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Senate Committee on Finance and Revenue
Written Testimony

SB1511, Estate Tax Reform

I write in support of estate tax reform bill

I am an estate planning attorney and tax professional. As a law professor I taught estates and trusts, estate and gift tax, property law, and income tax. Now, I teach continuing education for other tax professionals, mostly about estates, trusts, and estate tax.

If our law changes, I will have to change most of my slides! I could no longer proudly proclaim that we have the lowest threshold for estate tax in the entire country. I will have to just tell my audience that we have the most beautiful coastline and some of the tallest trees.

This issue matters to ordinary Oregonians.

My estate planning clients are mostly couples with net wealth in the 1.5- to 3-million-dollar range. Estate tax planning is relevant to these families. If I do my job right, any couple with combined estate under 2 million will not leave a taxable estate. These families may not show up in statistics about the percentage of estates that owe estate tax. But they currently do think about estate tax and pay the likes of me to help them analyze the tax consequences of avoiding the estate tax.

When an estate does exceed the \$1 million threshold, an Oregon estate tax return is required. The costs of preparing this return can be thousands of dollars between professional fees and appraisals. The personal representative tasked with gathering all of the information is likely to be an adult child of the decedent already dealing with the burdens of clearing out a house and possessions.

While our \$1 million threshold may have been appropriate 25 years ago when it became law, it has never been adjusted for inflation. Now, just owning a house in some areas means a couple is halfway to a taxable estate. A responsible amount of

retirement savings plus a bit of life insurance means that our estate tax applies to "ordinary" people. This was surely not the intended demographic. The threshold should be higher. I support raising the threshold.

The proposed rate structure includes a sensible phase-in.

To minimize the impact on revenue, this bill increases the rate in each marginal rate bracket. The lowest bracket will be 12.75% instead of 10%, and the bill provides a provision that phases in the first two brackets (12.75% and 13%). This is wise because it reduces the impact of a sudden increase in estate tax in the \$2.5 to \$3.5 million estate range.

Steep rate increases usually create incentives to change behavior in the phaseout range, and those incentives may result in unintended effects. Tax theory suggests that ideal taxes should not change economic behavior, and for this reason, gradual rate increases or phase-in (or out) ranges are usually preferred. Our current law has marginal rates that increase in small increments that are less likely to affect behavior. The increases under the proposed rate structure are somewhat larger increments, but this phase-in feature blunts the impact of the steeper rate structure, at least at the lower end of the taxable range. This is a good thing.

But please do not say there is a 100% rate

The way the phase-in has been described, however, is confusing. The bill has been described as phasing in from 20% to 100% of the tax rate. But there is no 100% tax rate here. Rather, there is simply a gradual phase-in range in which the marginal tax rate goes from 0% to 13%, rather than a step from a 0% bracket to a 12.75% bracket (and another step from 12.75% to 13%). By comparison, under current law, the step to the first bracket is from 0% to 10% with no phase-in. Please note that it is only the additional part of the estate that is subject to the higher rate. I am concerned that when people see the 100% in the explanation, they will stop processing further information and reject the proposal, when actually, this feature should make it more palatable.

A better way to describe this part of the bill might be simply to say that the lowest two brackets phase in gradually over the \$2.5 million to \$3.5 million estate range.

While I am not looking forward to revising all my presentation slides about the Oregon estate tax, I hope this bill is enacted. This is a step in the right direction.

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