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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
10/31/2025 12:41 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend administrative rule pertaining to the estate transfer tax natural resource property exemption.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/17/2025 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
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HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/17/2025
TIME: 10:00 AM
OFFICER: Duane Bales

REMOTE HEARING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 669-254-5252
SPECIAL INSTRUCTIONS:
Join by video: https://www.zoomgov.com/j/1608551811
Meeting ID: 160 855 1811
Passcode: 058472

Join by phone: +1- 669-254-5252
Meeting ID: 160 855 1811

NEED FOR THE RULE(S)

This administrative rule is being amended to incorporate the provisions of HB 3630 (2025) and SB 485 (2025) and detail when the changes contained in HB 3630 (2025) and SB 485 (2025) apply to estates of taxpayers.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

The department relied on Oregon Revised Statutes 305.100, 118.010, 118.140, 118.145, 118.160(2), SB 485 (2025 Regular Session), and HB 3630 (2025 Regular Session) which are available online at: https://www.oregonlegislature.gov/bills_laws/pages/ors.aspx or from the agency.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This rule is not expected to impact racial equity in this state. The rule impacts all estates that want to claim the natural resource property exemption.

FISCAL AND ECONOMIC IMPACT:

When the Legislature passed SB 485 (2025) and HB 3630 (2025), the Legislative Fiscal Office stated that the bills would have a minimal fiscal impact on state and local government. There is no anticipated additional fiscal or economic impact for this rule.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) There is no impact to state agencies or the counties, and a de minimis impact on the public. The rule is intended to be clarifying or interpretive in nature and does not affect the cost to comply.
(2)(a) According to the federal Small Business Administration , Oregon has approximately 417,747 small businesses with fewer than 500 employees, which employs approximately 53.4% of the state's workforce. Based on this information and information from the Oregon Employment Department Withholding Employer file reporting number of employees, we estimate that 134,543 small businesses in the state of Oregon, with fewer than 50 employees, could be subject to these rules. It is anticipated that small businesses, such as an LLC, partnership, or trust, may be impacted by these rules if the small business is included in an estate of a decedent who dies on or after July 1, 2025, or January 1, 2026.
(b) The department anticipates a de minimis effect on those small businesses subject to the rule because the rule is intended to be clarifying or interpretive in nature. Taxpayers will be required to keep records to validate their eligibility for the exemption. However, the administrative activities or costs are expected to be minimal.
(c) None known.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Department of Revenue reached out to representatives of small businesses through a Rules Advisory Committee regarding how this proposed rule would impact their clients.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 150-118-0115

RULE SUMMARY: Amend estate transfer tax rule to reflect modifications to natural resource property exemption resulting from legislation passed in the 2025 Oregon Legislative Session.

CHANGES TO RULE:

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) "Eligible business entity" means a business entity that is owned 100 percent by qualifying family members or

eligible entities, including, but not limited to corporations, partnerships, limited liability companies, and sole proprietorships. ¶
(c) "Eligible entity" means an eligible business entity or an eligible trust.¶
(d) "Eligible trust" means a trust or subtrust whose permissible distributees are all qualifying family members or eligible entities.¶
(e) "Material participation" means active management as defined by IRC 2032A(e)(12) and associated Treasury Regulations as of December 31, 2010.¶
(~~c~~f) "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).¶
(g) "Relevant business days" means those days during which a person that is engaged in active management of natural resource property would customarily be expected to exercise significant management activities, given the nature of the industry in which the business is operating.¶
(h) "Small forestland owner" means a decedent who owns, throughout the five years immediately prior to the date of the decedent's death, forestland that is at least 10 acres but fewer than 5,000 acres.¶
(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~~by an eligible entity. The eligible entity must qualify as an eligible business entity or eligible trust. The eligible entity may hold the natural resource property directly or indirectly through another eligible entity. The value of an eligible entity is included in the exemption only to the extent the value of the eligible entity is attributable to natural resource property used in a farm, fishing or forestry business owned ~~only~~ by the ~~decedent and any qualifying family members dur~~entity. ¶
Example 1: The decedent was the sole lifetime beneficiary of a trust that is included in~~g~~ the ~~five consecutive years immediately preceding~~decedent's estate. The trust held two assets at the time of the decedent's death: ~~and during the five con~~ large portfolio of marketable secu~~tive years beginning with the calendar year that begins immediately following the decedent's death~~rities, and a 100 percent membership interest in FFF, LLC, a limited liability company. FFF, LLC's sole assets are natural resource property that is used in a farming, forestry, or fishing business. Assuming that all other requirements of ORS 118.145 and this rule are met, the decedent's estate can exclude up to $15 million of the value of that portion of the trust interest that is attributable to FFF, LLC.¶
(4) Transfer of ownership of natural resource property between qualifying family members and eligible business entities 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. If an interest in natural resource property is transferred by a qualified family member or an eligible business entity to a qualified family member or an eligible business entity, the interest in natural resource property shall be deemed to have been owned by the transferee during the time that the interest in natural resource property was owned or deemed to have been owned by the transferor.¶
(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 materially participate by engage~~in~~ing in active management ~~in the~~of the farming, forestry, or fishing 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.~~relevant business days during the calendar year. ¶
Example ~~1~~2: 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~~3: 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~~relevant business days of the calendar year.¶
(c) A small forestland owner is not subject to the requirement to materially participate for at least 75 percent of the relevant business days during the calendar year. A small forestland owner must actively manage the small forestland property through appropriate or customary silvicultural or management activities given the current phase in the forest management cycle for the small forestland property. A small forestland owner must maintain documentation of these silvicultural or management activities. This paragraph applies to estates of a decedent who dies on or after January 1, 2026.¶
Example 4: Kingston, the decedent, owned a tree farm. He contracted with Lily, a professional forester, to manage the property for him as Kingston, a doctor, lived and worked in a town 50 miles away. The activities of Lily are not considered in determining whether Kingston materially participated in the tree farm operation. During the 5 years preceding Kingston's death, there was no need for frequent inspections of the property or consultation concerning it, given that most of the land had been reforested and the trees were in the beginning stages of their growing cycle. However, Lily annually submitted for Kingston's approval a proposed plan for the management of the property over the next year. Kingston actively participated in making important management decisions, such as where and whether a pre-commercial thinning should be conducted, whether the timber was adequately protected from fire and disease, whether fire lines needed to be plowed around the new trees, and whether boundary lines were properly maintained around the property. Kingston inspected the property at least twice every year and assumed financial responsibility for the expenses of the tree farm. Kingston also reported his income from the tree farm as earned income for purposes of the tax on self-employment income. Over a period of several years, Kingston had harvested and marketed timber from certain tracts of the tree farm and had supervised replanting of the areas where trees were removed. Kingston's history of harvesting, marketing, and replanting of trees showed him to be in the business of tree farming rather than merely passively investing in timber land. In light of all these facts, Kingston is deemed to have materially participated in the farm as his personal involvement amounted to more than managing an investment in natural resource property. If the history of Kingston's tree farm did not show such an active business operation, however, the tree farm would not qualify for the natural resource property exemption.¶
(d) 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~~5: 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 Elizbeth make management decisions for at least 75 percent of the relevant business days of the calendar year.¶
Example ~~4~~6: 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~~e) Active management decisions that demonstrate material participation include, but are not limited to, 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~~f) A disposition of the natural resource property occurs if the material participation requirements are not met. Whether the material participation requirement has been met for a calendar year will be determined at the end of the calendar year. If the material participation requirement is not met during the calendar year, the

disposition of the natural resource property is deemed to occur December 31 of the calendar year in which the disposition occurs.¶
(g) The decedent or qualifying family member must maintain documentary evidence of all decisions described by IRC 2032A(e)(12) related to the conduct of the natural resource business. The documentary evidence should record the involvement of the decedent or qualifying family member. Examples of documentary evidence of decision-making includes, but is not limited to, the following: a contemporaneous log, contemporaneous business communication, contracts, legal documents, contemporaneous minutes, and statements related to the natural resource business made under oath in a court of law. Documentary evidence of material participation may be evaluated with reference to industry standards to determine if the material participation requirement has been met. ¶
(6)(a) Natural resource property previously used as a basis to claim the exemption under ORS 118.145 may be replaced with other natural resource property and not result in a disposition subject to additional tax, subject to following other applicable statutory requirements and the following:¶
(A) If the relinquished property is real property, the replacement property must be real property acquired within one year of the transfer of the relinquished property, or within two years of the transfer in the case of property that is involuntarily converted within the meaning of section 1033 of the Internal Revenue Code;¶
(B) Personal property is considered replaced by other natural resource property by holding and using the proceeds from the sale of personal property in an operating allowance as described in ORS 118.140(1)(j) and subject to the limitation at ORS 118.140(2)(a), or by acquiring other natural resource property within 180 days of the transfer of the relinquished property¶
(C) the replacement property must qualify as natural resource property and must be used in the farming, forestry or fishing business promptly after its acquisition.¶
(b) If the purchase price of the replacement property is less than the gross sales price of the relinquished property less selling expenses (net sales proceeds), the amount that is treated as a disposition subject to additional tax is the gross sales price multiplied by a fraction that is equal to the difference between the net sales proceeds and the purchase price of the replacement property, divided by the net sales proceeds. Gross sales include any amount of money and fair market value of property received, as defined by IRC 1011(b) and associated regulations in effect on January 1, 2026, from the sale of or other disposition of property.¶
(c) To the extent that the replacement is not treated as a disposition subject to additional tax, the replacement property shall be deemed to have been owned by the transferor during the time that the transferred property was held or deemed to have been owned by the transferor, regardless of whether the transfer occurs before or after the death of the decedent.¶
(7) The value of the exemption allowed under ORS 118.145 must be excluded from the numerator and denominator of the ORS 118.010(5) and (6) apportionment calculations.¶
(8)(a) A person who inherits an interest in natural resource property from the decedent or is a recipient of a transfer of an interest in natural resource property from a qualifying family member must attest, on a form prescribed by the department, that the person 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~~owner of the natural resource property at the time of the disposition or disqualifying event must 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.¶
(9) The amendments to this rule effective on January 1, 2026, except as stated in paragraph 5(c), apply to estates of decedents dying on or after July 1, 2025.¶
[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