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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
06/28/2024 12:22 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adopt a new rule pertaining to the estate transfer tax exemption for natural resource property.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/17/2024 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:
Katie McCann
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HEARING(S)

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

DATE: 07/17/2024
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 ZoomGov Meeting by video:
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Meeting ID: 160 639 8628
Passcode: 523616

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NEED FOR THE RULE(S)

This administrative rule is being adopted to explain when ownership and material participation requirements are met for the estate tax exemption for natural resource property.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

The department relied on Oregon Revised Statutes 305.100, 118.140, 118.145, and SB 498 (2023 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

These rules are not expected to impact racial equity in this state. The rules impact all estates that want to claim the natural resource property exemption.

FISCAL AND ECONOMIC IMPACT:

When the Legislature passed SB 498 (2023), the Legislative Fiscal Office stated that the bill would have a minimal fiscal impact on state and local government. There is no anticipated additional fiscal or economic impact for these rules.

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 local governments, and a de minimis impact on the public. The rules are intended to be clarifying or interpretive in nature and do not impose a cost to comply.
(2)(a) According to the federal Small Business Administration , Oregon has approximately 397,422 small businesses with fewer than 500 employees, which employs approximately 54.1% of the state's workforce. This rule applies to decedents who own natural resource property, some of which may be small businesses, however the application of the rule is on the estate of the decedent.
(b) The department anticipates a de minimis effect on those small businesses subject to the rules because the rules are intended to be clarifying or interpretive in nature. Taxpayers will be required to keep records to validate their eligibility for the exemption prior to the date of death. 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):

As part of its Rules Advisory Committee (RAC), the Department of Revenue received input from representatives of the Oregon State Bar, the Oregon Small Woodlands Association, Oregon Association of Nurseries, and the National Federation of Independent Business (NFIB) regarding how these proposed rules would impact their clients, some of whom are small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 150-118-0115

RULE SUMMARY: The purpose of the rule is to explain when ownership and material participation requirements are met for the estate tax exemption for natural resource property.

CHANGES TO RULE:

<u>150-118-0115</u>
<u>Natural Resource Property Exemption</u>
<u>(1) Definitions. The following definitions apply for purposes of ORS 118.145:¶</u>

(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 an interest in natural resource property held indirectly through a trust, partnership, LLC, or corporation. Any trust, partnership, LLC, or corporation holding the interest in the natural resource property must be owned by the decedent during the five consecutive years immediately preceding the decedent's death and must be owned by one or more qualifying family members 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.¶
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 Elizbeth 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