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April 2, 2025

Chair Representative Nancy Nathanson
and Members of the Oregon House Committee on Revenue

Re: House Bill 3630
ORS 118.145 Technical Corrections

Dear Chair Representative Nathanson and Members of the Oregon House Committee on Revenue:

I am an attorney. I have practiced law for 34 years exclusively in the area of trusts and estates. I am the current chair of the Oregon State Bar Estate Planning and Estate Administration Section, although I am not appearing in that capacity today. I am appearing as a private citizen. Many of my clients are farmers who have been farming for more than three generations in the Willamette Valley. They drive good tractors and crummy pickup trucks. I support House Bill 3630. HB3630 clarifies the ambiguities in the existing law to ensure that the legislative intent is able to be implemented by the Oregon Department of Revenue and taxpayers.

I was the chair of the attorney and CPA workgroup who came together to try and understand the 2024 SB498. The workgroup wanted to clearly understand and use the new statute properly. In the process of working with the law, many practical questions arose. HB3630 is a response to some of the questions that came out of the workgroup. HB 3630 makes the law easy to apply, reliable for true family farms, forestry and fisherman, and clarifies questions for Oregon Department of Revenue and Oregon taxpayers.

There are technical issues in the statute. The legislative intent seems to be clear. The goal was to bring in the concepts of the Natural Resource Credit for the Natural Resource Exclusion. However, the details make it difficult. ODR, attorneys and CPA's could see what was intended, but the statute needs to give ODR the actual authority to do what was intended. HB3630 does that.

HB3630 does the following:

1. Ensures that ownership in entities like LLC's and family trusts that protect the farm are qualified. This concept is included for the natural resource credit under ORS 118.140(8), but it is ambiguous whether it is included for the natural resource exclusion in ORS 118.145(1)(c). It just is not clear.
2. Protects inter family transfers. For example, if a husband dies year one and leaves it all to a wife, then under HB3630 the wife is treated as the owner for the husband and wife's holding period if the wife dies less than a few years after the husband. This allows husbands and wives to pass the farm, forest or fishery to the children if they die within five years of each other. It is clearly allowed under the natural resource

- credit in ORS 118.140(2)(d), but it is unclear whether it is included under ORS 118.145(1)(c). It is just ambiguous.
3. Clarifies that the holding periods and the treatment of replacement property are similar to the Natural Resource Credit under ORS 118.140(4)(c). For example, if a farmer owns a tractor and trades in the old tractor for a newer tractor within five years before death, then the replacement tractor still qualifies for the exclusion even though it has not been directly owned for five years pre death. Similarly, if the tractor owned when dad/farmer dies needs replaced within the 5-year holding period after dad's death, then the replacement of the old tractor will not create a disqualifying event. It appears the legislature intended to use the same rule for the credit and the exemption, but the statute is silent for the exemption.
 4. Use the active management days as the days which are the industry standards for Fishing, Forestry and Farming. The new Oregon Administrative Rule allows for this. It would be helpful to have the statute unambiguously incorporate this.

It is important to be practical and understand how the law looks in practice. Attached to this letter are the following:

- A. A copy of the LRO Summary of the original SB498. You can see the technical corrections do not change the substance of the law.
- B. A copy of the new Oregon Administrative Rule 150-118-0115 implementing the Natural Resource Exclusion.
- C. A copy of the Oregon Department of Revenue Sch OR NRE which is the tax form that is filed to use the exemption.

HB3630 keeps the changes simple and straight forward. It clarifies what appears to be the legislature's intent, but it is not clear. HB3630 resolves questions for the taxpayer and the Oregon Department of Revenue. It is good public policy to have clear and unambiguous rules.

Sincerely,

HEATHER O. GILMORE

HG: gh

Estate Tax Natural Resource Credit/Exclusion

Comparison of Current Law Credit to SB 498-1

	Natural Resource Credit (Current Law)	SB 498-1
Natural Resource Property Definition	ORS 118.140	ORS 118.140
Definition of Family Member	Internal Revenue Code Section 2032A Ancestors/descendants, descendants of parents	3rd Degree of Relation
Maximum Value Of Natural Resource Property	7.5 million	15 million
Maximum Value of Estates	15 million adjusted gross estate	No limit
Minimum portion of estate that is Natural Resource Property	50%	No limit
Ownership Requirement	5 of 8 years prior to death, and 5 of 8 years after death	1 year prior to death, and 5 years after death
Family Member Material Participation	5 of 8 years prior to death, and 5 of 8 years after death	None
Form of Tax Reduction	Tax is reduced in proportion to Natural Resource Property value as fraction of total estate value	Tax is calculated after subtracting Natural Resource Property value from taxable estate value
Recapture	Portion of 5 years not in use multiplied by Difference in Tax	Difference in Tax

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Department of Revenue

Chapter 150

Division 118 INHERITANCE TAX

150-118-0115

Natural Resource Property Exemption

(1) Definitions. The following definitions apply for purposes of ORS 118.145:

(a) "Domestic partner" means an individual who has entered into a domestic partnership as defined in ORS 106.310. Per the general applicability provision of ORS 106.340, "spouse" as used in these rules includes domestic partner.

(b) "Material participation" means active management as defined by IRC 2032A(e)(12) and associated Treasury Regulations as of December 31, 2010.

(c) "Qualifying family member" means a person within the third degree of relation to the decedent, by blood, marriage, adoption, civil union, or domestic partnership, and includes:

(A) A great-grandparent, grandparent, or parent of the decedent;

(B) The spouse of the decedent;

(C) A great-grandchild, grandchild, or child of the decedent;

(D) An aunt or uncle of the decedent;

(E) A sibling, niece or nephew of the decedent; and

(F) The spouse of any family member described in paragraphs (A) or (C) to (E).

(2) Estates of decedents who die on or after July 1, 2023, may claim the exemption under ORS 118.145 only for natural resource property located in Oregon.

(3) An exemption under ORS 118.145 may be claimed for natural resource property held indirectly by a decedent or qualifying family member through a trust, partnership, LLC, or corporation. The trust, partnership, LLC or, corporation must be owned only by the decedent and any qualifying family members during the five consecutive years immediately preceding the decedent's death and during the five consecutive years beginning with the calendar year that begins immediately following the decedent's death.

(4) Transfer of ownership of natural resource property between qualifying family members does not cause natural resource property to lose its eligibility for exemption under ORS 118.145 if all other requirements of ORS 118.145 and this rule continue to be met.

(5) Material participation.

(a) To qualify under ORS 118.145, the decedent or a qualifying family member of the decedent must materially participate in the management of the business associated with the natural resource property. The duties of material participation may not be delegated to a person who is not a qualifying family member, except when the qualifying family member is an eligible qualified heir as defined by IRC 2032A(c)(7)(C), as in effect on December 31, 2010, in which case the material participation duties may be delegated to a fiduciary of the eligible qualified heir.

(b) The decedent or any qualifying family member must engage in active management in the business for at least 75 percent of the time during the calendar year when decisions described in IRC 2032A(e)(12) are ordinarily made for the farming, forestry, or fishing business.

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Example 1: For 50 years, Stubb ran a fishing business, with a homeport at Newport, devoted solely to halibut fishing off the Oregon Coast. This fishing business required active management decisions to be made only during six months of the year. Stubb made all decisions described in IRC 2032A(e)(12). Ahab, Stubb's nephew, took over the fishing business after Stubb's death in January 2025 and made all active management decisions in the relevant six months of the year during each of the five calendar years immediately following the year of Stubb's death. Both Stubb and Ahab materially participated as required by ORS 118.145 and this rule because each made all the active management decisions during the six months of each calendar year that management decisions were required for the fishing business.

Example 2: Fred is a wheat farmer in Eastern Oregon. Fred's business requires active management decisions to be made throughout the calendar year. Fred makes active management decisions an average of five out of every 10 days because the conduct of Fred's wheat farming business requires active management decisions to be made only on those days. Fred meets the requirement to materially participate at least 75 percent of the time because Fred makes all active management decisions that need to be made over at least 75 percent of the calendar year.

(c) Material participation by a decedent and each qualifying family member is evaluated separately for each family member and may not be combined for purposes of determining the percentage under subsection (b) of this section. However, more than one family member may materially participate at any given time.

Example 3: Mary and Elizabeth inherit a large cattle ranch from their father Henry. The cattle ranch requires year-round decision-making. Mary makes all the management decisions for the ranch business for the first six months of the year and Elizabeth makes all the management decisions for the remaining six months of the year. Material participation requirements are not met because neither Mary nor Elizabeth make management decisions for at least 75 percent of the calendar year.

Example 4: Mary and Elizabeth generally share the decision making for the cattle ranch business during the entire calendar year, so they each independently meet the requirements for material participation. One year, Mary decides to go on vacation for six months of the year. The material participation requirements are still met because Elizabeth is making management decisions for at least 75 percent of the year.

(d) Active management decisions that demonstrate material participation include the following: inspecting growing crops, animals, on-going fishing operations, forests, or equipment; reviewing and approving annual crop plans in advance of planting; making a substantial number of the management decisions of the business operation; approving expenditures for other than nominal operating expenses in advance of the time the amounts are expended; deciding what crops to plant or how many cattle to raise; determining what fields to leave fallow; determining what kind of fish to harvest and the equipment needed to harvest the fish; determining where and when to market crops and other business products; determining how to finance business operations; and determining what capital expenditures the trade or business should make.

(6)(a) A qualifying family member who inherits the natural resource property or who obtains an interest in the property from another qualifying family member must attest, on a form prescribed by the department, that the family member acknowledges and understands the requirements prescribed by ORS 118.145 and this rule to claim the natural resource property exemption.

(b) The qualifying family member must also agree to pay any additional tax owing if the requirements for exemption under ORS 118.145 and this rule are no longer met.

(c) A qualifying family member must file a report each year on a form prescribed by the department reporting whether the exemption requirements under ORS 118.145 and this rule continue to be met during the relevant five-year period.

[**Publications:** Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

Statutory/Other Authority: ORS 305.100 & 118.145

Statutes/Other Implemented: ORS 118.145

History:

REV 45-2024, adopt filed 08/28/2024, effective 09/01/2024

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2024 Schedule OR-NRE

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(Rev. 05-29-24, ver. 01)



Office use only

Oregon Natural Resource Exemption

Submit original form—do not submit photocopy.

Decedent first name

Initial

Decedent last name

Estate

Decedent Social Security number (DSSN):

Part 1. Qualifying natural resource property. The property must be in Oregon per ORS 118.145(1)(c). Check all boxes below that apply to the natural resource property:

- ☐ Farm use defined in ORS 308A.056

☐ Farm use defined in ORS 308A.250
- ☐ Forestland defined in ORS 321.201

☐ Forestland defined in ORS 308A.250
- ☐ Property used in commercial fishing business, as defined by IRC 1301(b)(4), and licensed under ORS 508
- ☐ Property of a commercial fishing business licensed under ORS chapter 508, that is used to process and sell the catch to consumers, including a restaurant with seating capacity of less than 15

The exemption isn't valid unless parts 1–4 of this schedule are completed:

a. Part 4 must be signed by each qualified heir with an interest in the natural resource property; and

b. The completed Schedule OR-NRE is filed with Form OR-706, Oregon Estate Transfer Tax Return, 150-104-001.

Part 2. Description of property. List all natural resource property owned by the decedent at death, even if you're not claiming the natural resource exemption for all natural resource properties. All properties listed below must also be listed on the applicable schedules filed with Form OR-706. Complete all columns.

- Include a legal description of all property described in column B.

• Include copies of fee appraisals used to determine date of death property values listed in column C and any other documents used to establish date of death value.

A. Schedule and item no. from Form OR-706	B. Description of the qualifying property and date when property was acquired	C. Fair market value as reported on Form OR-706 schedules	D. Value of qualifying property on which the exemption is calculated
		.00	.00
		.00	.00
		.00	.00
		.00	.00
Column totals		.00	.00

Part 3. Family member(s). Identify each family member receiving an interest in property upon which the exemption is calculated. "Family member" is a member of a decedent's family within the third degree of relation to the decedent as defined in ORS 118.145(1)(a) and corresponding administrative rule. Include additional pages if more lines are needed. The executor/administrator of this estate will provide a complete copy of this Schedule OR-NRE to each of the family member(s) identified below.

1. First name

Initial

Last name

SSN

FEIN

Entity

Address

City

State

ZIP code

Relationship to decedent

FMV or heir's portion of qualified property

2. First name

Initial

Last name

SSN

FEIN

Entity

Address

City

State

ZIP code

Relationship to decedent

FMV or heir's portion of qualified property

2024 Schedule OR-NRE

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Oregon Department of Revenue



Decedent first name	Initial	Decedent last name	Estate	Decedent SSN:
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Part 4. Valid election. Natural resource property exemption.

We (list the family members having an interest in the natural resource property)

are the family members having interest in the natural resource property. We approve of the election made by

executor/administrator of the estate of

As an heir of the natural resource property for which the exemption under ORS 118.145 is being claimed, I understand that ORS 118.145 requires the following conditions be met:

1. The property must be held by the decedent for five years prior to death.
2. The decedent, or any family member of the decedent, must have actively managed the farming, fishing, or forestry business 75 percent of the days during the five calendar years immediately prior to the decedent's death.
3. The property must pass to one or more family members on the decedent's death. A family member or members must own the property for at least five consecutive calendar years after the decedent's death, beginning with the calendar year immediately following the decedent's death.
4. One or more family members must actively manage the farming, fishing, or forestry business on 75 percent of the days during each of the five calendar years immediately after the decedent's death.
5. The value of the exemption may not exceed \$15 million.
6. If any interest in the natural resource property is sold or transferred to a non-family member, the department shall proceed to collect from the inheriting family members the additional tax that would have been due if the exemption had not been claimed.
7. If the active management requirements are not met, either prior to or after the decedent's death, the department shall proceed to collect from the inheriting family members the additional tax that would have been due if the exemption had not been claimed.
8. The persons who inherit the natural resource property are liable for the additional tax due if ORS 118.145 conditions are not met.
9. The estate may not claim both the ORS 118.145 exemption and the ORS 118.140 tax credit.

By signing this acknowledgment, I agree that I will be liable for any additional tax due under ORS 118.145 in an amount up to the full value of my direct or indirect interest in the natural resource property if all of the conditions for eligibility for the exemption are not met. The signature of each family member inheriting an interest in the natural resource property is required.

(Signature of family member)	Date (MM/DD/YYYY)
(Signature of family member)	Date (MM/DD/YYYY)
(Signature of family member)	Date (MM/DD/YYYY)
(Signature of family member)	Date (MM/DD/YYYY)
(Signature of family member)	Date (MM/DD/YYYY)

Include additional pages if more signature lines are needed. If all of the family members can't sign the same page, it is acceptable to have a separate signature page for each family member.