

House Bill 2893

Sponsored by Representative CATE; Representatives HIEB, LEVY B (Pre-session filed.)

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**.

Allows additional estate tax exclusion of \$1 million. Adjusts for inflation. Increases maximum allowed amount of natural resource property credit against estate tax. Applies to estates of decedents dying on or after January 1, 2024.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to exclusions from estate tax; creating new provisions; amending ORS 118.010 and 118.140;
3 and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 118.**

6 **SECTION 2. (1) In addition to any other amounts allowed under this chapter, an exclu-**
7 **sion in the amount of \$1 million is allowed against the tax due under this chapter.**

8 **(2) The Department of Revenue shall annually adjust the exclusion amount in subsection**
9 **(1) of this section according to the cost-of-living adjustment for the calendar year. The de-**
10 **partment shall make this adjustment by multiplying \$1 million by the percentage, if any, by**
11 **which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive**
12 **months ending August 31 of the prior calendar year exceeds the monthly averaged U.S. City**
13 **Average Consumer Price Index for the 12 consecutive months ending August 31, 2022.**

14 **(3) As used in this section, "U.S. City Average Consumer Price Index" means the Con-**
15 **sumer Price Index for All Urban Consumers (All Items), as published by the Bureau of Labor**
16 **Statistics of the United States Department of Labor.**

17 **SECTION 3. ORS 118.010 is amended to read:**

18 118.010. (1) As used in this section:

19 (a) "Nonresident decedent" means an individual who is domiciled outside of Oregon on the date
20 the individual dies.

21 (b) "Resident decedent" means an individual who is domiciled in Oregon on the date the indi-
22 vidual dies.

23 (2) A tax is imposed upon a transfer of the property of each:

24 (a) Resident decedent; and

25 (b) Nonresident decedent whose estate includes any interest in:

26 (A) Real property located in Oregon; or

27 (B) Tangible personal property located in Oregon.

28 (3) The Oregon taxable estate to be used for purposes of computing the tax imposed under this
29 section shall be the federal taxable estate:

30 (a) Increased by:

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.

(A) The deduction for state estate, inheritance, legacy or succession taxes allowable under section 2058 of the Internal Revenue Code; and

(B) If the decedent is a surviving spouse owning the property at death, the value of the following property unless included in the federal taxable estate:

(i) Property for which a deduction for Oregon special marital property under ORS 118.016 was previously allowed; or

(ii) Property for which a separate Oregon election under section 2056 or 2056A of the Internal Revenue Code was previously allowed; and

(b) Reduced by:

(A) The value on the date of the decedent's death of all Oregon special marital property under ORS 118.013; *[and]*

(B) The exclusion allowed under section 2 of this 2023 Act; and

~~(B)~~ (C) Any other applicable exclusions or deductions.

(4) The tax imposed under this section shall be calculated by applying the rates in the following table. If the Oregon taxable estate is at least the amount in column 1, but less than the amount in column 2, the tax 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
\$1,000,000	\$1,500,000	\$0	10.0%
1,500,000	2,500,000	50,000	10.25%
2,500,000	3,500,000	152,500	10.5%
3,500,000	4,500,000	257,500	11.0%
4,500,000	5,500,000	367,500	11.5%
5,500,000	6,500,000	482,500	12.0%
6,500,000	7,500,000	602,500	13.0%
7,500,000	8,500,000	732,500	14.0%
8,500,000	9,500,000	872,500	15.0%
9,500,000		1,022,500	16.0%

(5) In the case of a resident decedent owning, on the date of the decedent's death, real property located outside Oregon or tangible personal property located outside Oregon, the tax imposed under this section shall be the amount determined under subsection (4) of this section multiplied by a ratio. The numerator of the ratio shall be the sum of the value of the decedent's real property located in Oregon, tangible personal property located in Oregon and intangible personal property. The numerator may not include any intangible personal property subject to a tax imposed, as a result of the death of the decedent, by another state or country. The denominator of the ratio shall be the total value of the decedent's gross estate.

(6) In the case of a nonresident decedent owning, on the date of the decedent's death, real property located in Oregon or tangible personal property located in Oregon, the tax imposed under this section shall be the amount determined under subsection (4) of this section multiplied by a ratio. The numerator of the ratio shall be the sum of the value of the decedent's real property located in Oregon and tangible personal property located in Oregon. The denominator shall be the total value

1 of the decedent's gross estate.

2 (7) Payment, in whole or in part, of estate taxes from funds of an estate or trust on any benefit
 3 subject to tax under ORS 118.005 to 118.540 is not to be considered a further taxable benefit, when
 4 such payment is directed by the decedent's will or by a trust agreement.

5 (8)(a) If the federal taxable estate is determined by making an election under section 2031(c),
 6 2032, 2032A, 2056 or 2056A of the Internal Revenue Code or another provision of the Internal Re-
 7 venue Code, or if a federal estate tax return is not required under the Internal Revenue Code, an
 8 executor may make separate elections for state estate tax purposes under that same provision.

9 (b) An executor may make elections under ORS 118.013 and 118.140 and section 2056 of the
 10 Internal Revenue Code for state estate tax purposes.

11 (c) Elections described in this subsection are irrevocable.

12 **SECTION 4.** ORS 118.140 is amended to read:

13 118.140. (1) As used in this section:

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

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

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

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

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

23 (C) Dairying and selling dairy products;

24 (D) Breeding, stabling or training equines;

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

27 (F) Raising nursery stock;

28 (G) Practicing animal husbandry; or

29 (H) Raising other agricultural or horticultural products.

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

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

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

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

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

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

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

43 (B) Timber or trees.

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

45 (D) Forestry business or farm business equipment.

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

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

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

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

9 (I) An operating allowance.

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

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

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

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

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

21 (b) The credit allowed under this section shall be computed by:

22 (A) Multiplying the tax that would be payable under this chapter absent the credit by a ratio,
 23 the numerator of which is an amount equal to the lesser of the amount of natural resource property
 24 claimed under this section or \$7.5 million, and the denominator of which is an amount equal to the
 25 total adjusted gross estate[.]; **and**

26 **(B) Multiplying the result obtained in subparagraph (A) of this paragraph by 115 percent.**

27 (c) An executor may:

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

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

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

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

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

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

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

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

40 (4) Property that otherwise meets the requirements of this section shall be allowed a credit un-
 41 der this section if:

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

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

45 (c) The property replaces natural resource property, and the replacement property would oth-

1 erwise meet the definition of natural resource property except that it was acquired after the date
2 of the decedent's death but before the estate tax return is filed. In order to qualify under this par-
3 agraph, real property must be replaced with real property.

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

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

9 (b) Real property used in farm use.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (10) The executor shall identify property for which a credit under this section is claimed, by
 21 asset, on a form prescribed by the department and filed with the estate tax return. Transferees of
 22 property for which a credit under this section has been claimed shall file a report with the depart-
 23 ment on a form prescribed by the department. This report shall be filed annually until the require-
 24 ments of subsection (9)(a) of this section are met and shall require tracking of each asset for which
 25 the credit has been claimed, with confirmation that each asset falls into one of the following cate-
 26 gories:

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

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

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

33 **SECTION 5. Section 2 of this 2023 Act and the amendments to ORS 118.010 and 118.140**
 34 **by sections 3 and 4 of this 2023 Act apply to estates of decedents who die on or after January**
 35 **1, 2024.**

36 **SECTION 6. This 2023 Act takes effect on the 91st day after the date on which the 2023**
 37 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**