

150-118.140

Inheritance Tax Credit for Natural Resource or Commercial Fishing Property

(1) Definitions. The following definitions apply for purposes of ORS 118.140 and this rule:

(a) “Active Management” is defined by Internal Revenue Code (IRC) Section 2032A(e)(12) and means the making of the management decisions of a business (other than the daily operating decisions). Treasury Regulations 20.2032A-3(e) through (g) provide additional examples of active management.

(b) “Adjusted gross estate” means the value of the gross estate reduced by the sum of the amounts allowable as a deduction under either IRC sections 2053 or 2054, or both. The amount is determined on the basis of the facts and circumstances in existence on the date (including extensions) for filing the return of tax imposed by this chapter (or, if earlier, the date on which the return is filed).

(c) “Domestic partner” means an individual who has entered into a domestic partnership as defined in Chapter 99, Oregon Laws 2007.

(d) “Member of family” means, with respect to a decedent:

(A) An ancestor of the decedent;

(B) The spouse or domestic partner of the decedent;

(C) A lineal descendant of the decedent, of the decedent’s spouse or domestic partner, or of a parent of the decedent, or

(D) The spouse or domestic partner of any lineal descendant described in paragraph (C).

For purposes of the preceding sentence, a legally adopted child of an individual is treated as the child of such individual by blood.

(2) Federal Elections Binding for Oregon. Because ORS 118.007 ties Oregon inheritance tax law to the Internal Revenue Code as it existed on December 31, 2000, elections that were available on December 31, 2000, and that are made for federal estate tax purposes are binding for Oregon inheritance tax purposes unless specifically provided otherwise by statute or rule.

Example 1: Edwina died on July 1, 2007; her husband survives her. The value of her gross estate is \$8,000,000, made up entirely of natural resource property. For federal estate tax purposes, the estate elects a marital deduction of \$6,000,000. The unified credit offsets tax otherwise due on the balance of the estate, \$2,000,000, and there is no federal tax due. For Oregon purposes, the \$6,000,000 marital deduction election applies. In addition, the estate may elect to establish a Special Oregon Marital property trust as provided in ORS 118.016 to shelter \$1,000,000 of the value of the estate (the difference between the \$1,000,000 Oregon taxable estate and the \$2,000,000 federal taxable estate). Alternatively, the estate may use any portion of the \$2,000,000 in value to claim a natural resource credit against tax imposed on the estate.

(3) Active Management by a Member of Family. If natural resource property or a fishing business is owned indirectly by the decedent or a member of the family, the following requirements must be met to qualify for a credit under ORS 118.140:

(a) At least one member of the family must engage in active management of the natural resource property or fishing business after the transfer.

(A) The determination of whether active management occurs is factual, and the requirement can be met even though no self-employment tax is payable by the member of

the family with respect to income derived from the farm or other trade or business operation.

(B) Among the farming activities, various combinations of which constitute active management, are inspecting growing crops, reviewing and approving annual crop plans in advance of planting, making a substantial number of the management decisions of the business operation, and approving expenditures for other than nominal operating expenses in advance of the time the amounts are expended.

(C) Examples of active management decisions are what crops to plant or how many cattle to raise, what fields to leave fallow, where and when to market crops and other business products, how to finance business operations, and what capital expenditures the trade or business should make.

(b) An otherwise qualifying natural resource property or fishing business qualifies for the credit without active management if it is the subject of a net cash lease to or from the decedent or a member of the family.

(c) The property also qualifies for the credit if it is held in trust for a member of the family or if the property is transferred directly to a member of the family.

(d) If an indirect interest is held in trust for a member of the family, it qualifies as long as a member of the family is engaged in the active management of the business.

(e) The trustee does not have to be engaged in active management if these requirements are met.

(4) **Prior Use Requirement.** An estate that otherwise qualifies for the fishing business property credit is not required to meet the aggregate use period of five out of eight years ending on the date of the decedent's death. Active management is not required for natural resource property prior to death.

Example 2: Kelly died on April 3, 2007. Kelly owned and operated Kelly's Fishing Boat business starting in February 2005. The estate files the tax return with the department on June 17, 2008, claiming the fishing business credit, and pays the inheritance tax due. The estate may claim the fishing business credit providing all other requirements to qualify for the credit are met.

(5) **Interest and Penalty.** The department will not charge penalty or interest if an estate claims a natural resource property or fishing business property credit or if the estate is directly affected by the changes made to ORS 118.140 by chapter 28, Oregon Laws 2008 and the return is filed and tax is paid before September 1, 2008. This provision applies to estates of decedents dying on or after January 1, 2007, and before December 1, 2007.

Example 3: John died on June 23, 2007. The regular due date of the inheritance tax return is March 23, 2008. The estate files the return with the department on August 29, 2008, claiming the natural resource credit, and pays the inheritance tax due. Because the return is filed and the tax is paid before September 1, 2008, the interest and penalty which would otherwise result from late filing and late payment is cancelled.

Stat. Auth.: ORS 305.100, 118.140

Stats. Implemented: ORS 118.140