

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CIVIL LAW

February 28, 2005 Hearing Room 357

8:30 A.M. Tape 21

MEMBERS PRESENT: Rep. Rep. Bob Ackerman, Chair

Rep. Linda Flores

Rep. Bill Garrard

MEMBER EXCUSED: Rep. Kelley Wirth

GUEST MEMBERS: Rep. Wayne Krieger

Rep. Greg Macpherson

STAFF PRESENT: Sam Sears, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2469 – Public Hearing and Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
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TAPE 21, A

003	Chair Ackerman	Calls the meeting to order at 8:35 a.m. and opens a public hearing on HB 2469.
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HB 2469 – PUBLIC HEARING

009	Sam Sears	Counsel. Explains HB 2469 which excludes certain property from estate of decedent for inheritance tax purposes and defines Oregon special marital property.
016	Karey Schoenfeld	Chair, Tax Section, Oregon State Bar and Board Member of Oregon Society of Certified Public Accountants. Testifies and submits testimony in support of HB 2469 (EXHIBITS A, B AND C). Advises that in the 2003 legislative session there was not a “reconnect” of the Oregon inheritance laws to the federal estate tax laws. Explains that several years ago Congress increased the exemption amount whereby individuals can pass up to \$1.5 million on to their heirs tax free; however, under Oregon law the amount is only \$950,000.
039	Schoenfeld	Refers to EXHIBIT C, Page 1 to describe tax implications of the federal and state tax laws.
064	Schoenfeld	Refers to EXHIBIT C, Page 2 to explain a credit shelter trust.
081	Schoenfeld	Describes what happens in Oregon.
113	Schoenfeld	Explains that HB 2469 is intended to apply to a trust that is drafted to allow discretionary distribution of income to qualify and avoid tax until the death of the second spouse.
128	Mark Huglin	Treasurer, Oregon State Bar Tax Section. Describes current law. Explains that HB 2469 will allow “fixing” a trust that does not have mandatory payment of income, so the trust will qualify under the Qualified Terminal Interest Property (QTIP) rule. States that the policy at the federal level is to try to defer estate tax until the death of the surviving spouse and that is what is intended in HB 2469 at the state level.
157	Rep. Macpherson	Requests clarification on the “gap” between the federal and state tax laws.
171	Schoenfeld	

Replies that there are two sets of federal rules, one that applies to a credit shelter trust and the other in excess of a credit shelter trust, which also apply in Oregon.

176	Rep. Macpherson	Asks if HB 2469 will eliminate the necessity of going through an elaborate process to change existing trusts.
187	Schoenfeld	Comments that attorneys know there needs to be a change but clients do not and unexpected problems will arise if trusts are not updated.
189	Rep. Macpherson	Understands that HB 2469 will allow “fixing” problems without having to do it judicially.
199	Schoenfeld	Indicates that some individuals are starting to make changes but there will be many trusts that won’t be updated.
208	Rep. Macpherson	Asks staff about any revenue impact.
218	Sears	Informs that the revenue statement indicates only that there is a potential revenue impact.
223	Schoenfeld	States that there should be no revenue impact.
233	Rep. Macpherson	Believes the state inheritance tax became disconnected from the federal estate tax to try to avoid impacts on Oregon revenue.
245	Schoenfeld	Reiterates the tax will be picked up at the second death so it is deferred, not eliminated.
257	Huglin	States that the disconnect with federal estate tax took place in 1997 and has not been corrected.
277	Rep. Flores	Discusses action from the 2003 legislative session. Has spoken with several estate attorneys and they want this “fixed.”
287	Rep. Krieger	Expresses concern for revenue impact on small family-owned businesses and small landowners. Emphasizes the need to do something.
319	Sears	

Asks if under federal rules QTIP is only for trusts with mandatory distribution schemes, will HB 2469 allow for trusts that also have discretionary schemes.

- 327 Huglin Replies, yes.
- 328 Sears Inquires why there are no QTIP elections allowable for trusts with discretionary distribution schemes now.
- 339 Huglin Explains that the reasons for a mandatory distribution of income on a federal QTIP has to do with the purposes of the federal QTIP election as opposed to a credit shelter trust QTIP type election.
- 348 Schoenfeld Expands that at the time the QTIP election was put in place at the federal level, there was concern that spouses needed to get that income.
- 364 Chair Ackerman Closes the public hearing and opens a work session on HB 2469.

HB 2469 –WORK SESSION

- 368 Rep. Garrard **MOTION: Moves HB 2469 to the full committee with a DO PASS recommendation.**

VOTE: 3-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Wirth

- 380 Chair Ackerman **The motion CARRIES.**
REP. FLORES will lead discussion in the full committee.

- 382 Chair Ackerman Closes the work session on HB 2469 and adjourns the meeting at 9:02 a.m.

EXHIBIT SUMMARY

- A. **HB 2469, written testimony, Karey Schoenfeld, 2 pp**
- B. **HB 2469, written testimony, Karey Schoenfeld, 2 pp**
- C. **HB 2469, written overview, Karey Schoenfeld, 2 pp**