

Enrolled Senate Bill 498

Sponsored by Senators HANSELL, FINDLEY, SMITH DB, Representatives LEVY B, MANNIX; Senators GIROD, HAYDEN, MEEK, WEBER, Representatives BOSHART DAVIS, CATE, CRAMER, DIEHL, HIEB, RESCHKE, SMITH G, WRIGHT (Presession filed.)

CHAPTER

AN ACT

Relating to estate tax treatment of natural resource property; creating new provisions; amending ORS 118.010; and prescribing an effective date.

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

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

SECTION 2. (1) As used in this section:

(a) “Family member” means a person within the third degree of relation, by blood, marriage, adoption, civil union or domestic partnership, to another person.

(b) “Materially participate” means to engage in the active management, as defined in section 2032A of the Internal Revenue Code, of a farm business, forestry business or fishing business owned by the decedent on the date of the decedent’s death. The Department of Revenue may adopt rules to administer this section consistent with this definition.

(c) “Natural resource property” has the meaning given that term in ORS 118.140.

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

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

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

(c) The interest is transferred, as a consequence of the decedent’s death, to one or more family members of the decedent and is subsequently owned by family members of the decedent for at least five consecutive calendar years beginning with the calendar year immediately following the date of the decedent’s death; and

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

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

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

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

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

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

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

SECTION 3. ORS 118.010 is amended to read:

118.010. (1) As used in this section:

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

(b) "Resident decedent" means an individual who is domiciled in Oregon on the date the individual dies.

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

(a) Resident decedent; and

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

(A) Real property located in Oregon; or

(B) Tangible personal property located in Oregon.

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

(a) Increased by:

(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 exemption 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 of the decedent's gross estate.

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

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

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

(c) Elections described in this subsection are irrevocable.

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

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

Passed by Senate June 20, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House June 23, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State