

OREGON STATE BAR
Legislative Proposal

RE: Oregon Inheritance Tax Legislation

FROM: OSB Taxation Section

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This bill would add a new section: ORS 118.022

1. PROBLEM PRESENTED

As of the last legislative session, Oregon inheritance laws are no longer tied to federal estate tax laws. Many trusts and wills that are currently in existence for Oregon residents would cause Oregon inheritance taxes to be paid at the death of the first spouse, due to this recent disconnect.

In general, we see this as creating several problems:

1. Malpractice concerns;
2. The surviving spouse must pay inheritance taxes when they did not expect to until the death of the second spouse, and
3. General public policy has been to connect Oregon and federal tax laws to the extent possible.

2. SOLUTION

We drafted proposed legislation that would do the following:

1. We have broadened the definition of an Oregon “QTIP” election to include a credit shelter trust with discretionary income distribution provisions to the surviving spouse. Currently an Oregon QTIP election may be made only if income distributions are mandatory. This statutory change would allow a credit shelter trust which currently is written to allow discretionary distributions of income and principal to a spouse to qualify as an Oregon QTIP. We have defined this new interest as Oregon Special Marital Property, which property would be excluded from the taxable estate of the first spouse to die.

2. If a credit shelter trust is created that includes other than the surviving spouse as a beneficiary, then the proposed statute would also provide a simplified process whereby the other beneficiaries can consent to release their rights without court intervention or supervision. Although an executor could seek formal court reformation, if all beneficiaries are agreeable to the change, it would not be necessary. The proposed revisions provide specific language to allow such an election by the beneficiaries.

3. PUBLIC POLICY IMPLICATION

We believe these changes should be relatively income-neutral. The Inheritance Tax would be deferred to the second death as was done prior to the most recent change in Oregon inheritance taxes. If a surviving spouse moved out of the state before death, there would be loss of income, but that is how the tax law was structured prior to the most recent modification. Furthermore, the Oregon Department of Revenue would not have to try to enforce payment of taxes at the death of a surviving spouse who has moved out of state. We expect that the dollars potentially lost due to a spouse moving out of state are fairly small.

With these amendments, many Oregon residents can avoid the cost of amending their trusts and wills, and reformation in the courts can be avoided. Although this will not “fix” all problems, we feel it will fix many of the current problems. It is felt that this approach has more chance of passing the Oregon Legislature than a complete reconnect to federal law, which would cause a loss of tax dollars to the state of Oregon.