MEASURE: HB 2541
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Written Testimony to Senate Finance and Revenue Committee
RE: HB 2541A

I appear today on my own behalf as a citizen and as a former member of the House and Senate, as well as in my capacity as President of Common Sense For Oregon, Inc.

HB 2541A contains a complex scheme to establish new winners and new losers in the application of Oregon estate/inheritance/death taxes.

By themselves, certain credits and deductions for certain estates may be defensible and, indeed, desirable. The trouble is that the bill proponents have an instruction to try to make the bill "revenue neutral," so they have to "Rob Peter to Pay Paul."

This is reflected in the massive increase in tax rate schedules in this bill. Oregon's current death tax rates generally run from 6% to 16%. In this bill – Section 3 – the rates run from 10.5% to 19.8%. This reflects a 23.75% increase in the top tax rate.

In addition, the Bill is retroactive, and applies to any estate for a person who has died since January 1 of this year. It is bad policy to impose retroactive changes in tax rates applicable to persons who have already died.

Oregon already is on the "States of Confiscation" list compiled by the Wall Street Journal and reflected in a February 8, 2011 editorial (copy attached). If HB 2541A passes, we will jump to the top of the list – exceeding even New Jersey – with the highest estate tax rate in the nation; when you combine the 35% federal rate and the 19.8% state rate, we will have a 54.8% rate.

This creates more pressure for family-owned business to leave the state, and for such businesses to avoid starting here in the first place. Oregon will lose more existing jobs, and fail to get new jobs, if this bill becomes law.

One other thing: this Bill moves in the opposite direction of a national trend:

> In 2001, all 50 states had estate/inheritance taxes (Legislative Revenue Office Research Brief, Number 9-01, November 2001).
>
> Today, only 22 states still have estate/inheritance taxes (American Family Business Institute web site statistics; An Oregon Law Commission Memorandum dated September 22, 2010 reports 27 states have chosen to eliminate their estate taxes).

So, other states get rid of estate/inheritance taxes and we increase our top tax rate? This is hardly the way to keep and create Oregon jobs.

Sincerely,

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Death Tax Ambush

Many states now have crushing burdens.

Here's some free financial advice: Don't die in New Jersey any time soon. If you have more than $675,000 to your name and you die in the Garden State, about 54% may go to the IRS and the tax collectors in Trenton.

Better not take your last breath in Maryland either. The tax penalty for dying there is half of a lifetime's savings. That's the combined tab from the new federal estate tax rate of 35% and Maryland's inheritance and death taxes. Maybe they should rename it the Not-So-Free State.

This perverse confiscation also applies to some 20 other states, thanks to a quirk in December's GOP-White House tax compromise. The new law applies a top federal death tax rate of 35% with a $5 million exemption for 2011 and 2012. But it also changed a federal credit for state death tax rates into a federal *deduction*. The credit allowed a dollar-for-dollar reduction in federal taxes for state levies as high as 16%. This meant that every dime from state tax collections came from Uncle Sam. It was essentially a free tax for states.

By contrast, the deduction merely reduces the amount of federal taxable income and thus sharply reduces the amount of state tax that can be written off federal taxes. Many states have estate taxes at the old 16% threshold which now means an effective 10 percentage point or more surcharge above the 35% federal rate. This surcharge is even higher in states that also have an inheritance tax, which is levied on the value of specific property bequeathed to heirs, in addition to the estate tax (which is levied on the value of the entire estate).

Our friends at the American Family Business Foundation have done the math on the interaction between the new federal rates and these state taxes, and you can consult the nearby chart to see your state's fee for the privilege of dying. No wonder the battle over death taxes has suddenly moved to state capitals, with Indiana, Nebraska, Ohio, Pennsylvania and even Rhode Island looking to repeal their state levies this year.

These state taxes also generally hit estates starting at as little as $1 million. Family business owners, ranchers, farmers and wealthy retirees can avoid that tax by relocating to Arizona, Florida, Georgia, Idaho, South Carolina and other states that don't impose inheritance taxes. There are plenty of attractive places to go.

New research indicates that high state death taxes may be financially self-defeating. A 2011 study by the Ocean State Policy Research Institute, a think tank in Rhode Island, examined Census Bureau migration data and discovered that "from 1995 to 2007 Rhode Island collected $341.3 million from the estate tax while it lost $540 million in other taxes due to out-migration."

Not all of those people left because of taxes, but the study found evidence that "the most significant driver of out-migration is the estate tax." After Florida eliminated its estate tax in 2004, there was a significant acceleration of exiles from Rhode Island to Florida.

Connecticut has come to the same conclusion. A 2008 study by the Connecticut Department of Revenue Services found that the 26 states without an estate tax produced twice as many jobs from 2004-07 and had a growth rate 50% faster than those with estate taxes. The study found that the average estate of those leaving Connecticut was $7.5 million and their average taxable income was $446,000. With wealth like this chased out year after year, is it any wonder so many Northeastern states can't balance their budgets?

Proponents argue that the death tax has minimal incentive effects because people can't change their behavior after they die. But every day people make decisions to minimize their tax bills before they die. In other words, estate taxes don't redistribute income among taxpayers. They redistribute income among states.

The federal death tax will revert with a vengeance to 55% in 2013 unless Congress acts in the next two years. But in the meantime, states like Indiana and Ohio, and especially New Jersey, can help their economic recovery by eliminating their death taxes and inviting lost wealth to return.

States of Confiscation

Combined federal and state death tax rates, including inheritance and estate taxes

	Rate		Rate
New Jersey	54.1%	New York	45.4
Maryland	50.9	North Carolina	45.4
Indiana	48	Oregon	45.4
Washington	47.4	Rhode Island	45.4
Nebraska	46.7	Vermont	45.4
Delaware	45.4	Iowa	44.8
Hawaii	45.4	Pennsylvania	44.8
Illinois	45.4	Connecticut	42.8
Kentucky	45.4	Tennessee	41.2
Maine	45.4	Ohio	39.6
Massachusetts	45.4		
Minnesota	45.4	All Other States	35

Source: American Family Business Foundation, 2011