises.

(c) General devises.

(d) Specific devises.

(3) A general devise charged on any specific property or fund is considered, for purposes of abatement, property specifically devised to the extent of the value of the thing on which it is charged. Upon the failure or insufficiency of the thing on which it is charged, it is considered a general devise to the extent of the failure or insufficiency.

(4) Abatement within each classification is in proportion to the amounts of property each of the distributees would have received had full distribution of the property been made in accordance with the terms of the will.

(5) Persons to whom the will gives tangible personal property not used in trade, agriculture or other business are not required to contribute from that property unless the particular devise forms a substantial amount of the total estate and the court specifically orders contribution because of the devise.

(6) When the subject matter of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets. [1969 c.591 §180]

116.135 [Repealed by 1969 c.591 §305]

116.140 [Repealed by 1969 c.591 §305]

116.143 Interest on pecuniary devises. General pecuniary devises not entitled to a share of income under ORS 116.007 (2) bear interest payable from the residuary estate at the rate of five percent per annum for a period beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is evidenced in the will or unless otherwise ordered by the court. [1969 c.591 §181]

116.145 [Repealed by 1969 c.591 §305]

116.150 [Repealed by 1969 c.591 §305]

116.153 Right of retainer. The amount of the indebtedness of a distributee to the estate if due, or its present worth if not due, shall be offset against the interest of the distributee in the estate; but the distributee has the benefit of any defense that would be available to the distributee in a direct proceeding for recovery of the debt. The right of offset and retainer is prior and superior to the rights of judgment creditors, heirs or assignees of the distributee. [1969 c.591 §182]

116.155 [Repealed by 1969 c.591 §305]

116.160 [Repealed by 1969 c.591 §305]

116.163 Distribution to foreign personal representative. When administration of an estate in this state has been completed and the estate is in a condition to be distributed, the court, upon application by the personal representative, may authorize the delivery to the personal representative of an estate of a decedent pending in a foreign jurisdiction of such property as the court finds appropriate for the payment of debts, taxes or other charges or for distribution to the distributees of the estate in the foreign jurisdiction. [1969 c.591 §183]

116.165 [Repealed by 1969 c.591 §305]

116.170 [Repealed by 1969 c.591 §305]

116.173 Compensation of personal representative. (1) Upon application to the court a personal representative is entitled to receive compensation for services as provided in this section. If there is more than one personal representative acting concurrently, the compensation shall not be increased, but may be divided among them as they agree or as the court may order. The compensation is

a commission upon the whole estate, as follows:

(a) Upon the property subject to the jurisdiction of the court, including income and realized gains:

(A) Seven percent of any sum not exceeding $1,000.

(B) Four percent of all above $1,000 and not exceeding $10,000.

(C) Three percent of all above $10,000 and not exceeding $50,000.

(D) Two percent of all above $50,000.

(b) One percent of the property, exclusive of life insurance proceeds, not subject to the jurisdiction of the court but reportable for Oregon inheritance tax or federal estate tax purposes.

(2) In all cases, such further compensation as is just and reasonable may be allowed by the court for any extraordinary and unusual services not ordinarily required of a personal representative in the discharge of a trust.

(3) When a decedent by will has made special provision for the compensation of a personal representative, the personal representative is not entitled to any other compensation for services unless prior to appointment the personal representative signs and files with the clerk of the court a written renunciation of the compensation provided by the will. [Formerly 117.680]

116.175 [Repealed by 1969 c.591 §305]

116.180 [Repealed by 1969 c.591 §305]

116.183 Expenses of personal representative; determination of attorney fees. (1) A personal representative shall be allowed in the settlement of the final account all necessary expenses incurred in the care, management and settlement of the estate, including reasonable fees of appraisers, attorneys and other qualified persons employed by the personal representative. A partial award of such expenses, including fees, may be allowed prior to settlement of the final account upon petition, showing that the final account reasonably cannot be filed at that time, and upon notice as directed by the court. An award of reasonable attorney fees under this section shall be made after consideration of the customary fees in the community for similar services, the time spent by counsel, counsel's experience in such matters, the skill displayed by counsel, the excellence of the result obtained, any agreement as to fees which may exist between the personal representative and the counsel of the personal representative, the amount of responsibility assumed by counsel considering the total value of the estate, and such other factors as may be relevant. No single factor shall be controlling.

(2) A personal representative who defends or prosecutes any proceeding in good faith and with just cause, whether successful or not, is entitled to receive from the estate necessary expenses and disbursements, including reasonable attorney fees, in the proceeding. [1969 c.591 §185; 1977 c.733 §1; 1987 c.518 §1]

116.185 [Repealed by 1961 c.417 §2]

116.186 [1961 c.417 §1; repealed by 1969 c.591 §305]

116.190 [Repealed by 1969 c.591 §305]

116.193 Order of escheat. If it appears to the court, at any time after the expiration of four months after the date of the first publication of notice to interested persons, that there is no known person to take by descent the net intestate estate, the court shall order that the estate escheat to the State of Oregon and that the whole of the estate, after payment of claims, taxes and expenses of administration, be distributed to the Division of State Lands. There shall be no further proceeding in the administration of the estate, and the estate shall summarily be closed. [1969 c.591 §186]

116.195 [Repealed by 1969 c.591 §305]

116.203 Disposition of unclaimed assets. If a report filed in the estate proceeding by the personal representative not less than 30 days after the date of entry of the decree of distribution shows that payment or delivery of property in the possession of the personal representative or under the control of the personal representative cannot be made to a distributee entitled thereto, either because the distributee refuses to accept the property or because the distributee cannot be found, the court may direct the personal representative to pay or deliver the property to the Division of State Lands, to be placed in the escheat funds of the state. The personal representative shall take the receipt of the Division of State Lands stating from whom the property was received, a description of the property and the name of the person entitled to the property. The person entitled thereto may apply for and recover the property in the manner provided for recovery of escheat funds. [1969 c.591 §187]

116.213 Discharge of personal representative. Upon the filing of receipts or other evidence satisfactory to the court that distribution has been made as ordered in the final decree, the court shall enter an order of discharge. Except as provided in ORS 115.004, the discharge so entered operates as a release of the personal representative from further duties and as a bar to any action against the personal representative and the surety of the personal representative. The court may, in its discretion and upon such

terms as may be just, within one year after entry of the order of discharge, permit an action to be brought against the personal representative and the surety of the personal representative if the order of discharge was taken through fraud or misrepresentation of the personal representative or the surety of the personal representative or through the mistake, inadvertence, surprise or excusable neglect of the claimant. [1969 c.591 §188; 1989 c.229 §9]

116.223 Recording of personal representative's deed in other counties. The personal representative shall cause to be recorded in the deed records of any county in which real property belonging to the estate is situated, a personal representative's deed executed in the manner required by ORS chapter 93. The execution of the personal representative's deed shall not place the personal representative in the chain of title to the property so conveyed unless the personal representative is also an heir, devisee or claiming successor to the property conveyed. [1969 c.591 §189; 1991 c.191 §1]

116.233 Reopening estate of decedent. Upon the petition of any interested person, the court, with such notice as it may prescribe, may order the estate of a decedent reopened if other property is discovered, if any necessary act remains unperformed or for any other proper cause appearing to the court. The court may reappoint the former personal representative, or appoint another personal representative, to administer any additional property or to perform such other acts as are considered necessary. The provisions of law as to original administration apply, in so far as applicable, to accomplish the purpose for which the estate is reopened, but a claim that already is adjudicated or barred may not be asserted in the reopened administration. [1969 c.591 §190]

116.243 Reports by court clerks, county clerks or court administrators to Division of State Lands. A court clerk of any county in which the county court has judicial functions, the clerk of any county court that has jurisdiction over probate matters under ORS 111.075 or a court administrator, upon request, shall furnish to the Director of the Division of State Lands the titles of estates of decedents that have remained open for more than three years and in which no heirs, or only persons whose right to inherit the proceeds thereof is being contested, have appeared to claim the estate. [1969 c.591 §191; 1991 c.230 §24; 1991 c.790 §9a]

116.253 Recovery of escheated property. (1) Within 10 years after the entry of a decree of final distribution designating title to an estate available for distribution in the Division of State Lands or an order of escheat to the state, a claim may be made for the property escheated, or the proceeds thereof, by or on behalf of a person not having actual knowledge of the decree or order.

(2) The claim shall be made by a petition filed with the Director of the Division of State Lands. The claim is considered a contested case as provided in ORS 183.310 and there is the right of judicial review as provided in ORS 183.480. The petition shall be verified in the same manner as a complaint and shall state:

(a) The age and place of residence of the claimant by whom or on whose behalf the petition is filed;

(b) That the claimant lawfully is entitled to the property or proceeds, briefly describing the property or proceeds;

(c) That at the time the property escheated to the state the claimant had no knowledge or notice thereof;

(d) That the claimant claims the property or proceeds as an heir or as the personal representative of the estate of an heir, setting forth the relationship of the decedent who at the time of death was the owner;

(e) That 10 years have not elapsed since the entry of the decree or order escheating the property to the state; and

(f) If the petition is not filed by the claimant, the status of the petitioner.

(3) If it is determined that the claimant is entitled to the property or the proceeds thereof, the Director of the Division of State Lands shall deliver the property to the petitioner, subject to and charged with the inheritance tax thereon, if any, and the costs and expenses of the state in connection therewith.

(4) If the person whose property escheated or reverted to the state was at any time an inmate of a state institution in Oregon for the mentally ill or mentally deficient, the reasonable unpaid cost, as determined by the Mental Health and Developmental Disability Services Division, of the care and maintenance of the person while a ward of the institution, regardless of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the amount of the escheated property. [Formerly 120.130]

116.263 Payment of debt and delivery of property to foreign personal representative without local administration. (1) Three months or more after the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession of personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the es-

tate of the nonresident decedent may make payment of the indebtedness, in whole or in part, or deliver the personal property or the instrument evidencing the debt, obligation, stock or chose in action to the foreign personal representative of the nonresident decedent, upon an affidavit made by or on behalf of the foreign personal representative stating:

(a) The date of the death of the nonresident decedent;

(b) That no local administration or application therefor is pending in this state; and

(c) That the foreign personal representative is entitled to payment or delivery.

(2) Payment or delivery made in good faith on the basis of the affidavit is a discharge of the debtor or person having possession of the personal property.

(3) Payment or delivery may not be made under this section if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the foreign personal representative. [1969 c.591 §193; 1987 c.646 §3]

APPORTIONMENT OF ESTATE TAXES

116.303 Definitions. As used in ORS 116.303 to 116.383:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the inheritance tax payable to this state under ORS 118.005 to 118.840.

(2) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency or local governmental agency.

(3) "Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, guardian, conservator or trustee.

(4) "State" means any state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(5) "Tax" means the federal estate tax and the inheritance tax payable to this state under ORS 118.005 to 118.840, and interest and penalties imposed in addition to the tax. [1969 c.591 §194; 1977 c.666 §32]

116.305 [Repealed by 1969 c.591 §305]

116.310 [Repealed by 1969 c.591 §305]

116.313 Apportionment among interested persons; valuations; testamentary apportionment. Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose. In the event the decedent's will directs a method of apportionment of tax different from the method described in ORS 116.303 to 116.383, the method described in the will shall control. A mere testamentary direction to pay debts, charges, taxes or expenses of administration shall not be considered a direction against apportionment of estate taxes. [1969 c.591 §195; 1973 c.506 §38]

116.315 [Repealed by 1969 c.591 §305]

116.320 [Repealed by 1969 c.591 §305]

116.323 Apportionment proceedings; equitable apportionment; penalties and interest; court determination. (1) The court in which the administration of the estate is proceeding may on petition for the purpose determine the apportionment of the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in ORS 116.313 because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the personal representative, the court may charge the personal representative with the amount of the assessed penalties and interest.

(4) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with ORS 116.303 to 116.383, the determination of the probate court in respect thereto is prima facie correct. [1969 c.591 §196]

116.325 [Repealed by 1969 c.591 §305]

116.330 [Repealed by 1969 c.591 §305]

116.333 Withholding of tax; recovery from distributee; bond of distributee. (1) The personal representative or other person who is in possession of the property of the decedent and who is required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to the person, the amount of tax attributable to the interest of the person. If the property in possession of the personal representative or other person required to

pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with ORS 116.303 to 116.383.

(2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative. [1969 c.591 §197]

116.335 [Repealed by 1969 c.591 §305]

116.340 [Repealed by 1969 c.591 §305]

116.343 Allowances for exemptions, deductions and credits. (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purpose of the gift inures to the benefit of the person bearing that relationship or receiving the gift; except that when an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the estate of the decedent inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as, the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in ORS 116.313, and to that extent no apportionment shall be made against the property. This subsection does not apply to any case where the result will be to deprive the estate of a deduction otherwise allowable under section 2053 (d) of the Internal Revenue Code of 1954 (26 U.S.C. 2053 (d)), as amended and in effect on January 1, 1969, relating to deduction for state death taxes on transfers for public, charitable or religious uses. [1969 c.591 §198]

116.353 Income interests; life or temporary interests; charging corpus. No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder. [1969 c.591 §199]

116.363 Proceedings for recovery of tax; liability of personal representative; apportionment of amount not recovered. Neither the personal representative nor other person required to pay the tax is under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to that person until the expiration of three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the three-month period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment. [1969 c.591 §200]

116.373 Foreign personal representatives and estates. A personal representative acting in another state or a person required to pay the tax who is domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of

apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. [1969 c.591 §201]

116.383 Construction. ORS 116.303 to 116.383 embody the Uniform Estate Tax Apportionment Act and shall be construed to effectuate its general purpose to make uniform the law of those states which enact it. [1969 c.591 §202]

116.405 [Repealed by 1969 c.591 §305]

116.410 [Repealed by 1969 c.591 §305]

116.415 [Repealed by 1969 c.591 §305]

116.420 [Amended by 1957 c.364 §1; repealed by 1969 c.591 §305]

116.425 [Repealed by 1969 c.591 §305]

116.430 [Repealed by 1969 c.591 §305]

116.435 [Repealed by 1969 c.591 §305]

116.440 [Repealed by 1969 c.591 §305]

116.445 [Repealed by 1969 c.591 §305]

116.450 [Repealed by 1969 c.591 §305]

116.455 [Repealed by 1969 c.591 §305]

116.460 [Repealed by 1969 c.591 §305]

116.465 [Repealed by 1969 c.591 §305]

116.505 [Repealed by 1969 c.591 §305]

116.510 [Amended by 1957 c.410 §1; repealed by 1969 c.591 §305]

116.515 [Repealed by 1969 c.591 §305]

116.520 [Repealed by 1969 c.591 §305]

116.525 [Amended by 1957 c.410 §2; repealed by 1969 c.591 §305]

116.530 [Amended by 1957 c.410 §3; repealed by 1969 c.591 §305]

116.535 [Repealed by 1969 c.591 §305]

116.540 [Amended by 1957 c.410 §4; repealed by 1969 c.591 §305]

116.545 [Amended by 1957 c.410 §5; repealed by 1969 c.591 §305]

116.550 [Amended by 1969 c.198 §57; repealed by 1969 c.591 §305]

116.555 [Repealed by 1969 c.591 §305]

116.560 [Repealed by 1969 c.591 §305]

116.565 [Repealed by 1969 c.591 §305]

116.570 [Repealed by 1969 c.591 §305]

116.575 [Repealed by 1969 c.591 §305]

116.580 [Repealed by 1969 c.591 §305]

116.585 [Repealed by 1969 c.591 §305]

116.590 [Amended by 1955 c.444 §1; repealed by 1969 c.591 §305]

116.595 [Amended by 1955 c.444 §2; repealed by 1969 c.591 §305]

116.705 [Repealed by 1969 c.591 §305]

116.710 [Repealed by 1969 c.591 §305]

116.715 [Repealed by 1969 c.591 §305]

116.720 [Amended by 1955 c.149 §1; repealed by 1969 c.591 §305]

116.725 [Repealed by 1969 c.591 §305]

116.730 [Repealed by 1969 c.591 §305]

116.735 [Repealed by 1969 c.591 §305]

116.740 [Repealed by 1969 c.591 §305]

116.745 [Amended by 1963 c.417 §6; repealed by 1969 c.591 §305]

116.750 [Repealed by 1969 c.591 §305]

116.755 [Repealed by 1969 c.591 §305]

116.760 [Repealed by 1969 c.591 §305]

116.765 [Repealed by 1969 c.591 §305]

116.770 [Repealed by 1969 c.591 §305]

116.775 [Repealed by 1969 c.591 §305]

116.780 [Repealed by 1969 c.591 §305]

116.785 [Repealed by 1969 c.591 §305]

116.790 [Repealed by 1969 c.591 §305]

116.795 [Repealed by 1969 c.591 §305]

116.800 [Repealed by 1969 c.591 §305]

116.805 [Amended by 1965 c.504 §1; repealed by 1969 c.591 §305]

116.810 [Repealed by 1965 c.399 §1 (116.811 enacted in lieu of 116.810)]

116.811 [1965 c.399 §2 (enacted in lieu of 116.810); repealed by 1969 c.591 §305]

116.815 [Repealed by 1969 c.591 §305]

116.820 [Amended by 1953 c.350 §2; repealed by 1969 c.591 §305]

116.825 [Amended by 1963 c.417 §11; repealed by 1969 c.591 §305]

116.830 [Repealed by 1969 c.591 §305]

116.835 [Subsection (1) enacted as 1903 p.133 §2; subsection (2) enacted as 1907 c.175; subsection (3) enacted as 1917 c.114 §2; subsection (4) enacted as 1943 c.26; 1969 c.591 §133; renumbered 114.365]

116.840 [1963 c.417 §3; repealed by 1969 c.591 §305]

116.850 [1963 c.417 §4; repealed by 1969 c.591 §305]

116.860 [1963 c.417 §5; repealed by 1969 c.591 §305]

116.870 [1963 c.417 §7; repealed by 1969 c.591 §305]

116.880 [1963 c.417 §8; repealed by 1969 c.591 §305]

116.890 [1963 c.417 §9; repealed by 1969 c.591 §305]

116.900 [1963 c.417 §10; repealed by 1969 c.591 §305]

116.990 [Repealed by 1969 c.591 §305]