

A-Engrossed House Bill 3618

Ordered by the House February 13
Including House Amendments dated February 13

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of House Interim Committee on Revenue)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Replaces inheritance tax exclusion for natural resource property or property used in commercial fishing operations with tax credit. Modifies eligibility requirements for inheritance tax reduction based on natural resource property or property used in commercial fishing operations. **Expands availability of credit to include property owned indirectly by decedent, member of family, domestic partner or transferee. Adds domestic partner to list of eligible owners or transferees. Extends filing and payment requirements for estates claiming credit to no earlier than June 30, 2008. Directs Department of Revenue to adopt rules applicable to estates of decedents dying before effective date of Act.**

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to tax credits; 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, "natural resource property" means real property[,] as defined in ORS 307.010[, *lawfully qualified, at the decedent's death, for designation as*] **that at the decedent's death:**

(a) **Is in** farm use, as defined in ORS 308A.056, or **is used** as one or more farm use homesites, as defined in ORS 308A.250, related to that real property; or

(b) **Is used as** forestland, as defined in ORS 321.201, or **is used** as one or more forestland homesites, as defined in ORS 308A.250, related to that real property, not to exceed 5,000 acres.

[(2) *For purposes of computing the tax imposed under ORS 118.010, the gross estate of a decedent may not include the value of:*]

(2)(a) A credit against the taxes otherwise due under ORS 118.005 to 118.840 shall be allowed based upon the value of the following property:

[(a)] **(A)** Natural resource property[, *to the extent the value of natural resource property does not exceed \$7.5 million; or*].

[(b)] *Property used in commercial fishing operations and any property used in processing or marketing of the product of those commercial fishing operations, to the extent the value of the property described in this paragraph does not exceed \$7.5 million.*

(B) If the decedent or a person described in subsection (3)(c) of this section was licensed under ORS chapter 508, property that is:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

(i) Used in the conduct of a fishing business as defined in section 1301(b)(4) of the Internal Revenue Code, including boats, gear, equipment, vessel licenses and permits and commercial fishing licenses and permits; or

(ii) Used to process and sell the catch of a commercial fishing business in fresh, canned or smoked form directly to consumers, including a restaurant with seating capacity of less than 15 seats at which catch from the fishing business is prepared and sold.

(C) Tangible and intangible personal property devoted to use as a farm or used for farm or forestry purposes, including:

(i) Timber, trees and improvements;

(ii) Crops, both growing and stored; and

(iii) Forestry and farming equipment.

(D) Working capital of a farm, natural resource-based business or fishing business owned by the decedent at the decedent's death.

(b) A taxpayer 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.

(c) If the value of property for which the credit allowed under this section is claimed is at least the amount in column 1, but less than the amount in column 2, the credit is the amount in column 3, increased by the excess above the amount in column 1 multiplied by the percentage in column 4:

1	2	3	4
0	100,000	0	
100,000	150,000	0	0.8%
150,000	200,000	400	1.6%
200,000	300,000	1,200	2.4%
300,000	500,000	3,600	3.2%
500,000	700,000	10,000	4.0%
700,000	900,000	18,000	4.8%
900,000	1,100,000	27,600	5.6%
1,100,000	1,600,000	38,800	6.4%
1,600,000	2,100,000	70,800	7.2%
2,100,000	2,600,000	106,800	8.0%
2,600,000	3,100,000	146,800	8.8%
3,100,000	3,600,000	190,800	9.6%
3,600,000	4,100,000	238,800	10.4%
4,100,000	5,100,000	290,800	11.2%
5,100,000	6,100,000	402,800	12.0%
6,100,000	7,100,000	522,800	12.8%
7,100,000	7,500,000	650,800	13.6%
7,500,000	8,100,000	402,800	13.0%
8,100,000	9,100,000	253,344	12.5%
9,100,000	10,100,000	146,800	12.0%

1	10,100,000	11,100,000	35,400	11.2%
2	11,100,000	12,100,000	15,520	7.7%
3	12,100,000	13,100,000	8,000	5.7%
4	13,100,000	14,100,000	0	3.7%
5	14,100,000	15,100,000	0	1.7%
6	15,100,000		0	0%

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8
9 [(3) Subsection (2) of this section applies only if the property that is excluded from the value of the
10 gross estate under subsection (2) of this section is transferred to:]

11 [(a) The spouse of the decedent;]

12 [(b) A natural or adopted child of the decedent;]

13 [(c) A natural or adopted grandchild of the decedent;]

14 [(d) A natural or adopted brother or sister of the decedent; or]

15 [(e) A natural or adopted niece or nephew of the decedent.]

16 [(4)(a) For each calendar year beginning on or after January 1, 2009, the Department of Revenue
17 shall recompute the maximum excluded value of the gross estate provided for in subsection (2) of this
18 section by the change in the cost of living, if any. The computation shall be as follows:]

19 [(A) Divide the average U.S. City Average Consumer Price Index for the 12 consecutive months
20 ending January 1 of the calendar year prior to the calculation by the average U.S. City Average Con-
21 sumer Price Index for the calendar year 2007.]

22 [(B) Multiply \$7.5 million by the indexing factor determined as provided in subparagraph (A) of
23 this paragraph.]

24 [(b) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City
25 Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of
26 Labor Statistics of the United States Department of Labor.]

27 [(c) If any change in the maximum excluded value of the gross estate determined under paragraph
28 (a) of this subsection is not a multiple of \$500, the change shall be rounded to the nearest \$500.]

29 **(3) Except as provided in subsections (4) and (5) of this section, a credit is allowed under
30 this section only if:**

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

32 **(b) The total value of property for which the credit established under this section is al-
33 lowable is at least 50 percent of the total adjusted gross estate;**

34 **(c) The property is transferred to a member of the family, as that term is defined in
35 section 2032A of the Internal Revenue Code, or the registered domestic partner, of the
36 decedent; and**

37 **(d) During an aggregate period of five out of the eight years ending on the date of the
38 decedent's death, the decedent, a member of the decedent's family or the decedent's regis-
39 tered domestic partner owned the property and the property was devoted to use as a farm
40 or used for farm or forest purposes.**

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

43 **(a) The property is the subject of a net cash lease to or from the decedent or a transferee
44 described in subsection (3)(c) of this section; or**

45 **(b) The property is held in trust for a person described in subsection (3)(c) of this section.**

(5) Property that otherwise meets the requirements of this section and that is owned indirectly by the decedent or a member of the family described in subsection (3)(c) of this section, or the registered domestic partner, of the decedent shall qualify 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 for a credit under this subsection, at least one member of the family, or the registered domestic partner, of the decedent 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 natural resource property or a fishing business. The Department of Revenue may adopt rules to administer this subsection consistent with this definition.

(6) Property that otherwise meets the requirements of this section and is involuntarily converted, as that term is used in section 1033 of the Internal Revenue Code, shall qualify for a credit under this section if the proceeds of conversion are used to acquire replacement property, the cost of which equals or exceeds the amount realized on the conversion. The replacement property must also meet the requirements of this section.

[(5)(a)] (7)(a) *[If property initially excluded from the value of a gross estate as natural resource property]* An additional tax under ORS 118.005 to 118.840 shall be imposed if property for which a credit is allowed under this section is not *[then]* used in commercial fishing operations or as natural resource property for at least five out of the eight calendar years following the decedent's death or is disposed of by the transferee other than by disposition to another *[family member who is]* member of the family, or the registered domestic partner, of the decedent or to another entity eligible for the *[exclusion]* credit allowed under this section*[, an additional tax under ORS 118.005 to 118.840 shall be imposed]*. Property that otherwise meets the requirements of this section and is conveyed after the decedent's death as a qualified conservation contribution, as that term is defined in section 170(h) of the Internal Revenue Code, shall continue to qualify for a credit under this section.

(b) The additional tax liability shall be *[an amount that is no greater than the amount of additional taxes that would have been due had the property been included in the gross estate, but at least the amount of such additional taxes]* the amount of the credit allowed on the disqualified property multiplied by ((five minus the number of years the property was used as natural resource property) divided by five). The additional tax liability shall be *[apportioned to the estate for any time period prior to transfer and apportioned to the transferee for any time period thereafter.]* the responsibility of the owner of the property at the time of the disposition or disqualifying event.

(c) Prior to the transfer of property *[treated as natural resource property]* under this section, the executor *[or the decedent]* 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 inheritance tax return.

[(6)] (8) The department *[of Revenue]* shall adopt rules consistent with those adopted under *[section 2032A of]* the Internal Revenue Code*[, as that section was amended and in effect on December 31, 2006,]* to administer this section.

SECTION 2. Inheritance tax returns claiming a credit under ORS 118.140 are not due, and no tax is owed by those estates, prior to June 30, 2008. No later than July 1, 2008, the Department of Revenue shall adopt by rule procedures and filing deadlines necessary to ad-

1 minister ORS 118.140 as it applies to estates of decedents dying on or after January 1, 2007,
2 and before the effective date of this 2008 Act. The department shall cancel any interest or
3 penalty that would otherwise result from noncompliance with ORS 118.140 by estates of
4 decedents dying on or after January 1, 2007, and before the effective date of this 2008 Act.

5 **SECTION 3.** The amendments to ORS 118.140 by section 1 of this 2008 Act apply to estates
6 of decedents who die on or after January 1, 2007.

7 **SECTION 4.** This 2008 Act takes effect on the 91st day after the date on which the special
8 session of the Seventy-fourth Legislative Assembly adjourns sine die.