

**OREGON STATE BAR**  
**Legislative Proposal**  
**Part I – Legislative Summary**

**RE:** HB 2308 Closing Letter and Discharge from Inheritance Tax Liability

**Submitted by:** Estate Planning and Administration Section Executive

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1. **Does this amend current law or program?** This would be a new statute, and would create a new procedure at the Oregon Department of Revenue.

2. **PROBLEM PRESENTED** (including level of severity):

The Oregon inheritance tax exemption for Oregon estates is \$1 million. For farm, forest and fishing property Oregon has recently adopted a \$7.5 million inheritance tax credit program. In 2008 the federal exemption is \$2 million, and in 2009 the exemption will be \$3.5 million. There is substantial uncertainty concerning the amount of the federal exemption after 2009; however, it is expected to be more than \$1 million. Because of this exemption/credit disparity, a number of decedent estates will be required to file an Oregon Inheritance tax return, but not a federal estate tax return.

Currently, there is no provision in Oregon law for obtaining an inheritance tax closing letter similar to the letter issued by the IRS. Also, there is no provision for obtaining a discharge from the inheritance tax liability. This poses a significant problem for fiduciaries who are prepared to complete the distributions specified in a will or trust, but they cannot fully complete those distributions because the applicable statute of limitations for tax liabilities have not yet run. The current policy of the Department of Revenue is to issue a receipt upon request, but this does not constitute a closing letter and the Department maintains that it can still audit the return at a later time. As a result prudent representatives and trustees are required to hold back reserves for taxes and other related expenses for substantial periods of time until the applicable statutes of limitation have run.

3. **SOLUTION:**

Adopt an Oregon statute similar to IRC 2204 which will allow a trustee, personal representative, or executor to apply to the Oregon Department of Revenue for a determination of the tax and a discharge from tax liability.

4. **PUBLIC POLICY IMPLICATION** of this proposed legislative change:

a. Has this been introduced in a prior session? No, but ORS 316.387 requiring a release in a probate was repealed in 1995 (HB 2197).

- b. Does this amend current law or program? Yes, the Department of Revenue does not currently have a closing letter or tax discharge program for inheritance taxes. Additional staffing resources may have to be allocated if this bill passes. Preliminarily, the Department has indicated that it is fine with the Estate Planning section moving this issue forward. However, because of the need for additional staffing resources, the 9 month time period may need to be extended.
5. Could the problem be addressed through a **NON-LEGISLATIVE SOLUTION**, such as administrative rule or education?

The Department of Revenue may be able to provide for closing letters by administrative rule, but with the repeal of ORS 316.387 they may not have the authority to issue inheritance tax releases.

6. **COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL?** If so, have you suggested it to the section or group?

Possibly, the Tax Section; however, that section normally sponsors and monitors income tax issues. Because this is a change in the inheritance tax process, the Estate Planning Section is the most appropriate.

7. **IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it?

Estate heirs, trust beneficiaries, Personal representatives, trustees, executors, other fiduciaries, accountants and attorneys.