

House Bill 3305

Sponsored by Representatives BOONE, CLEM, KRIEGER; Senator GIROD

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**.

For purposes of natural resource property or commercial fishing property inheritance tax credit, allows credit equal to tax otherwise due for eligible property with value less than \$7.5 million and phases out credit for property with value up to \$15 million. Defines terms related to working capital. Provides for exemption from taxation if property is sold and proceeds used to pay tax. Adjusts limit of value of property eligible for credit and credit amounts for inflation. Provides that certain federal elections are not binding on Oregon estates.

Applies to estates of decedents who die on or after effective date of Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to inheritance tax credits; creating new provisions; amending ORS 118.140; and prescribing
3 an effective date.

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

5 **SECTION 1.** ORS 118.140, as amended by section 1, chapter 28, Oregon Laws 2008, is amended
6 to read:

7 118.140. (1) As used in this section[,]:

8 (a) **“Cash conversion cycle” means the aggregate amount of time:**

9 (A) **Necessary to produce, process and sell inventory;**

10 (B) **Necessary to collect receivables; and**

11 (C) **Available to a business to satisfy accounts payable without incurring a penalty.**

12 (b) **“Material property” includes machinery, equipment, timber, trees, crops, vineyards,**
13 **nursery stock, real property improvements and boats used by a business for the production**
14 **of inventory, distribution and sales.**

15 (c) **“Material property recovery account” means an account that holds assets specifically**
16 **identified as intended for recovery and replacement of material property.**

17 (d) **“Natural resource property” means real property as defined in ORS 307.010 that at the**
18 **decedent's death:**

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

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

23 (e) **“Working capital” includes commercially or privately held liquid assets and securities**
24 **in a material property recovery account for material property recovery and replacement of**
25 **tangible property used for business purposes.**

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

28 (A) Natural resource property.

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.

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

(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. **Other than the value of a material property recovery account, working capital may not exceed for a period longer than the cash conversion cycle of the business, 20 percent of the total value of assets and assets owned by the business. If a business has debt obligations that exceed the value of all commercially and privately held liquid assets and securities, other than those in a material property recovery account, it shall be considered to have no working capital.**

(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) The amount of the credit allowed under this section shall equal the tax that would otherwise be imposed on the property for which the credit is allowed, if not for the credit.

[(c)] **(d)** If the value of property for which the credit allowed under this section is claimed is **at least \$7.5 million and** is at least the amount in column 1, but less than the amount in column 2, the credit [is] **shall be** 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%

1	3,100,000	3,600,000	190,800	9.6%
2	3,600,000	4,100,000	238,800	10.4%
3	4,100,000	5,100,000	290,800	11.2%
4	5,100,000	6,100,000	402,800	12.0%
5	6,100,000	7,100,000	522,800	12.8%
6	7,100,000	7,500,000	650,800	13.6%]
7	7,500,000	8,100,000	402,800	13.0%
8	8,100,000	9,100,000	253,344	12.5%
9	9,100,000	10,100,000	146,800	12.0%
10	10,100,000	11,100,000	35,400	11.2%
11	11,100,000	12,100,000	15,520	7.7%
12	12,100,000	13,100,000	8,000	5.7%
13	13,100,000	14,100,000	0	3.7%
14	14,100,000	15,100,000	0	1.7%
15	15,100,000		0	0%

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

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

[(b)] **(B)** The total value of property for which the credit established under this section is allowable is at least 50 percent of the total adjusted gross estate;

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

[(d)] **(D)** During an aggregate period of five out of the eight years ending on the date of the decedent's death, the decedent, a member of the decedent's family or the decedent's registered domestic partner owned the property and the property was devoted to use as a farm or used for farm or forest purposes.

(b) For each 12-month period beginning on or after July 1, 2010, the Department of Revenue shall adjust the limitation provided under paragraph (a)(A) of this subsection and the dollar amounts set out in the rate brackets in subsection (2)(d) of this section according to the change in the cost of living, if any. The computation shall be as follows:

(A) Divide the average Portland Consumer Price Index for the 12 consecutive months ending January 1 of the calendar year prior to the calculation by the Consumer Price Index for the calendar year 2008.

(B) Multiply the limitation provided under paragraph (a)(A) of this subsection and the dollar amounts set out in the rate brackets in subsection (2)(d) of this section by the indexing factor determined as provided in subparagraph (A) of this paragraph.

(c) As used in this subsection, "Portland Consumer Price Index" means the Portland Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor.

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

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

1 (b) The property is held in trust for a person described in subsection [(3)(c)] **(3)(a)(C)** of this
2 section.

3 [(5)] **(c)** [*Property that otherwise meets the requirements of this section and that*] **The property** is
4 owned indirectly by the decedent or a member of the family described in subsection [(3)(c)] **(3)(a)(C)**
5 of this section, or the registered domestic partner, of the decedent [*shall qualify for a credit under*
6 *this section if the property is owned*] through an interest in a limited liability company or in a cor-
7 poration, partnership or trust as the terms corporation, partnership or trust are used in section
8 2032A(g) of the Internal Revenue Code. In order to qualify for a credit under this [*subsection*] **par-**
9 **agraph**, at least one member of the family, or the registered domestic partner, of the decedent must
10 materially participate in the business after the transfer. For purposes of this [*subsection*]
11 **paragraph**, “materially participate” means to engage in active management, as defined in section
12 2032A of the Internal Revenue Code, of natural resource property or a fishing business. The De-
13 partment of Revenue may adopt rules to administer this [*subsection*] **paragraph** consistent with this
14 definition.

15 [(6)] **(d)** [*Property that otherwise meets the requirements of this section and*] **The property** is in-
16 voluntarily converted, as that term is used in section 1033 of the Internal Revenue Code, [*shall*
17 *qualify for a credit under this section if*] **and** the proceeds of conversion are used to acquire re-
18 placement property, the cost of which equals or exceeds the amount realized on the conversion. The
19 replacement property must also meet the requirements of this section.

20 **(e) The property is claimed as a marital deduction under section 2056 of the Internal**
21 **Revenue Code or claimed as exempt or excluded property under section 2010 of the Internal**
22 **Revenue Code. The executor shall make a written election identifying the property for which**
23 **a credit allowed under this section is claimed. Any property described in this paragraph for**
24 **which the executor elects to claim a credit allowed under this section shall be ineligible for**
25 **a marital deduction under section 2056 of the Internal Revenue Code, as that section applies**
26 **to this chapter, and for treatment as special marital property under ORS 118.016.**

27 [(7)(a)] **(5)(a)** An additional tax under ORS 118.005 to 118.840 shall be imposed if property for
28 which a credit is allowed under this section is not used in commercial fishing operations or as na-
29 tural resource property for at least five out of the eight calendar years following the decedent’s
30 death or is disposed of by the transferee other than by disposition to another member of the family,
31 or the registered domestic partner, of the decedent or to another entity eligible for the credit al-
32 lowed under this section. Property that otherwise meets the requirements of this section and is
33 conveyed after the decedent’s death as a qualified conservation contribution, as that term is defined
34 in section 170(h) of the Internal Revenue Code, shall continue to qualify for a credit under this
35 section.

36 (b) The additional tax liability shall be the amount of the credit allowed on the disqualified
37 property multiplied by ((five minus the number of years the property was used as natural resource
38 property) divided by five). The additional tax liability shall be the responsibility of the owner of the
39 property at the time of the disposition or disqualifying event.

40 (c) Prior to the transfer of property under this section, the executor shall notify the transferee
41 of the potential for tax consequences to the transferee if the transferee fails to meet the conditions
42 of paragraph (a) of this subsection. The transferee’s written acknowledgment of this notice shall be
43 attached to the inheritance tax return.

44 **(d) Property described in subsection (4)(d) of this section is exempt from the additional**
45 **tax imposed under this subsection if the proceeds are used to pay federal estate taxes or the**

1 **tax under this chapter that would be due if the property were included in the decedent's**
2 **taxable estate.**

3 [(8)] (6) The department shall adopt rules consistent with those adopted under the Internal Re-
4 venue Code to administer this section.

5 **SECTION 2. Section 3 of this 2009 Act is added to and made a part of ORS 118.005 to**
6 **118.840.**

7 **SECTION 3. For purposes of this chapter, elections under federal law are not binding on**
8 **Oregon inheritance tax liability if the executor notifies the Department of Revenue at the**
9 **time of filing of any federal elections, exemptions, credits or deductions that are not used**
10 **on the Oregon inheritance tax return.**

11 **SECTION 4. Section 3 of this 2009 Act and the amendments to ORS 118.140 by section 1**
12 **of this 2009 Act apply to the estates of decedents who die on or after the effective date of**
13 **this 2009 Act.**

14 **SECTION 5. This 2009 Act takes effect on the 91st day after the date on which the reg-**
15 **ular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

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