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## **Current Federal Estate Tax Status.**

The federal estate tax is imposed on transfers of the control of assets at death and gifts during life. A certain amount of combined estates and gifts-\$5 million in 2011, indexed for inflation-is excluded from taxation by the federal government.

The American Taxpayer Relief Act (ATRA; P.L. 112-240) established permanent rules for the estate and gift tax for 2013 and subsequent years. The tax revision of 2017 (P.L. 115-97), commonly known as the Tax Cuts and Jobs Act (TCJA), temporarily doubled the excluded amounts. This increase expires after 2025, absent legislative change. <sup>1</sup>

With indexation, the exclusion amount (technically known as the Basic Exclusion Amount or BEA) was \$5.49 million in 2017, and with the temporary doubling of the BEA and inflation adjustments, it is \$13.990 million in 2025. The taxable estate is subject to a 40% rate. The BEA applies to total bequests and gifts.<sup>2</sup> Most of the major investment and banking houses, including but not limited to Fidelity, Merrill, Schwab, JP Morgan, along with scholarly reviews advise that it is estimated that the BEA **beginning 1/1/2026 will be approximately \$7 million to \$7.5 million if Congress does not act.**

## **Oregon Estate Tax.**

The Oregon Estate Tax under ORS 118.010 imposes an obligation to file an estate tax return for all estates in excess of \$1 Million and imposes estate tax on all assets in the taxable estate (assets less deductions) in excess of \$1 Million.

Responsible tax payers, some accountants, and other business professionals are often unaware and of the low Oregon exclusion amount. Many assume the Oregon estate tax to be similar to the federal law.

Responsible tax payers, some accountants, and other business professionals are often unaware that out of state assets count towards the obligation to file an Oregon estate tax return.

## **Portability.**

The federal estate tax law allows for “portability” in IRC §2010(c). The technical name for this is “Deceased Spouse Unused Exclusion Amount” or DSUE. Portability allows a surviving spouse to inherit any unused portion of their deceased spouse's estate and gift tax exemption. As a practical matter,

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<sup>1</sup> *The Estate and Gift Tax: An Overview*, Congressional Research Service (09/16/2024) accessed 02/07/2025 <https://crsreports.congress.gov/product/pdf/R/R48183>

<sup>2</sup> *Estate and Gift Tax FAQs*, IRS, accessed 02/07/2025, <https://www.irs.gov/newsroom/estate-and-gift-tax-faqs>

this allows two spouses to combine their BEA's (tax exempt amounts) without special trusts, legal fees, accounting fees, appraisal fees, and segregation of assets. Oregon does not have portability. It requires spouses to use trusts to preserve the use of assets and protect each spouse's \$1,000,000 excluded amount. This results in the surviving spouse paying substantial sums to preserve the \$1 Million exemption of the first spouse to die.

### **What Does the Oregon Estate Subject to Tax Include:**

The estate tax includes any assets where the decedent had any interests or control on who has the right to enjoy the asset after the decedent's death. Many are surprised that the following assets are included in a taxable estate:

- Life insurance proceeds
- The value of an ongoing PERS payment
- Homes
- Cars
- Household furniture and furnishings as well as personal jewelry
- IRA's or other pension plans
- Out of state assets
  - Although the actual value of the out of state asset is not taxed, the value of the out of state assets creates the obligation to file an Oregon estate tax return, establishes the % of the tax, and must be appraised and reported on the Oregon estate tax return.

These assets regularly place responsible tax payers in the position of failure to file an Oregon Estate Tax Return.

The obligation to file the estate tax return is not based on the net value of the estate, it is based on the gross value of the estate. This means it does not matter that a decedent had a mortgage, debts, funeral expenses and other costs. The obligation to file exists. The cost to obtain support for asset values, prepare and file an estate tax return is substantial.

### **Challenges in Helping Responsible Tax Payers:**

- Lack of consistency between federal and state law.
  - Help resolve this problem by increasing the Oregon Exclusion Amount to equal the federal amount or to be similar to the federal amount.
  - Adopt portability to help spouses avoid unnecessary costs and match the federal law.
  - There are different due dates for the state and federal returns. Federal returns are due 9 months from date of death and Oregon returns are due 12 months from date of death. This difference often causes taxpayers to unknowingly lose options for planning and management of assets. Oregon allows 12 months, however, many of Oregon estate tax definitions and rules are derived directly from federal law tied to the 9 month requirements.
- Dramatic increases in real estate values.
  - This lone factor has required numerous families to pay tax when the assets are a house, IRA/PERS account, cars, household items and a limited bank account.
  - It is not unusual to have a house at \$750,000, \$200,000 in an IRA or PERS remainder value, a car of \$30,000, and bank account of less than \$50,000. This estate has a filing

requirement regardless of whether there is a surviving spouse and will pay estate tax if there is not a marital deduction or other deductions available.

- If the decedent was a state employee or other responsible business employee, there is also usually life insurance that is added to what is subject to tax and the obligation to file the estate tax return.
- Properly fund the Estate Tax Unit at the Oregon Department of Revenue.
  - These employees are doing an awesome job with limited resources.
  - The waiting period to get a tax release for an estate often exceeds eight months. The staff does their best, but they are incredibly busy. This delays the close of an estate and burdens the judicial system with open cases and follow ups.
  - Estate tax returns cannot be filed electronically. It is an old fashioned method of filing. Lawyers and CPA's literally send or deliver large boxes full of the return, appraisals, supporting data for values, copies of estate planning documents, death certificates and related elections and information. The information is then scanned in for the estate tax staff.
  - The State of Washington has spreadsheets and other interactive tools to simplify filing for tax preparers and also simplifies review for staff. It makes sense to consider these tools to reduce complexity and increase productivity.

### **Math and Revenue from the Estate Tax.**

The math about what is collected and which estates generate the tax revenue is very interesting. The law requires an estate tax return to be filed if the estate exceeds the gross value of \$1 Million. Estates are only taxed on the net assets which is gross estate less deductions (like a mortgage). The term "taxable estate value" is gross estate less deductions. It is expensive for an estate to file an estate tax. The state also incurs the expense of reviewing each of the returns filed. See pdf page 60 or F-3 of the Legislative Revenue Department report available by googling Oregon Basic Facts 2025. Or use this link: <https://www.oregonlegislature.gov/lro/Documents/Basic%20Facts%202025.pdf>

As per the Legislative Revenue Office information:

- 29% of the returns filed have more than a million dollars of gross value, but a net taxable estate (assets less deductions - like a mortgage) of less than \$1 Million and therefore generate zero tax. This is of course affected by those estates taking a marital deduction.
- 33% of the returns filed have \$1.5 million or less of a net taxable estate.
- The number of Estates with a net taxable estate of between \$1 Million (29%) and \$1.5 Million (33%) equal a combined total of 62% of the returns filed. *62% of the estate tax returns filed generate only 5% of the estate tax revenue.*
- 49% of the estate tax revenue is generated by taxable estates that exceed \$5.5 Million.
- In 2011, the revenue from the estate tax was \$76,248,946. In 2024, the revenue from the estate tax was \$338,975,886. This is an increase of 344.7%. When the disconnect between the state and the federal estate tax occurred, it was a surprising, unintentional disconnect and then an intentional decision to remain disconnected.
- The current estate tax generates more than the marijuana tax, almost as much as the cigarette tax, and more than the beer and wine tax.
- Text books and scholarly articles teach that the public policy of the estate tax is to break up large concentrations of wealth because it is not good for a democratic society to have so few control so much.

- It is time for the legislature to intelligently consider whether the public policy of the current estate tax is proper. The legislature must consider at what amount the law will require filing of a return and at what amount the tax is proper.
  - A house, a limited retirement account (or the remainder value of PERS), a car, and a small amount of savings is not a large concentration of wealth that necessitates the "breaking up of a large concentration of wealth." Attorneys and CPA's find these to be very ordinary clients.
- There are many simplification options available.
  - One of the most important simplification options is for Oregon to adopt portability.
    - The federal estate tax law allows for "portability" in IRC §2010(c). The technical name for this is "Deceased Spouse Unused Exclusion Amount" or DSUE. Portability allows a surviving spouse to inherit any unused portion of their deceased spouse's estate and gift tax exemption. As a practical matter, this allows two spouses to combine their BEA's (tax exempt amounts) without special trusts, legal fees, accounting fees, appraisal fees, and segregation of assets.
    - Oregon does not have portability. It requires spouses to use trusts to preserve the use of assets and protect each spouse's \$1,000,000 excluded amount. This results in the surviving spouse paying substantial sums to preserve the \$1 Million exemption of the first spouse to die. It also generates attorney fees in planning and administration that can be avoided or reduced for the proper client.
  - Increase the tax free amount to at least \$1.5 million of a gross estate. This eliminates the filing burden of approximately 62% of the estate tax returns that only generate 5% of the estate tax revenue. This estimated percentage is subject to modification due to the number of zero tax returns that relate to the marital deduction. There were 888 returns filed that resulted in zero tax. There is no data in the LRO report that discloses what number of those 888 returns were zero taxable estates because of the marital deduction. This is an interesting number to access or track.
  - Allocate some income generated by the estate tax to the ODR Estate Tax Unit to allow ODR to simplify the estate tax return filing process and reduce expenses to the tax payer.
  - If ODR Estate Tax Unit's workload is reduced by 62% because returns are no longer required for those estates with \$2 million or less, then the Estate Tax Unit is able to more efficiently review returns that actually generate tax and issue releases more promptly. There were three ODR employees in the estate tax unit within the last year or so. Three employees for more than \$300 Million in estate tax revenue. The current number of employees may be modestly revised. It is a very limited number of employees who review all the OR 706's and all the OR 41's. They do an amazing job with the resources they have. However, there are serious delays. The legislature could make their job and the work of professionals easier by supporting better resource allocation to the unit.
- There is a group of CPA's and attorneys willing to assist any legislative workgroup on estate tax bills in a balanced manner and to provide experienced, technical assistance or answer practical questions. There are relatively new limitations on the kinds of bills the Oregon State Bar can submit to the legislature. However, a group of highly experienced, independent estate attorneys and CPA's have been informally working on a variety of issues in a neutral way to try and improve the law. The group can be reached through me via Rep. Mannix who is my legislator. He has my contact information. The group is committed to practical legislation, not any particular result.