

House Bill 3618

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 **as introduced**.

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.

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:

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

[(b)] **(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.*]; **and**

(C) Property used in a natural resource based trade or business, including, in the case of forestland, the value of trees and timber.

(b) A taxpayer may elect not to claim the credit allowed under this section or may elect to claim less than the full amount of the credit allowed under this section.

(c) The credit allowed under this section shall be determined as follows:

(A) If the value of property for which the credit 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:

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.

	1	2	3	4
1				
2				
3	\$1,000,000	\$1,100,000	\$33,200	5.6%
4	1,100,000	1,600,000	38,800	6.0%
5	1,600,000	2,100,000	68,800	6.4%
6	2,100,000	2,600,000	100,800	6.8%
7	2,600,000	3,100,000	134,800	7.2%
8	3,100,000	3,600,000	170,800	7.6%
9	3,600,000	4,100,000	208,800	8.0%
10	4,100,000	5,100,000	248,800	8.4%
11	5,100,000	6,100,000	332,800	8.8%
12	6,100,000	7,100,000	420,800	9.2%
13	7,100,000	7,500,000	512,800	9.6%

(B) If the value of property for which the credit 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, reduced by the excess above the amount in column 1 multiplied by the percentage in column 4:

	1	2	3	4
21				
22	\$7,500,000	\$8,100,000	\$474,400	9.2%
23	8,100,000	9,100,000	419,200	8.4%
24	9,100,000	10,100,000	335,200	7.6%
25	10,100,000	11,100,000	259,200	6.8%
26	11,100,000	12,100,000	191,200	6.0%
27	12,100,000	13,100,000	131,200	5.2%
28	13,100,000	14,100,000	79,200	4.4%
29	14,100,000	15,100,000	35,200	1.6%
30	15,100,000	and above	0	0.0%

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

[(a) The spouse of the decedent;]

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

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

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

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

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

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

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

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

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

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

10 **(a) The total value of property for which the credit established under this section is al-**
 11 **lowable is at least 75 percent of the total gross estate; and**

12 **(b) The property is transferred to a member of the family, as that term is defined in**
 13 **section 2032A of the Internal Revenue Code, of the decedent.**

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

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

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

19 **(5) Property that otherwise meets the requirements of this section and that is owned**
 20 **indirectly by the decedent or a member of the family described in subsection (3)(b) of this**
 21 **section shall qualify for a credit under this section if the property is owned through an in-**
 22 **terest in a limited liability company or in a corporation, partnership or trust as the terms**
 23 **corporation, partnership or trust are used in section 2032A(g) of the Internal Revenue Code.**
 24 **In order to qualify for a credit under this subsection:**

25 **(a) The interest must qualify under section 6166(b)(1) of the Internal Revenue Code as**
 26 **an interest in a closely held business on the date of the decedent's death; and**

27 **(b) At least one member of the family of the decedent must materially participate in the**
 28 **business after the transfer.**

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

34 *[(5)(a)] (7)(a) [If property initially excluded from the value of a gross estate as natural resource*
 35 *property] An additional tax under ORS 118.005 to 118.840 shall be imposed if property for which*
 36 *a credit is allowed under this section is not [then] used in commercial fishing operations or as*
 37 *natural resource property for at least five out of the eight calendar years following the decedent's*
 38 *death or is disposed of by the transferee other than by disposition to another [family member who*
 39 *is] member of the family or to another entity eligible for the [exclusion] credit allowed under*
 40 *this section[, an additional tax under ORS 118.005 to 118.840 shall be imposed].*

41 **(b) The additional tax liability shall be [an amount that is no greater than the amount of addi-**
 42 **tional taxes that would have been due had the property been included in the gross estate, but at least**
 43 **the amount of such additional taxes] the amount of the allowed credit multiplied by ((five minus**
 44 **the number of years the property was used as natural resource property) divided by five). The ad-**
 45 **ditional tax liability shall be apportioned to the estate for any time period prior to transfer and**

1 apportioned to the transferee for any time period thereafter.

2 (c) Prior to the transfer of property [*treated as natural resource property*] under this section, the
3 executor or the decedent shall notify the transferee of the potential for tax consequences to the
4 transferee if the transferee fails to meet the conditions of paragraph (a) of this subsection. The
5 transferee's written acknowledgment of this notice shall be attached to the inheritance tax return.

6 [(6)] (8) The Department of Revenue shall adopt rules consistent with those adopted under [*sec-*
7 *tion 2032A of*] the Internal Revenue Code, as [*that section was*] amended and in effect on December
8 31, [2006] 2000, to administer this section.

9 **SECTION 2. No later than July 1, 2008, the Department of Revenue shall adopt by rule**
10 **procedures and filing deadlines necessary to administer ORS 118.140 as it applies to estates**
11 **of decedents dying on or after January 1, 2007, and before the effective date of this 2008 Act.**
12 **The department may cancel any interest or penalty that would otherwise result from non-**
13 **compliance with ORS 118.140 by estates of decedents dying on or after January 1, 2007, and**
14 **before the effective date of this 2008 Act.**

15 **SECTION 3. The amendments to ORS 118.140 by section 1 of this 2008 Act apply to estates**
16 **of decedents who die on or after January 1, 2007, for which no inheritance tax return has**
17 **been filed as of the effective date of this 2008 Act.**

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

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