

**DIVISION 118  
INHERITANCE TAX**

**150-118.010(3)**

**Apportionment of Tax**

Where property is left in two or more states by a decedent, the maximum state tax credit allowed against the federal estate tax is apportioned. The numerator of the apportionment formula is the value for federal estate tax purposes of the property within the jurisdiction of this state notwithstanding that some of such property for Oregon inheritance tax purposes may be exempt, deductible, appraised at different values or considered in computing a credit. The denominator of the apportionment formula is the value of the gross estate for federal estate tax purposes.

The executor shall, upon demand, file a copy of the federal estate tax return and such other information deemed necessary by the Department in the computation of the additional tax. In case of failure to file such returns as these rules provide, the Department shall compute the tax upon the basis of the best information available.

If the amount of federal estate tax is increased or decreased subsequently, the pick-up tax imposed upon such estate shall be changed accordingly. In such case it is the duty of the executor to notify the Department of the changes.

Example of apportionment of federal credit where decedent leaves property in three states that impose death taxes:

Value of Oregon property included in federal gross estate	\$500,000
Value of property in State B included in federal gross estate	100,000
Value of property in State C included in federal gross estate	<u>100,000</u>
Value of federal gross estate	\$700,000
Credit allowable against the federal estate tax for state death taxes	\$3,600
Federal credit apportioned to Oregon	<u>\$500,000</u>
	\$700,000 x \$3,600 =
	<u>\$2,570</u>
Oregon tax	<u><u>\$2,570</u></u>

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 118.010

Hist.: 9-71; 12-19-75, Renumbered; 1-1-77, 12-31-77, Renumbered; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; TC 8-1980, f. 11-28-80, cert. ef. 12-31-80; Repealed by RD 4-1997, f. 9-12-97, cert. ef. 12-31-97, Renumbered from 150-118.100(2)

**150-118.225**

**Extension of Time to Pay Tax**

(1)(a) An application for extension of time to pay the inheritance tax shown on the return shall be by letter mailed to the Department within nine months after the date of decedent's death or within the time of any extension granted for filing of the return.

(b) An application for extension of time to pay a tax deficiency shall be by letter mailed to the Department within thirty days from the date of mailing of the notice of deficiency.

The department shall consider that an extension of time to pay the tax has been granted if the executor has obtained an approved federal extension and collateral has been provided to the department. The extended period for the department shall agree with the extended period for federal purposes. The federal extension must be submitted with the return.

An approved federal extension to pay shall not waive the penalties for late filing and interest shall accrue during the extension period.

(2) An extension of time will be granted for reasonable cause. For example, reasonable cause will generally exist where:

(a) Funds are not available to pay the tax except by disposing of property at a sacrifice price (less than market value) or by borrowing money at a rate in excess of the mortgage money market (on terms that would inflict loss on the estate), or

(b) The gross taxable estate includes a beneficial interest in a closely held business where the value of such interest exceeds either 35 percent of the gross taxable estate or 50 percent of the net taxable estate. For purposes of the 35 percent and 50 percent tests provided in this paragraph, interest in two or more closely held businesses shall be treated as an interest in a single closely held business.

(3) The time to pay the tax shall be extended only on the portion of the tax attributable to the interest in the closely held business.

(4) For purposes of this rule, "interest in a closely held business" means an interest as described below determined immediately before the decedent's death:

(a) An interest as a proprietor in a trade or business carried on as a proprietorship;

(b) An interest as a partner in a partnership carrying on a trade or business if 20 percent or more of the total capital interest in such partnership is included in the gross taxable estate, or such partnership has 15 or fewer partners;

(c) Stock in a corporation carrying on a trade or business if 20 percent or more of the voting stock of such corporation is included in the gross taxable estate, or such corporation had 15 or fewer shareholders. Stock or a partnership interest which is held by a husband and wife as community property or as joint tenants, tenants by the entirety, or tenants in common shall be treated as owned by one shareholder or one partner, whichever is applicable.

(d) A "trade or business" does not include an investment or holding company.

(5) If the time for payment has been extended, the amount extended shall be paid in equal annual installments plus accrued interest. If any installment is not paid on or before the date fixed for its payment, the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Department.

(6) An extension of time for payment of tax shall generally cease to apply, and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Department if:

(a) One-third or more in value of an interest in a closely held business is sold, exchanged or otherwise disposed of; or

(b) Aggregate withdrawals of money and other property from the closely held business equal or exceed one-third of the value of such closely held business.

(7) Collateral acceptable to the Department will generally include the following:

(a) First mortgage on real property having a value of double the extended tax;

(b) Assignment of a contract and deed for the sale of real property where the market value of the contract is double the amount of the extended tax;

(c) A deposit and pledge of closely held stock having a market value of double the extended tax;

(d) A surety bond in double the amount of the extended tax executed by a corporation licensed to do business in the State of Oregon. Such bond shall be renewed every five years.

(8) Examples of reasonable cause:

(a) "A" died January 10, 1997, leaving a gross estate of \$1,200,000 of which \$700,000 was the value of a retail store operated by the decedent. The balance of the estate was listed securities, cash, a family residence and miscellaneous personal effects. The taxable estate was \$850,000 on which the Oregon tax was \$25,200. The portion that could be extended is \$20,753.

$$\frac{\$700,000}{\$850,000} \times \$25,200 = \$20,753$$

(b) "B" died February 1, 1997, leaving a taxable estate of \$1,000,000 of which \$700,000 was stock in a closely held corporation. The balance of the property was listed securities and personal effects. The corporation was a holding company with the majority of corporate assets invested in real estate. It was not

shown that money could only be borrowed on terms that would inflict loss upon the estate. An extension would not be granted.

(c) "C" died January 1, 1997, leaving a taxable estate of \$1,000,000. The estate included farm land valued at \$500,000. The balance of the estate was real property, listed securities, cash and personal effects. The farm land was leased for cash rent. Because this is an investment in real property, it would not be considered a trade or business and the tax would not be extended.

(d) "D" died May 10, 1997, leaving a taxable estate of \$750,000 including a tree farm valued at \$400,000. The farm consisted of all pre-merchantable timber. It was shown that the farm could only be sold at a sacrifice price in a depressed market and that money could only be borrowed on terms that would inflict loss upon the estate. The tax of \$10,880 would be extended.

$$\frac{\$400,000}{\$750,000} \times \$20,400 = \$10,880$$

(e) "E" died May 10, 1997, leaving a taxable estate of \$5,000,000 of which tree farms were valued at \$1,000,000. The balance of the estate was comprised of merchantable timber and timberlands valued at \$2,000,000 and an interest in a closely held lumber manufacturing company valued at \$2,000,000. Only the portion of the tax attributable to the closely held business (\$156,640) would qualify for the extension. Other reasonable causes were not shown.

$$\frac{\$2,000,000}{\$5,000,000} \times \$391,600 = \$156,640$$

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 118.225

Hist.: 12-31-77; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97