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Chair Representative Nancy Nathanson
and Members of the Oregon House Committee on Revenue

Re: House Bill 3934
Estate Tax Portability

Dear Chair Representative Nathanson and Members of the Oregon House Committee on Revenue:

I am an attorney. I have practiced law for 34 years exclusively in the area of trusts and estates. I am the current chair of the Oregon State Bar Estate Planning and Estate Administration Section, although I am not appearing in that capacity today. I am appearing as a private citizen. I support House Bill 3934. HB3934 improves estate tax fairness and equity for all Oregonians.

What does HB3934 Do?

Spouse #1 dies. Surviving Spouse gets to use Spouse #1's \$1 Million Oregon Exemption when Surviving Spouse dies IF:

- A. Estate Tax Return filed for Spouse #1 within 12 months after Spouse #1's death; AND
 - B. An Election is made on Spouse #1's estate filed estate tax return.
- THEN
- C. At Surviving Spouse's death, the estate of Surviving Spouse gets to use of Spouse #1's \$1 Million Exemption equal to the amount NOT used at Spouse #1's death - and - Surviving Spouse gets to use Surviving Spouse's own \$1 Million Exemption.

Why Is HB3934 Important?

- Creates option for spouses to use both exemptions without trusts.
- Eliminates unnecessary expense for tax payers. Trusts are costly to set up, administer after the first death and manage long term. Not all spouses can afford the set up cost of trusts. The surviving spouse also pays the costs of administration for the rest of the survivor's life. This includes annual separate tax returns for the trust, separate accounting and legal expenses for administration, and unintended income taxes.
- Allows spouses who did not know or did not have the opportunity to plan with trusts the same treatment as those spouses who planned and have trusts.
- Creates equality/fairness for Oregonians regardless of whether they die with or without a trust.
- Reduces the income tax returns required to be filed and the burden on Oregon Department of Revenue Estate Tax Unit who reviews all estate tax returns and income tax returns for trusts and estates. With the exception of some deductions and capital gains issues, the trusts do not generate additional tax revenue.
- Eliminates unneeded costs, confusion, complexity for surviving spouses.

Things for the Legislature to think about:

Option 1: Does the legislature want the surviving spouse to be able to use the first spouse's exemption amount; OR

Option 2: Does the legislature want the surviving spouse to be able to only use \$1 Million, even if the exemption amount is higher?

Note: If the goal is to treat spouses with a trust and without a trust the same, then the legislature should modify Section 2. (1)(a) and (2) to remove the words "\$1 million" and replace with "the amount equal to the amount that can pass free of tax in 118.010(4) column 1."

Sincerely,

HEATHER O. GILMORE

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Practical Example:

Assets:	Spouse #1 Estate with or without Portability and with or without a Trust	Spouse #2 Estate No Portability No Trust	Spouse #2 with Portability	Spouse #2 Estate w/Trust
House \$750,000	375,000	750,000	750,000	375,000
2 Cars \$25,000 each	25,000	50,000	50,000	50,000
Joint Bank \$150,000	75,000	150,000	150,000	75,000
Life Insurance	100,000	100,000	100,000	0
IRA	200,000	200,000	200,000	200,000
TOTAL	775,000	1,250,000	1,250,000	510,000 (trust owns the balance of \$)
Amount Exempt from Tax	(775,000)	-1,000,000	-1,000,000 + 775,000	-1,000,000
OREGON ESTATE TAX	0	25,000*	0	0

* This tax can be entirely avoided with a trust. Using trusts allows a family with a surviving spouse to save up to \$100,125 in Oregon estate tax. Portability eliminates this disproportionate treatment of families with trusts and families without trusts.