

A-Engrossed
Senate Bill 498

Ordered by the Senate June 2
Including Senate Amendments dated June 2

Sponsored by Senators HANSELL, SMITH DB; Senators GIROD, WEBER (Presession 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.

Allows exclusion from taxable estate for value of interest in farm, forestry or fishing business.
Applies to estates of decedents dying on or after July 1, 2023.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to estate tax treatment of natural resource property; creating new provisions; amending
3 ORS 118.010; 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) As used in this section:**

7 (a) **"Family member" means a person within the third degree of relation, by blood, mar-**
8 **riage, adoption, civil union or domestic partnership, to another person.**

9 (b) **"Materially participate" means to engage in the active management, as defined in**
10 **section 2032A of the Internal Revenue Code, of a farm business, forestry business or fishing**
11 **business owned by the decedent on the date of the decedent's death. The Department of Re-**
12 **venue may adopt rules to administer this section consistent with this definition.**

13 (c) **"Natural resource property" has the meaning given that term in ORS 118.140.**

14 (2) **An interest in natural resource property is exempt from the tax imposed under this**
15 **chapter if:**

16 (a) **The property is held by a decedent for at least five years before the death of the**
17 **decedent;**

18 (b) **During at least 75 percent of the days of each of the five calendar years immediately**
19 **prior to date of the decedent's death, the decedent or any family member of the decedent**
20 **materially participates in the farm business, forestry business or fishing business;**

21 (c) **The interest is transferred, as a consequence of the decedent's death, to one or more**
22 **family members of the decedent and is subsequently owned by family members of the**
23 **decedent for at least five consecutive calendar years beginning with the calendar year im-**
24 **mediately following the date of the decedent's death; and**

25 (d) **During at least 75 percent of the days of each of the five calendar years immediately**
26 **following the date of the decedent's death, any family member of the decedent materially**
27 **participates in the farm business, forestry business or fishing business.**

28 (3) **An additional tax under ORS 118.005 to 118.540 shall be imposed if:**

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 (a) The natural resource property for which an exemption is allowed under this section
2 is, during the five calendar years following the date of the decedent's death, subsequently
3 sold or otherwise transferred to a person other than a family member of the decedent; or

4 (b) The material participation requirement of subsection (2)(d) of this section is not met.

5 (4) The additional liability imposed under subsection (3) of this section shall be the
6 amount of additional tax that would have been imposed had the transferred property been
7 included in the decedent's taxable estate. Upon receiving notice of a subsequent sale or other
8 transfer of property for which an exemption has been claimed, or upon receiving notice that
9 the material participation requirement of subsection (2)(d) of this section has not been met,
10 the department shall immediately proceed to collect the additional tax.

11 (5) An estate claiming the exemption under this section may not claim the credit allowed
12 under ORS 118.140.

13 (6) The exemption allowed under this section may not exceed \$15 million for the estate.

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

15 118.010. (1) As used in this section:

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

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

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

21 (a) Resident decedent; and

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

23 (A) Real property located in Oregon; or

24 (B) Tangible personal property located in Oregon.

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

27 (a) Increased by:

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

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

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

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

36 (b) Reduced by:

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

39 **(B) The exemption allowed under section 2 of this 2023 Act; and**

40 [(B)] (C) Any other applicable exclusions or deductions.

41 (4) The tax imposed under this section shall be calculated by applying the rates in the following
42 table. If the Oregon taxable estate is at least the amount in column 1, but less than the amount in
43 column 2, the tax is the amount in column 3, increased by the excess above the amount in column
44 1 multiplied by the percentage in column 4:

	1	2	3	4
3	\$1,000,000	\$1,500,000	\$0	10.0%
4	1,500,000	2,500,000	50,000	10.25%
5	2,500,000	3,500,000	152,500	10.5%
6	3,500,000	4,500,000	257,500	11.0%
7	4,500,000	5,500,000	367,500	11.5%
8	5,500,000	6,500,000	482,500	12.0%
9	6,500,000	7,500,000	602,500	13.0%
10	7,500,000	8,500,000	732,500	14.0%
11	8,500,000	9,500,000	872,500	15.0%
12	9,500,000		1,022,500	16.0%

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

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

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

32 (8)(a) If the federal taxable estate is determined by making an election under section 2031(c),
 33 2032, 2032A, 2056 or 2056A of the Internal Revenue Code or another provision of the Internal Re-
 34 venue Code, or if a federal estate tax return is not required under the Internal Revenue Code, an
 35 executor may make separate elections for state estate tax purposes under that same provision.

36 (b) An executor may make elections under ORS 118.013 and 118.140 **and section 2 of this 2023**
 37 **Act** and section 2056 of the Internal Revenue Code for state estate tax purposes.

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

39 **SECTION 4. Section 2 of this 2023 Act and the amendments to ORS 118.010 by section 3**
 40 **of this 2023 Act apply to estates of decedents dying on or after July 1, 2023.**

41 **SECTION 5. This 2023 Act takes effect on the 91st day after the date on which the 2023**
 42 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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