

Oregon's Estate Tax Law: Basic Facts



Provisions for Most Families

Oregon's basic estate tax applies only to those estates valued at over \$1 million. That is \$1 million - net of debt, funeral expenses, health care expenses, accounting & legal fees, spousal benefit, and charitable donations - passed to heirs tax free.

For taxable estates, the tax rate increases with the size of the estate, from 10 to 16%. The rate on any value above one million is determined by the following chart:

(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:

| <u>1</u> | <u>2</u> | <u>3</u> | <u>4</u> |
|-----------|-----------|-----------|----------|
| 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% |

In a case of a couple, the first to die can pass their estate to their spouse, and upon the death of the spouse, both \$1 million exemptions can be used.

Special Provisions for Family Businesses

We note that at the federal level, when the estate tax exemption was \$1 million, only 1% of taxable estates actually consisted largely of family-held businesses, and only 3% consisted largely of farms according to Congressional Budget Office analysis.

This would suggest that on average, only 29 of Oregon's 730 estates owing taxes each year are largely business or farm/forest estates. CBO also found that only 0.3 percent of these taxable estates lacked sufficient liquid assets (like cash, stocks, and bonds) to pay the estate tax. These few estates of business owners and farmers lacking liquid assets are protected by the rule allowing them 14 years to pay the tax so that it is not necessary to sell land and other fixed business assets to pay the estate tax.

Following federal law, there are a number of special provisions for estates that include family owned businesses and farms. These are available for the Oregon estate tax as well. Among the most used are:

- Discounts on the value of the assets because of multiple owners. Discounts range from 20-70%.
- Valuing land at the current use, not what it might be worth for development or other purposes.
- Up to 14 years to pay the tax, thus negating the necessity of selling assets to pay tax.
- Estate appraisals of business, farm and personal assets below real market value.
- Estates with farm/forest land taking advantage of conservation easements to lower values.

Oregon's Additional Provisions for Farm, Forest and Fishing Families: the Natural Resource Credit

In recent years, the Oregon legislature has passed additional special provisions for farm, forest and fishing families which mean that only very wealthy Oregon natural resource families will own any Oregon estate tax.

Of course, if the estate of each parent is below \$1 million, there will be no tax. But for each farm, forest or fishing individual with an estate valued at \$15 million or less -- with at least ½ the estate in natural resource property -- the natural resource assets will pass tax free if valued at less than \$7.5 million and with reduced taxes if valued between \$7.5 and \$15 million.

The law says you figure out your tax bill then take this natural resource credit. The credit is a proportion that is applied to the tax due. It is figured in the following way:

(2)(a) An estate shall be allowed a credit for the value of natural resource property claimed. Any operating allowance claimed under this section may not exceed the lesser of \$1 million or 15 percent of the total value of natural resource property claimed, not including the operating allowance.

(b) The credit allowed under this section shall be computed by multiplying the tax that would be payable under this chapter absent the credit by a ratio, the numerator of which is an amount equal to the lesser of the amount of natural resource property claimed under this section or \$7.5 million, and the denominator of which is an amount equal to the total adjusted gross estate.

(c) "Farm business" means a business operated for the primary purpose of obtaining a profit in money by:

- (A) Raising, harvesting or selling fruit or crops;
- (B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or bees, or the produce thereof;
- (C) Dairying and selling dairy products;
- (D) Breeding, stabling or training equines;
- (E) Propagating, cultivating, maintaining or harvesting aquatic species, birds or animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;
- (F) Raising nursery stock;
- (G) Practicing animal husbandry; or
- (H) Raising other agricultural or horticultural products.

(d) "Farm use" has the meaning given that term in ORS 308A.056.

(e) "Fishing business" has the meaning given that term in section 1301(b)(4) of the Internal Revenue Code.

(f) "Forestland" has the meaning given that term in ORS 321.201.

(g) "Forestry business" means a business operated for the primary purpose of obtaining a profit in money by the planting, cultivating, caring for, preparing, harvesting or cutting of timber or trees for market.

(h) "Homesite" has the meaning given that term in ORS 308A.250.

(i) "Natural resource property" means the following property, if on the date of the decedent's death the property is owned by the decedent and used in the operation of a farm business, forestry business or fishing business owned by the decedent:

(A) Real property used as forestland or as forestland homesites, not to exceed 5,000 acres, or that is in farm use.

(B) Timber or trees.

(C) Crops, fruit or other horticultural products, both growing and stored.

(D) Forestry business or farm business equipment.

(E) Livestock, poultry, fur-bearing animals, bees, dairying animals, equines, aquatic species, birds or other animal species, including stored products or by-products.

(F) Nursery stock as defined in ORS 571.005.

(G) Boats, gear, equipment, vessel licenses or permits, commercial fishing licenses or permits and other real or personal property used in the operation of a fishing business.

(H) Real or personal property used to process and sell the catch of a fishing business in fresh, canned or smoked form directly to consumers, including a restaurant with seating capacity of fewer than 15 seats at which catch from the fishing business is prepared and sold.

(I) An operating allowance.

(J) Any other tangible and intangible personal property used in the operation of a farm business, forestry business or fishing business.

(j) "Operating allowance" means cash or a cash equivalent that is spent, maintained, used or available for the operation of a farm business, forestry business or fishing business and not spent or used for any other purpose.

(k) "Qualified beneficiary" has the meaning given that term in ORS 130.010.

(L) "Real property" means real property, as defined in ORS 307.010, that is in this state.

(c) An executor may:

(A) Elect not to claim the credit allowed under this section;

(B) Elect to claim less than the full amount of the credit allowed under this section; or

(C) Elect to claim the credit only for the value of certain assets.

(3) Except as provided in subsections [(4) and (5)] (4), (7) and (8) of this section, a credit is allowed under this section only if:

(a) The total adjusted gross estate does not exceed \$15 million;

(b) The total value of natural resource property in the estate is at least 50 percent of the total adjusted gross estate;

(c) The natural resource property is transferred to a family member; and

(d) During an aggregate period of five out of the eight years ending on the date of the decedent's death, the decedent or a family member operated a farm business, forestry business or fishing business and the property for which a credit is claimed under this section is part of the business.