

Melissa May

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Oregon House Committee on Revenue

Re: Comments on H.B. 3934

I write today in support of H.B. 3934, allowing a surviving spouse to claim the unused amount of his or her predeceased spouse's Oregon estate tax exemption. This concept, as implemented in the federal estate tax system, often is referred to as "portability."

I have been an estate planning attorney for more than twenty years, and was in private practice in Oregon from 2013-2024. I now work in an adjacent field, no longer serving as an attorney for individuals. Although I currently am a member of the Executive Committee of the Oregon State Bar's Estate Planning & Administration Section, I am commenting only in my role as an individual Oregonian. These comments do not necessarily represent the views of the OSB Estate Planning & Administration Section or my employer or colleagues.

House Bill 3934 would restore the benefits of Oregon's estate tax "exemption" for married individuals, without requiring them to engage in unduly burdensome estate planning. Currently, Oregon allows an exemption of \$1 million worth of property from the Oregon estate tax for every individual. Oregon also allows an unlimited marital deduction for property the surviving spouse inherits from the first spouse to die. The practical result of these laws is that (unless a couple engages in sophisticated estate planning during life and follows through on that planning shortly after the first spouse's death), the surviving spouse often holds all of the marital couple's assets at his or her death, with only his or her \$1 million exemption to shelter some of those assets. Essentially, the first spouse's exemption amount is forfeited unless careful attention is paid and a sophisticated plan is implemented (at some expense). Implementing portability in Oregon's estate tax system would put married individuals on equal footing with unmarried individuals, with each person enjoying a \$1 million exemption from Oregon estate tax.

As other written testimony in support of H.B. 3934 has indicated, there are two technical corrections to this bill that would be helpful:

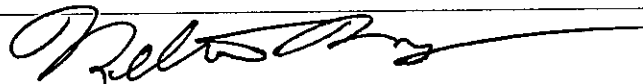
- (1) Changing the references to the "personal representative" in Sections 2.(1)(b) and 2.(3) of the bill to instead refer to the "executor." ORS 118.005(4) defines an

“executor” for purposes of Chapter 118 as “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 estate tax purposes whether or not such estate is subject to administration.”

- (2) Replacing references to “\$1 million” in Sections 2.(1)(a) and 2.(2) of the bill with references to the Oregon estate tax exemption amount in effect at the time of the first spouse’s death. This is easier said than done because ORS chapter 118 does not succinctly define an estate tax exemption. One potential solution would be replacing the term “\$1 million” with a term such as the “Exemption Amount” and then defining the “Exemption Amount” for purposes of Section 2 of the bill as “the first number in column 1 of the table set forth in ORS 118.010(4) in effect at the time of the prior deceased spouse’s death.” Alternatively, the bill could define the “Exemption Amount” as something like “the maximum Oregon taxable estate that could pass free of Oregon estate tax pursuant to ORS 118.010 at the time of the prior deceased spouse’s death.”

Thank you for considering these comments.

Very Truly Yours,



Melissa May