Chapter 118

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Inheritance Tax

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TAXABLE PROPERTY; DEDUCTIONS; RATES

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

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

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

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

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

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

(6) "Personal representative" means personal representative as defined in ORS 111.005.

(7) "Stepchild" means the child of the spouse or deceased spouse by a person other than the decedent. [1959 c.418 §7; 1969 c.520 §23; 1971 c.567 §4; 1973 c.344 §1; 1975 c.762 §1; 1977 c.666 §1]

118.010 Transfers and interests subject to tax; value of gross taxable estate. (1) A tax at the rate specified in ORS 118.100 (1) is imposed upon a transfer of property and any interest therein, within the jurisdiction of the state, whether belonging to the inhabitants of this state or not, which passes to or vests in any person or persons, or any body or bodies politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectation, to any property or interest therein or income thereof. Such transfers are those by:

(a) Survivorship, will or statutes of inheritance of this or any other state, or revesting, repayment or settlement of any previously escheated estate or part thereof.

(b) Exercise or nonexercise of a general power of appointment as provided in subsection (5) of this section.

(c) Deed, grant, bargain, sale or gift as an advancement or division of the estate of the grantor, bargainor or donor made within the three-year period ending on the date of the death of the grantor or bargainor or intended to take effect in possession or enjoyment after the death of the grantor, bargainor or donor.

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

(b) Upon the death of one of the tenants of real property held by the entirety or real or personal property held in joint names by a husband and wife alone with right of survivorship, the right of the surviving spouse to the immediate ownership or possession and enjoyment of such property shall be deemed a taxable transfer in the same manner as though one-half of the property belonged absolutely to the deceased spouse and had been devised or bequeathed to the surviving spouse.

(c) For purposes of this section, "property held in joint names" means all property held or owned under any form of ownership which includes or provides for the right of survivorship, including but not limited to tenancies by the entirety, joint tenancies and cotenancies with remainder to the survivor.

(3)(a) Except as provided in paragraph (b) of this subsection, the value of the gross taxable estate shall include the value of all property to the extent of any interest thereof of which the decedent has at any time made a transfer, by trust or otherwise, during the three-year period ending on the date of death of the decedent.

(b) Paragraph (a) of this subsection shall not apply to any bona fide sale for an adequate and full consideration in money or

money's worth nor to gifts excluded under ORS 119.031.

(c) The amount of the gross taxable estate, determined without regard to this paragraph, shall be increased by the amount of any tax paid or payable under ORS chapter 119 by the decedent prior to death on any gift made by the decedent during the three-year period ending on the date of death of the decedent.

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

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

(6) Payment, in whole or in part, of inheritance and estate taxes from funds of an estate or trust on any benefit subject to tax under ORS 118.005 to 118.840 is not to be considered as a further taxable benefit, when such payment is directed by decedent's will or by a trust agreement. [Amended by 1955 c.727 §1; 1959 c.418 §1; 1965 c.470 §1; 1969 c.591 §213; 1975 c.685 §3; 1977 c.666 §2]

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

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

(b) Any society, association, trust or corporation but only if such devises, bequests, legacies or 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 (7) shall be considered as engaged in a charitable purpose.

(2) No credit shall be allowed under this section in respect to any devise or gift that is subject to a discretionary power, the exercise or nonexercise of which may result in a distribution of the property subject to such power to a beneficiary other than those specified in subsection (1) of this section or ORS 118.035, within the limitations of ORS 118.035. [Amended by 1961 c.455 §1; 1963 c.135 §1; 1971 c.652 §1; 1973 c.793 §1; 1977 c.666 §3; 1987 c.293 §67]

118.025 Effect of transfer intended to qualify for federal marital deduction. If any transfer is made under a will or trust instrument to or for the benefit of the spouse of the testator or settlor, and if the transfer is intended to qualify for the marital deduction under section 2056 or 2523 of the Internal Revenue Code, as amended and in effect on December 31, 1988, the relevant provisions of the will or trust instrument shall be interpreted consistently with that intent, and the rights, powers and discretion possessed by any fiduciary appointed to administer the will or trust instrument shall be exercisable only in a manner consistent with that intent. The intent to qualify for the marital deduction must be established by a preponderance of the evidence from the language of the will or trust instrument. This section shall apply to all wills and trust instruments, whenever executed. [1987 c.646 §12; 1989 c.625 §80]

Note: 118.025 was added to and made a part of ORS chapter 118 but was not added to any other series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

their accounts upon its own motion, or on the application of the Director of the Department of Revenue shall fix such compensation.

118.035 Tax credit for surviving spouse, minor or incompetent child. (1) A credit shall be allowed to each of the following beneficiaries against the tax imposed by ORS 118.010 that is apportioned to each of the following beneficiaries of the decedent pursuant to ORS 118.110 (1):

(a) The surviving spouse.

(b) A child or stepchild under 18 years of age at the time of the parent's death.

(c) A child or stepchild who has been found to be incompetent by judicial determination in this or any state or who is unable to support self by reason of physical or mental disability, as determined by order of the Department of Revenue.

(2) The amount of the credit allowed by subsection (1) of this section shall be the lesser of the amount of the tax or the amount determined with reference to the calendar year of death of the decedent in accordance with the following table:

Calendar year of death of the decedent	Amount of Credit
1978	$ 54,000
1979 and 1980	51,600
1981 and 1982	48,000
1983 and 1984	36,000
1985 and 1986	0

(3) Any person related to the decedent by a chain of relationship, any step or steps of which are created by legal adoption, shall, for the purposes of this section, be considered as related in the same degree as though all steps in the relationship were by natural blood.

(4) No credit shall be allowed under this section in respect to any devise or gift that is subject to a discretionary power, the exercise or nonexercise of which may result in a distribution of the property subject to such power to a beneficiary other than those specified in subsection (1) of this section within its limitations, or ORS 118.020. [1973 c.759 §2; 1975 c.685 §4; 1977 c.666 §4; 1989 c.224 §8]

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

118.040 Taxability of insurance. The gross value of the taxable estate shall include the value of the amounts receivable by all beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. For the purposes of the preceding sentence, "incident of ownership" includes a reversionary interest (whether arising by the express terms of the policy or other instrument or by operation of law) only if the value of such reversionary interest exceeded five percent of the value of the policy immediately before the death of the decedent. As used in this section, "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or the estate of the decedent, or may be subject to a power of disposition by the decedent. The value of a reversionary interest at any time shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations determined by the Department of Revenue. In determining the value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or the estate of the decedent. [Amended by 1959 c.418 §2; 1977 c.666 §5]

118.050 Pension, retirement and social security benefits exempt from taxation. (1) There shall be exempt from taxation under the provisions of ORS 118.005 to 118.840 the value of all benefits payable to any beneficiary, other than to the estate or to the personal representative of the estate of a deceased person, under:

(a) The National Social Security Act;

(b) The National Railroad Retirement Act; or

(c) Any pension or retirement plan or trust established by the federal or state government or any municipality or any political subdivision of the state or that qualifies for income tax exemptions under the federal Internal Revenue Code but only to the extent the value of the benefits from such pension or retirement plan or trust is attributable to employer or owner-employee contributions to such plan or trust. Individual retirement accounts described in section 408 (a) of the Internal Revenue Code, individual retirement annuities described in section 408 (b) of the Internal Revenue Code and retirement bonds described in section 409 (a) of the Internal Revenue Code also shall be exempt. As used in this paragraph, "owner-employee" has the meaning given the term by section 401 (c) (3) of the Internal Revenue Code.

(2) As used in this section, references to the Internal Revenue Code mean the Internal Revenue Code of 1954 as amended and in effect on December 31, 1976. [Amended by 1955 c.727 §2; 1963 c.392 §1; 1967 c.485 §1; 1975 c.687 §1; 1977 c.666 §6]

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

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

(1) Debts of the decedent owing at the time of death that are properly paid or payable from property the value of which is included in the taxable estate.

(2) Mortgages or other liens owing at the time of death upon property, the value of which is included in the taxable estate, but not the proportionate part of mortgages or liens on property which is not included in the gross taxable estate.

(3) Expenses of funeral, and any amount not exceeding $1,000 actually expended or to be expended for a monument or memorial.

(4) All state, county and municipal property taxes which were a lien against the property of the estate at the date of death, but not the proportionate part of taxes on property which is not included in the gross taxable estate.

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

(6) All reasonable and necessary expenses, including expenses of administration, fees allowed personal representatives under ORS 116.173, reasonable attorney, appraiser, trustee and accountant fees and any other expense actually incurred during the administration of the decedent's estate that is principally related to collecting and preserving assets, to pay debts or to effecting distribution. No deduction may be made from the gross value of the taxable estate for interest expenses accruing after the time of death. However, no deduction shall be allowed to the extent that such expenses have been or will be claimed as deductions in calculating taxable income under the Personal Income Tax Act of 1969 by the personal representatives, trustees or beneficiaries entitled to the estate. [Amended by 1955 c.727 §3; 1959 c.418 §3; 1961 c.455 §2; 1963 c.283 §1; 1965 c.470 §2; 1969 c.493 §74; 1973 c.132 §1; 1973 c.299 §1; 1973 c.703 §1; 1975 c.762 §2; 1977 c.666 §7; 1983 c.632 §1]

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

118.080 Credit for tax on property previously taxed within five years. (1) There shall be allowed as a credit against the tax imposed by ORS 118.010 the tax on the value of any property, as in this section limited, received by the decedent within five years prior to death by inheritance, devise, bequest or gift if the tax on such property within such five years has been imposed and accrued in this state under ORS 118.010 and 118.220, and subsequently paid.

(2) This credit shall be limited to the lesser of the actual tax paid on the value of the property in the net estate of the prior decedent which passed to the present decedent, or the tax on such value included in the net estate of the present decedent.

(3) The credit shall be allowed prior to the apportionment of tax under ORS 118.110 (1). [Amended by 1959 c.418 §4; 1961 c.455 §3; 1973 c.703 §2; 1975 c.762 §3; 1977 c.666 §8]

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

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

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

118.090 Deductions in case of foreign estate liable to pay tax. In case of any property belonging to a foreign estate, which estate in whole or in part is liable to pay an inheritance tax in this state, the tax shall be assessed upon the true cash value of the property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. If the personal representative or trustee of such foreign estate files with the Department of Revenue duly certified statements exhibiting the true cash value of the entire estate of the decedent owner, and the indebtedness for which the estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of the estate shall then be entitled to have deducted such proportion of the indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. [Amended by 1963 c.68 §1; 1977 c.666 §16]

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

118.100 Rates of tax; amount of exemption; additional tax; effect of change in federal estate tax reported. (1)(a) Except as provided in paragraph (b) of this subsection, the rate of tax on all estates shall be 12 percent on any amount exceeding the amount of exemption. The amount of exemption shall be determined with reference to the calendar year of death of the decedent in accordance with the following table:

Calendar year of death of the decedent:	Amount of 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 rate of tax on all estates of decedents dying on or after January 1, 1987, shall be zero. Nothing in this subsection shall affect the imposition of the tax imposed by subsections (2) and (3) of this section.

(2) In addition to the inheritance tax imposed by this section, a tax equal to the difference between the state inheritance tax and the state death tax credit allowable under the federal estate tax law is imposed. In determining the difference, credits other than the state death tax credit shall first be applied to the tentative federal estate tax. If credits other than the state death tax credit result in no federal estate tax, no tax shall be imposed under this subsection. Where a decedent leaves property in two or more states and the inheritance tax payable to this state is less than this state's proportionate share of the maximum state tax credit allowable under the federal estate tax law, the department shall by rule determine the amount of the additional tax. If no inheritance tax is payable to this state in a case where a federal estate tax is payable, a tax equal to the maximum state death tax credit allowable by the federal estate tax law is hereby imposed.

(3) The additional tax provided for in subsection (2) of this section shall be paid to the department at the same time at which the federal estate tax is payable and shall bear interest when delinquent at the rate provided by ORS 118.260. If interest is paid on federal estate tax installments resulting in a reduction of the federal estate tax, and the department determines, pursuant to an amended return or refund claim, that the amount of tax imposed by subsection (2) of this section is less than the amount theretofore paid, the excess tax shall be refunded by the department with interest at the rate established by ORS 305.220 for each month or fraction of a month during a period beginning on the date the amended return or refund claim is filed to the time the refund is made.

(4) If the amount of federal estate tax reported on a United States estate tax return is changed or corrected by the Internal Revenue Service or other competent authority, resulting in a change in the maximum state tax credit allowable under the federal estate tax law, the executor shall report the change or correction in federal estate tax to the department. If the federal change or correction results in a reduction of the allowable state tax credit, the report of the change or correction shall be treated by the department as a claim for refund pursuant to ORS 305.270 and, notwithstanding the limitations of ORS 305.270, shall be deemed timely if filed with the department within two years after the federal correction was made. If the change or correction results in an increase in the state death tax credit allowable on the federal estate tax return, the department may issue a notice of deficiency within two years after the federal change or correction was made or within two years after receiving a report of the federal change or correction, whichever is the later. Any executor filing an amended federal estate tax return shall also file an amended return with the department within 90 days thereafter.

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

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

118.110 Tax rate applicable to net taxable estate; apportionment of tax. (1) The rate of tax prescribed in ORS 118.100 (1) shall be applied to the net taxable estate reduced by the appropriate exemption provided in ORS 118.100 (1), with the tax thus computed being reduced by the credit allowed by ORS 118.080, if any. The remaining tax shall be apportioned to each distributive share of the net taxable estate in the ratio that each distributive share bears to the net taxable estate. However, the portion of the tax qualifying for a credit under ORS 118.020 and 118.035 shall not be collected.

(2) The additional tax, if any, imposed by ORS 118.100 (2) shall be apportioned to each noncharitable distributive share of the estate

in the ratio that each noncharitable distributive share bears to the total of all noncharitable distributive shares. For purposes of this subsection, "noncharitable distributive share" means the share or shares of the estate passing to or for the use of or in trust for beneficiaries other than those described in ORS 118.020.

(3) For purposes of this section, a discretionary power to allocate the benefits of the net taxable estate among the beneficiaries shall be disregarded. [Amended by 1953 c.704 §1; 1961 c.455 §4; 1973 c.268 §1; 1975 c.685 §5; 1977 c.666 §10; 1979 c.582 §2]

118.150 Evaluating particular interests. (1) The executor of the estate of a decedent shall appraise the property of the estate at its true cash value as of the date of the death of the decedent.

(2) When a gift or devise of real property passes to or vests in a husband and wife as tenants by the entirety, the value thereof shall be determined in the same manner as though the grantees or devisees took undivided halves of the real property as tenants in common.

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

(4) The value of a limited estate, income interest or annuity dependent upon any life or lives in being or upon a specified period of time, and the value of an interest or estate remaining after a limited estate, income interest or annuity shall be determined by tables adopted by department rule. In implementing this subsection, the department shall give due consideration to the tables adopted by federal regulation for estate tax purposes under the Internal Revenue Code.

(5) As to inter vivos transfers, where such gifts are made within the three-year period ending on the date of death of the decedent the value shall be as of the date of death. However, in the case of a life insurance contract transferred within the three-year period ending on the date of death of the decedent, the value of the proceeds shall be considered as the value of the gift. [Formerly 118.640; 1971 c.652 §2; 1973 c.498 §1; 1975 c.762 §4; 1977 c.666 §11; 1985 c.761 §1]

118.155 Valuation of certain property assessed as farm use land or forestland. (1) As used in this section:

(a) "Interests in real property" includes interests in farm or forest real property represented by closely held corporate stock or partnership interests. However, "interests in real property" does not include interests in timber.

(b) "Passing by reason of death" includes passing by:

(A) A conveyance subject to a life estate reserved by the grantor;

(B) A gift made within the three-year period ending on the date of death of the decedent;

(C) A conveyance in trust; and

(D) An exercise or nonexercise of a general power of appointment.

(2) Interests in real property passing by reason of death that had received special assessment as farm use land under ORS 308.370 shall be valued at its value for farm use determined by the assessor under ORS 308.370 as of July 1 of the year of the death of the decedent.

(3) Interests in real property passing by reason of death that are assessed as forestland in western Oregon under ORS 321.257 to 321.381, or as forestland in eastern Oregon under ORS 321.420 (2) and 321.805 to 321.820, as of July 1 of the calendar year of death of the decedent, shall be valued at the value determined pursuant to ORS 321.257 to 321.381, or 321.420 (2) and 321.805 to 321.820, whichever is applicable, as forestland for ad valorem property tax purposes, as of July 1 of the calendar year of death of the decedent.

(4) Interests in real property passing by reason of death that are classified under the western Oregon small tract optional tax law (ORS 321.705 to 321.765) as of July 1 of the calendar year of death of the decedent shall be valued at the value that would have been determined pursuant to ORS 321.257 to 321.381 for the land for ad valorem property tax purposes as of July 1 of the calendar year of death of the decedent had the interests been valued for that year under ORS 321.257 to 321.381.

(5) Interests in real property represented by closely held corporate stock or partnership interests shall be valued using farm or forest use values determined under subsections (2) to (4) of this section, whichever are applicable, for the land. For purposes of this section, an interest is closely held if the interest is:

(a) An interest as a partner in a partnership carrying on a trade or business if 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or if the partnership had 15 or fewer partners.

(b) Stock in a corporation carrying on a trade or business if 20 percent or more in value of the voting stock of the corporation is included in determining the gross estate of the decedent, or if the corporation had 15 or fewer stockholders.

(6) For purposes of determining if an interest is closely held under this section:

(a) Determinations shall be made as of the time immediately before the death of the decedent.

(b) Stock or a partnership interest which is held by a husband and wife as joint tenants, tenants by the entirety or tenants in common shall be treated as owned by one shareholder or one partner, whichever is applicable.

(c) Property owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by or for its shareholders, partners or beneficiaries. For purposes of this paragraph, a person shall be treated as a beneficiary of any trust only if the person has a present interest in the trust. [1973 c.503 §13; 1975 c.762 §5; 1977 c.666 §11a; 1979 c.553 §12; 1981 c.804 §70; 1991 c.459 §341]

Note: The amendments to 118.155 by section 341, chapter 459, Oregon Laws 1991, first apply to property passing due to the death of a decedent dying on or after July 1, 1992. See section 342, chapter 459, Oregon Laws 1991.

118.160 Delivery to department of tax return and lists of property transfers and other data. (1) Except as provided in subsection (2) of this section, no inheritance tax return shall be required with respect to the estates of decedents dying on or after January 1, 1987, unless a federal estate tax return is required to be filed.

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

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

118.171 Procedure for audit, deficiencies, assessments, refunds, conferences and appeals governed by ORS chapter 305. The provisions of ORS chapter 305 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences, 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 inheritance taxes under this chapter, except where the context requires otherwise. [1977 c.870 §17 (enacted in lieu of 118.170, 118.180 and 118.360)]

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

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

LIEN; PAYMENT; COMPROMISE OF TAX

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

118.220 When tax accrues and is payable. All taxes imposed by ORS 118.005 to 118.840 take effect at and accrue upon the death of the decedent, and are due and payable at the expiration of nine months from such death, except as otherwise provided in ORS 118.005 to 118.840. [Amended by 1973 c.254 §1; 1975 c.762 §7; 1977 c.666 §13]

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

(2) The extension under this section shall be for a period not in excess of 10 years from the date prescribed by ORS 118.220 for payment of the tax.

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

118.230 Lien of tax; liability for payment; collection of taxes. (1) Every tax imposed by ORS 118.005 to 118.840 is a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property is transferred, and the personal representatives and trustees of every estate embracing such property are personally liable for such tax until its payment, to the extent of the value of such property.

(2) Taxes imposed under ORS 118.005 to 118.840 may be collected by the Department

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

118.240 Delivery of property prior to collection of tax by personal representative or trustee prohibited. Any personal representative or trustee having in charge, or in trust, any property for distribution, embraced in or belonging to any inheritance, devise, bequest, legacy or gift, subject to inheritance tax shall deduct the tax therefrom, and within 30 days thereafter pay the same to the Department of Revenue, as provided in ORS 118.005 to 118.840. If such property is not in money, the personal representative or trustee shall collect the tax on such inheritance, devise, bequest, legacy or gift upon the appraised value thereof from the person entitled thereto. The personal representative or trustee shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, bequest, legacy or gift, subject to tax under ORS 118.005 to 118.840, to any person until it has collected the tax thereon. [Amended by 1973 c.254 §2]

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

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

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

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

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

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

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

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

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

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

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

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

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

118.270 From what property tax is collectible. Except as to real property located outside of the state passing in fee from the decedent owner, the tax imposed under ORS 118.100 shall be assessed against and be collected from property of every kind, which, at the death of the decedent owner is subject

to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distributive purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent even though such property was situated outside of the state.

118.280 Power to sell for payment of tax; tax lien transferred to proceeds when property of estate sold or mortgaged. (1) Every executor, administrator or trustee has power to sell as much of the property embraced in any inheritance, devise, bequest or legacy, as will enable the executor, administrator or trustee to pay the tax imposed by ORS 118.005 to 118.840, in the same manner as the executor, administrator or trustee is authorized to do for the payment of the debts of a decedent.

(2) Any part of the gross estate sold for the payment of claims against the estate and expenses of administration, for the payment of the tax imposed by ORS 118.005 to 118.840, or for purposes of distribution, shall be divested of the lien of such tax, and such lien shall be transferred to the proceeds of such sale. A mortgage on property executed for payment of claims against the estate and expenses of administration and for payment of the tax imposed by ORS 118.005 to 118.840 shall constitute a lien upon said property prior and superior to the inheritance tax lien, which inheritance tax lien shall attach to the proceeds of such mortgage. [Amended by 1957 c.362 §1; 1969 c.591 §215]

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

(2) If any bequest or legacy is given in money for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount; but, if it is not in money, the administrator, executor or trustee shall make application to the court having jurisdiction of an accounting by the administrator, executor or trustee to make an apportionment, if the case requires, of the sum to be paid by such legatee or beneficiary, and for such further order relative thereto as the case may require. [Amended by 1961 c.455 §5; 1985 c.85 §5]

118.300 Deferred payment; bond or letter of credit. Any person or corporation beneficially interested in any property chargeable with a tax under this chapter and personal representatives and trustees, may elect, within nine months from the death of the decedent, not to pay such tax until the person or persons beneficially interested therein shall come into actual possession or enjoyment thereof. If it is personal property, the person or persons so electing shall give a bond or irrevocable letter of credit to the state in double the amount of the tax, with such sureties or issued by such commercial bank as defined in ORS 706.005 as the Director of the Department of Revenue may approve, conditioned for the payment of such tax and interest thereon, at such time and period as the person or persons beneficially interested therein may come into actual possession or enjoyment of such property, which bond shall be executed and filed, and a full return of such property made to the Director of the Department of Revenue within six months from the date of transfer thereof, as in this section provided. Such bond or letter of credit must be renewed every five years. [Amended by 1969 c.591 §216; 1975 c.762 §10; 1977 c.666 §14; 1991 c.331 §34]

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

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

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

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

118.350 Compromise and compounding tax; approval by court; proceedings in case of actions or suits involving title to real property. (1) Whenever an estate, devise, legacy or beneficial interest therein, charged or sought to be charged with the inheritance tax is of such nature or is so disposed that the liability of the same is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the Department of Revenue may compromise with the beneficiaries or representatives of such estate, and compound the tax thereon. The payment of the amount of the taxes so agreed upon shall

discharge the lien against the property of the estate.

(2) In any suit or action involving the title to real property, in which it appears, by the pleadings or otherwise, that an inheritance tax is or might be payable to the State of Oregon by reason of the death of any person whose estate has not been administered in Oregon, the circuit court shall direct that a copy of the pleadings in such cause be served upon the Department of Revenue, such service to be made as summons is served in any cause in the circuit court of this state. Thereupon further proceedings in the cause shall be suspended until the department has had an opportunity to appear therein, such appearance to be made within the time that is required by the service of summons upon a private person or corporation. The department shall appear in the cause and present the claims of the state, if any, to an inheritance tax, and it is the duty of the Attorney General of the state to represent the state and the department in such proceedings, and the department may compromise and compound the tax claimed to be due upon the passing of such real property. Such settlement and compromise shall be entered of record in the register of such court. Thereafter the payment of the amount of taxes so agreed upon shall discharge the inheritance tax lien against the property. If a compromise is not effected, the amount of tax, if any, due upon the passing of the real property shall be determined by the court as are other questions involved in such litigation, and subject to the same right of appeal to the Court of Appeals. The decree of the court or of the Court of Appeals, if there is an appeal, is conclusive as to the amount of taxes due upon the passing of the real property and payment thereof shall discharge the lien against the property. [Amended by 1969 c.591 §217; 1971 c.567 §8; 1979 c.562 §6; 1985 c.540 §29; 1987 c.758 §8]

118.360 [Amended by 1959 c.273 §2; repealed by 1977 c.870 §16 (118.171 enacted in lieu of 188.360)]

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

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

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

ADMINISTRATION OF INHERITANCE TAX ACT

118.410 Jurisdiction of tax cases. The Oregon Tax Court has sole jurisdiction to hear and determine all questions arising under the provisions of ORS 118.005 to 118.840, and to any act in relation thereto authorized by law to be done by such court in other matters or proceedings coming within its jurisdiction. [Amended by 1971 c.567 §10]

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

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

118.450 Department to furnish copies of release or consent to transfer. The department shall issue to any person demanding the same, a copy of any consent issued pursuant to the provisions of ORS 118.005 to 118.840 to transfer, or release, shares of corporate stock, mutual funds, insurance proceeds, bonds, securities, deposits, assets, property or safe deposit boxes belonging to or standing in the name of the decedent, who was a resident or nonresident, or belonging to or standing in the joint names of such decedent, and one or more other persons. [1967 c.161 §1; 1973 c.254 §7; 1975 c.593 §3]

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

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

118.480 [Repealed by 1975 c.762 §19]

118.490 [Repealed by 1981 c.705 §8]

118.500 [Repealed by 1969 c.591 §305]

118.510 Disposition of revenues. The net revenue from the taxes imposed by ORS 118.005 to 118.840 and ORS chapter 119 (including temporary payments under ORS 118.260 and fees, taxes, interest and penalties), after deduction of refunds, shall be credited to the General Fund to be available to meet any expense or obligation of this state lawfully incurred. [Amended by 1959 c.273 §1; 1969 c.479 §4]

118.520 [Repealed by 1959 c.273 §8]

118.525 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 executors or beneficiaries and their authorized representatives, it shall be unlawful for any person or entity who has acquired information pursuant to subsections (3) and (4) of this section to divulge or make known such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or judicial order shall be issued compelling the department, or its officers or employees, or persons described in subsections (3) and (4) of this section, to divulge

or make known any particulars disclosed in any such return or supporting data except where the liability for inheritance taxes is to be adjudicated by the Oregon Tax Court. Nothing in this section shall prohibit the publication of statistics so classified as to prevent the identification of particulars in any return or supporting data covered by this section.

(2) As used in this section:

(a) "Officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or former officer, employee or person, or an authorized representative of such former officer, employee or person.

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

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

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

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

(6) Each officer or employee of the department and each person described or referred to in subsection (5) of this section to whom disclosure or access to tax information is given, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of subsection (1) of this section and ORS 118.990 (3), and shall as a condition of employment or performance of duties execute a certificate for the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of subsection (1) of this section. [1979 c.690 §4; 1983 c.633 §1; 1985 c.565 §10d; 1987 c.158 §18; 1987 c.646 §6a; 1993 c.726 §51]

118.535 Appraisal by department; costs. (1) If the department determines that the executor 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 118.150 (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 §3]

Note: 118.535 was enacted into law by the Legislative Assembly and added to and made a part of ORS chapter 118 by legislative action, but was not added to or made a part of any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

118.620 [Repealed by 1969 c.591 §305]

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

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

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

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

118.670 [Repealed by 1969 c.591 §305]

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

118.690 [Repealed by 1969 c.591 §305]

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

ENFORCEMENT OF FOREIGN DEATH TAXES

118.810 Application, construction and definition. (1) The provisions of ORS 118.810 to 118.840 apply to the estate of any nonresident decedent if the laws of the state of domicile of the nonresident decedent contain a provision, of any nature or however expressed, whereby this state is given reason-

able assurance of the collection of its inheritance or death taxes, interest and penalties, from the estates of decedents dying domiciled in this state in cases where the estates of such decedents are being administered by the probate court of such other state, or if the state of domicile of the nonresident decedent does not grant letters in nonresident estates until after letters have been issued by the state of domicile.

(2) The provisions of ORS 118.810 to 118.840 shall be construed liberally in order to insure that the state of domicile of any decedent shall receive any death taxes, together with interest and penalties thereon, due to it.

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

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

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

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

DISPUTES RESPECTING DOMICILE OF DECEDENT

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

(1) "Board" means board of arbitration.

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

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

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

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

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

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

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

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

(2) Notwithstanding the commencement of a legal action for determination of domicile within this state or the commencement of an arbitration proceeding as provided in ORS 118.870, the department, at any time prior to the conclusion of such action or proceeding, may in any case enter into a written agreement with the other taxing officials involved and with the executor to accept a sum certain in full payment of any death tax, together with interest and penalties, which may be due this state, provided the agreement fixes the amount of death taxes with interest and penalties to be paid the other states involved in the dispute. Upon the filing of the agreement with the authority which would have jurisdiction to assess the death taxes of this state if the decedent died domiciled in this state, an assessment shall be made as provided in such agreement, and such assessment shall finally and conclusively fix the amount of death taxes due this state. If the aggregate amount payable under such agreement or under an agreement made in accordance with the provisions of subsection (1) of this section to the states involved in the dispute is less than the minimum credit allowable to the estate against the United States estate tax imposed with respect thereto, the executor forthwith shall also pay to the department the same percentage of the difference between such aggregate amount of such credit as the amount payable to the department under such agreement bears to such aggregate amount. [1959 c.573 §§3,5; 1987 c.758 §9]

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

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

(2) The board shall hold hearings at such places as it deems necessary, upon reasonable notice to the executor, ancillary administrators, all interested persons and the

taxing officials of the states involved, all of whom are entitled to be heard.

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

(4) Whenever practicable the board shall apply the rules of evidence then prevailing in the federal courts under the federal rules of civil procedure.

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

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

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

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

118.880 Reciprocal statutes required in other states; resolving conflicts between statutes. (1) ORS 118.855 to 118.880 shall be applicable only to cases in which each of the states involved in the dispute has in effect therein a statute substantially similar to ORS 118.855 to 118.880, or has in effect therein a statute empowering one or more of its officials to voluntarily enter into a binding arbitration or compromise agreement respecting disputed liability for death taxes and such an agreement with each of the other states involved in the dispute and the executor is entered into prior to the appointment of the board of arbitration as provided in ORS 118.870.

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

PENALTIES

118.990 Penalties. (1) Failure, neglect or refusal by any person in possession or control of any record, file or paper containing information relating to the estate of a deceased person or any interest therein to exhibit the same upon the written request of the department specifying and describing such instrument is a misdemeanor.

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

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