

Enrolled Senate Bill 864

Sponsored by Senator GIROD; Senators JOHNSON, OLSEN, WHITSETT, Representatives BOONE, CLEM, KRIEGER, WHITSETT

CHAPTER

AN ACT

Relating to the estate tax credit for natural resource property; creating new provisions; amending ORS 118.140; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 118.140 is amended to read:

118.140. (1) As used in this section:

(a) "Adjusted gross estate" means the value of the gross estate reduced by the sum of the amounts allowable under sections 2053 and 2054 of the Internal Revenue Code.

(b) "Family member" means a member of the family, as defined in section 2032A of the Internal Revenue Code, of the decedent.

(c) "Farm business" means a business operated for the primary purpose of obtaining a profit in money by:

(A) Raising, harvesting or selling fruit or crops;

(B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or bees, or the produce thereof;

(C) Dairying and selling dairy products;

(D) Breeding, stabling or training equines;

(E) Propagating, cultivating, maintaining or harvesting aquatic species, birds or animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

(F) Raising nursery stock;

(G) Practicing animal husbandry; or

(H) Raising other agricultural or horticultural products.

(d) "Farm use" has the meaning given that term in ORS 308A.056.

(e) "Fishing business" has the meaning given that term in section 1301(b)(4) of the Internal Revenue Code.

(f) "Forestland" has the meaning given that term in ORS 321.201.

(g) "Forestry business" means a business operated for the primary purpose of obtaining a profit in money by the planting, cultivating, caring for, preparing, harvesting or cutting of timber or trees for market.

(h) "Homesite" has the meaning given that term in ORS 308A.250.

(i) "Natural resource property" means the following property **in this state**, if on the date of the decedent's death the property is owned by the decedent and used in the operation of a farm business, forestry business or fishing business owned by the decedent:

(A) Real property used as forestland or as forestland homesites, not to exceed 5,000 acres, or that is in farm use.

(B) Timber or trees.

(C) Crops, fruit or other horticultural products, both growing and stored.

(D) Forestry business or farm business equipment.

(E) Livestock, poultry, fur-bearing animals, bees, dairying animals, equines, aquatic species, birds or other animal species, including stored products or by-products.

(F) Nursery stock as defined in ORS 571.005.

(G) Boats, gear, equipment, vessel licenses or permits, commercial fishing licenses or permits and other real or personal property used in the operation of a fishing business.

(H) Real or personal property used to process and sell the catch of a fishing business in fresh, canned or smoked form directly to consumers, including a restaurant with seating capacity of fewer than 15 seats at which catch from the fishing business is prepared and sold.

(I) An operating allowance.

(J) Any other tangible and intangible personal property used in the operation of a farm business, forestry business or fishing business.

(j) "Operating allowance" means cash or a cash equivalent that is spent, maintained, used or available for the operation of a farm business, forestry business or fishing business and not spent or used for any other purpose.

(k) "Qualified beneficiary" has the meaning given that term in ORS 130.010.

(L) "Real property" means real property, as defined in ORS 307.010, that is in this state.

(2)(a) An estate shall be allowed a credit for the value of natural resource property claimed. Any operating allowance claimed under this section may not exceed the lesser of \$1 million or 15 percent of the total value of natural resource property claimed, not including the operating allowance.

(b) The credit allowed under this section shall be computed by multiplying the tax that would be payable under this chapter absent the credit by a ratio, the numerator of which is an amount equal to the lesser of the amount of natural resource property claimed under this section or \$7.5 million, and the denominator of which is an amount equal to the total adjusted gross estate.

(c) An executor may:

(A) Elect not to claim the credit allowed under this section;

(B) Elect to claim less than the full amount of the credit allowed under this section; or

(C) Elect to claim the credit only for the value of certain assets.

(3) Except as provided in subsections (4), (7) and (8) of this section, a credit is allowed under this section only if:

(a) The total adjusted gross estate does not exceed \$15 million;

(b) The total value of natural resource property in the estate is at least 50 percent of the total adjusted gross estate **that is in this state**;

(c) The natural resource property is transferred to a family member; and

(d) During an aggregate period of five out of the eight years ending on the date of the decedent's death, the decedent or a family member operated a farm business, forestry business or fishing business and the property for which a credit is claimed under this section is part of the business.

(4) Property that otherwise meets the requirements of this section shall be allowed a credit under this section if:

(a) The property is the subject of a net cash lease to or from the decedent or a qualified beneficiary who is a family member;

(b) The property is held in trust for a qualified beneficiary who is a family member; or

(c) The property replaces natural resource property, and the replacement property would otherwise meet the definition of natural resource property except that it was acquired after the date of the decedent's death but before the estate tax return is filed. In order to qualify under this paragraph, real property must be replaced with real property.

(5) A credit is allowed under this section for the following real property only if the real property was owned by the decedent or a family member during an aggregate period of five out of the eight years ending on the date of the decedent's death and used in a business described in subsection (3)(d) of this section:

- (a) Real property used as forestland or as forestland homesites, not to exceed 5,000 acres.
- (b) Real property used in farm use.

(6) A credit is allowed under this section for property used in the operation of a fishing business only if the decedent or a family member, during an aggregate period of five out of the eight years ending on the date of the decedent's death:

(a) Owned a vessel used in taking food fish or shellfish for commercial purposes as defined in ORS 506.006;

(b) Held a boat license as provided in ORS 508.260;

(c) Held a commercial fishing license under ORS 508.235; and

(d) Held one or more restricted fisheries permits as provided in ORS chapter 508 or an equivalent restricted vessel permit system under the laws of another state.

(7) For the purpose of meeting the requirements of subsection (5) of this section, in determining the period of time during which the decedent or a family member owned real property received in exchange under section 1031 of the Internal Revenue Code or acquired in an involuntary conversion under section 1033 of the Internal Revenue Code, the period during which the decedent or a family member owned the exchanged or acquired real property, if the exchanged or acquired real property was used in the farm business or forestry business, may be included.

(8) Property that otherwise meets the requirements of this section and that is owned indirectly by the decedent or a family member qualifies for a credit under this section if the property is owned through an interest in a limited liability company or in a corporation, partnership or trust as the terms corporation, partnership or trust are used in section 2032A(g) of the Internal Revenue Code. In order to qualify under this subsection, at least one family member must materially participate in the business after the transfer. For purposes of this subsection, "materially participate" means to engage in active management, as defined in section 2032A of the Internal Revenue Code, of the farm business, forestry business or fishing business. The Department of Revenue may adopt rules to administer this subsection consistent with this definition.

(9)(a) A disposition shall occur and an additional tax under ORS 118.005 to 118.540 shall be imposed if the natural resource property for which a credit is allowed under this section is not used in the operation of a farm business, forestry business or fishing business for at least five out of the eight calendar years following the decedent's death or is transferred to a person other than a family member or another entity eligible for the credit allowed under this section.

(b) The use of cash or other assets for which a credit is claimed under this section for the payment of federal estate taxes or state inheritance or estate taxes shall be a disposition and an additional tax shall be imposed under this subsection.

(c) The conveyance after the decedent's death of property that otherwise meets the requirements of this section and is conveyed as a qualified conservation contribution, as defined in section 170(h) of the Internal Revenue Code, is not a disposition requiring payment of additional tax under this subsection.

(d) Natural resource property may be replaced with real property or personal property after the credit is claimed and not result in a disposition subject to an additional tax if the replacement property is used in the operation of the farm business, forestry business or fishing business. Real property for which a credit is claimed under this section may be replaced only with real property that would otherwise qualify as natural resource property and that replacement must be made within one year to avoid a disposition and additional tax, except that a replacement of property that is involuntarily converted under section 1033 of the Internal Revenue Code must occur within two years.

(e) The additional tax liability shall be the amount of additional tax that would have been imposed, had the disqualified property not been included in the numerator of the ratio in subsection

(2)(b) of this section, multiplied by ((five minus the number of years the property was used as natural resource property) divided by five). The additional tax liability is the responsibility of the owner of the property at the time of the disposition or disqualifying event and is due within six months after the date on which the disposition or event occurs. The Department of Revenue may establish by rule procedures for reporting the additional tax due, consistent with ORS chapter 305.

(f) Prior to the executor's identification of property for which a credit under this section is claimed, the executor shall notify the transferee of the potential for tax consequences to the transferee if the transferee fails to meet the conditions of paragraph (a) of this subsection. The transferee's written acknowledgment of this notice shall be attached to the estate tax return.

(10) The executor shall identify property for which a credit under this section is claimed, by asset, on a form prescribed by the department and filed with the estate tax return. Transferees of property for which a credit under this section has been claimed shall file a report with the department on a form prescribed by the department. This report shall be filed annually until the requirements of subsection (9)(a) of this section are met and shall require tracking of each asset for which the credit has been claimed, with confirmation that each asset falls into one of the following categories:

(a) The asset is still used in the operation of a farm business, forestry business or fishing business;

(b) The asset has been replaced with property that meets the requirements of subsection (9)(d) of this section; or

(c) The asset has been subject to a disposition under subsection (9) of this section, resulting in additional tax.

SECTION 2. The amendments to ORS 118.140 by section 1 of this 2015 Act apply to estates of decedents dying on or after January 1, 2015.

SECTION 3. This 2015 Act takes effect on the 91st day after the date on which the 2015 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

Passed by Senate April 15, 2015

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 29, 2015

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2015

Approved:

.....M.,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State