

House Bill 3330

Sponsored by Representative SMITH DB (at the request of former Representative Wayne Krieger)

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**.

Reduces required size of real property and percentage of value of adjusted gross estate necessary for real property to qualify for natural resource property credit against estate tax, where real property is forestland or forestland homesites.

Applies to estates of decedents dying on or after January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to a natural resource credit against estate tax; creating new provisions; amending ORS
3 118.140; and prescribing an effective date.

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

5 **SECTION 1.** ORS 118.140 is amended to read:

6 118.140. (1) As used in this section:

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

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

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

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

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

16 (C) Dairying and selling dairy products;

17 (D) Breeding, stabling or training equines;

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

20 (F) Raising nursery stock;

21 (G) Practicing animal husbandry; or

22 (H) Raising other agricultural or horticultural products.

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

24 (e) "Fishing business" has the meaning given that term in section 1301(b)(4) of the Internal Re-
25 venue Code.

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

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

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

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

4 (A) Real property used as forestland or as forestland homesites, not to exceed [5,000] **4,000**
5 acres, or that is in farm use.

6 (B) Timber or trees.

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

8 (D) Forestry business or farm business equipment.

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

11 (F) Nursery stock as defined in ORS 571.005.

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

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

17 (I) An operating allowance.

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

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

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

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

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

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

33 (c) An executor may:

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

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

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

37 (3) Except as provided in subsections (4), [(7) and (8)] **(5), (8) and (9)** of this section, a credit is
38 allowed under this section only if:

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

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

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

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

1 **(4) Notwithstanding subsections (1)(i)(A) and (3)(b) of this section, a credit may be al-**
 2 **lowed for natural resource property that is real property used as forestland or as forestland**
 3 **homesites, if:**

4 **(a) The real property exceeds 2,000 acres, but does not exceed 4,000 acres, and its value**
 5 **is at least 35 percent of the total adjusted gross estate that is in this state;**

6 **(b) The real property exceeds 1,000 acres, but does not exceed 2,000 acres, and its value**
 7 **is at least 30 percent of the total adjusted gross estate that is in this state;**

8 **(c) The real property exceeds 500 acres, but does not exceed 1,000 acres, and its value is**
 9 **at least 25 percent of the total adjusted gross estate that is in this state; or**

10 **(d) The real property does not exceed 500 acres, and its value is at least 20 percent of the**
 11 **total adjusted gross estate that is in this state.**

12 **[(4)] (5) Property that otherwise meets the requirements of this section shall be allowed a credit**
 13 **under this section if:**

14 **(a) The property is the subject of a net cash lease to or from the decedent or a qualified bene-**
 15 **ficiary who is a family member;**

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

17 **(c) The property replaces natural resource property, and the replacement property would oth-**
 18 **erwise meet the definition of natural resource property except that it was acquired after the date**
 19 **of the decedent's death but before the estate tax return is filed. In order to qualify under this par-**
 20 **agraph, real property must be replaced with real property.**

21 **[(5)] (6) A credit is allowed under this section for the following real property only if the real**
 22 **property was owned by the decedent or a family member during an aggregate period of five out of**
 23 **the eight years ending on the date of the decedent's death and used in a business described in sub-**
 24 **section (3)(d) of this section:**

25 **(a) Real property used as forestland or as forestland homesites, not to exceed 5,000 acres.**

26 **(b) Real property used in farm use.**

27 **[(6)] (7) A credit is allowed under this section for property used in the operation of a fishing**
 28 **business only if the decedent or a family member, during an aggregate period of five out of the eight**
 29 **years ending on the date of the decedent's death:**

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

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

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

34 **(d) Held one or more restricted fisheries permits as provided in ORS chapter 508 or an equiv-**
 35 **alent restricted vessel permit system under the laws of another state.**

36 **[(7)] (8) For the purpose of meeting the requirements of subsection [(5)] (6) of this section, in**
 37 **determining the period of time during which the decedent or a family member owned real property**
 38 **received in exchange under section 1031 of the Internal Revenue Code or acquired in an involuntary**
 39 **conversion under section 1033 of the Internal Revenue Code, the period during which the decedent**
 40 **or a family member owned the exchanged or acquired real property, if the exchanged or acquired**
 41 **real property was used in the farm business or forestry business, may be included.**

42 **[(8)] (9) Property that otherwise meets the requirements of this section and that is owned indi-**
 43 **rectly by the decedent or a family member qualifies for a credit under this section if the property**
 44 **is owned through an interest in a limited liability company or in a corporation, partnership or trust**
 45 **as the terms corporation, partnership or trust are used in section 2032A(g) of the Internal Revenue**

1 Code. In order to qualify under this subsection, at least one family member must materially partic-
2 ipate in the business after the transfer. For purposes of this subsection, “materially participate”
3 means to engage in active management, as defined in section 2032A of the Internal Revenue Code,
4 of the farm business, forestry business or fishing business. The Department of Revenue may adopt
5 rules to administer this subsection consistent with this definition.

6 [(9)(a)] (10)(a) A disposition shall occur and an additional tax under ORS 118.005 to 118.540 shall
7 be imposed if the natural resource property for which a credit is allowed under this section is not
8 used in the operation of a farm business, forestry business or fishing business for at least five out
9 of the eight calendar years following the decedent’s death or is transferred to a person other than
10 a family member or another entity eligible for the credit allowed under this section.

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

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

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

26 (e) The additional tax liability shall be the amount of additional tax that would have been im-
27 posed, had the disqualified property not been included in the numerator of the ratio in subsection
28 (2)(b) of this section, multiplied by ((five minus the number of years the property was used as natural
29 resource property) divided by five). The additional tax liability is the responsibility of the owner of
30 the property at the time of the disposition or disqualifying event and is due within six months after
31 the date on which the disposition or event occurs. The Department of Revenue may establish by rule
32 procedures for reporting the additional tax due, consistent with ORS chapter 305.

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

37 [(10)] (11) The executor shall identify property for which a credit under this section is claimed,
38 by asset, on a form prescribed by the department and filed with the estate tax return. Transferees
39 of property for which a credit under this section has been claimed shall file a report with the de-
40 partment on a form prescribed by the department. This report shall be filed annually until the re-
41 quirements of subsection [(9)(a)] (10)(a) of this section are met and shall require tracking of each
42 asset for which the credit has been claimed, with confirmation that each asset falls into one of the
43 following categories:

44 (a) The asset is still used in the operation of a farm business, forestry business or fishing busi-
45 ness;

1 (b) The asset has been replaced with property that meets the requirements of subsection
2 [(9)(d)] (10)(d) of this section; or

3 (c) The asset has been subject to a disposition under subsection [(9)] (10) of this section, re-
4 sulting in additional tax.

5 **SECTION 2. The amendments to ORS 118.140 by section 1 of this 2021 Act apply to estates**
6 **of decedents dying on or after January 1, 2022.**

7 **SECTION 3. This 2021 Act takes effect on the 91st day after the date on which the 2021**
8 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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