

PRELIMINARY DRAFT - FOR DISCUSSION PURPOSES ONLY

New 458-57-XXX Farm deduction. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and is intended to help taxpayers determine if the estate is eligible for the farm deduction and to correctly calculate the deduction.

(2) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Active management" means the making of the management decisions of a farm, other than the daily operating decisions;

(b) "Farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms; plantation; ranches; nurseries; ranges; greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards and woodlands;

(c) "Farming purposes" means:

(i) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of animals on a farm;

(ii) Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its un-manufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(iii) (A) The planting, cultivating, caring for, or cutting of trees; or

(B) The preparation, other than milling, of trees for market.

(d) "Member of the family" means, with respect to any individual, only:

(i) An ancestor of the individual;

(ii) Spouse of the individual;

(iii) A lineal descendant of the individual; of the individual's spouse, or a parent of the individual; or

(iv) The spouse of any lineal descendant described in (iii) of this subsection

A legally adopted child of an individual shall be treated as the child of such individual by blood.

(e) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired property, or to whom property passed, from the decedent.

(f) (i) "Qualified real property" means real property which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

(A) Fifty percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which:

(I) On the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family; and

(II) Was acquired from or passed from the decedent to a qualified heir of the decedent;

(B) Twenty-five percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of (f)(i)(A)(II) and (f)(i)(C) of this subsection; and

(C) During the eight-year period ending on the date of the decedent's death there have been periods aggregating five years or more during which:

(I) The real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family; and

(II) There was material participation by the decedent or a member of the decedent's family in the operation of the farm. For the purposes of this subsection (f)(i)(C)(II), material

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participation shall be determined in a manner similar to the manner used for purposes of section 1402(a)(1) of the Internal Revenue Code (IRC).

(ii) For the purposes of this subsection, the term "adjusted value" means:

(A) In the case of the gross estate, the value of the gross estate, determined without regard to any special valuation under section 3032A of the IRC, reduced by any amounts allowable as a deduction under section 2053(a)(4) of the IRC; or

(B) In the case of any real or personal property, the value of the property for purposes of chapter 11 of the IRC, determined without regard to any special valuation under section 2032A of the IRC, reduced by an amounts allowable as a deduction in respect of such property under section 2053(a)(4) of the IRC.

(g) "Qualified use" means the property is used as a farm for farming purposes. In the case of real property which meets the requirements of (f)(i)(C) of this subsection, residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use. For tangible personal property eligible for a deduction under section (1)(b) of this section, "qualified use" means the property is used primarily for farming purposes on a farm.

(h) "Qualified woodland" means any real property which:

(i) Is used in timber operations; and

(ii) Is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(i) "Timber operations" means:

(i) The planting, cultivating, caring for, or cutting of trees; or

(ii) The preparation, other than milling, of trees for market.

(3) **Farm deduction - Qualification criteria.** (a) A deduction from the Washington taxable estate is available for the value of qualified real property and the value of any tangible personal property used by the decedent or a member of the decedent's family for a qualified use. In certain circumstances an estate of a tenant farmer may deduct the value of agricultural personal property. See subsection (7) of this rule. If the estate is eligible for the federal special valuation of farmland it would also be eligible for the state deduction. The estate does not have to elect special valuation treatment for federal purposes in order to take the state deduction. Unlike the federal special valuation for farmland there is no requirement that the heir to the land and equipment continue farming.

(b) There are several criteria that must be met before the deduction can be taken:

(i) Decedent at the time of his or her death was a citizen or resident of the United States;

(ii) Fifty percent or more of the estate's adjusted value must be in agricultural real and personal property;

(iii) On the date of the decedent's death the real and personal property must have been used for a qualified use (farming) by the decedent or a member of the decedent' family;

(iv) The real and personal property must pass from the decedent to a qualified heir; and

(v) Twenty-five percent or more of the estate consists of agricultural real property (land) that was actively managed by the decedent or the decedent's family.

(4) **What does "acquired from the decedent" mean?** Property shall be considered to have been acquired from or to have passed from the decedent if:

(i) The property is so considered under section 1014(b) of the IRC;

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(ii) The property is acquired by any person from the estate; or

(iii) The property is acquired by any person from a trust, to the extent the property is includible in the gross estate of the decedent.

(5) **Treatment of qualified real property held as a community property.** If the decedent and the decedent's surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in the property shall be taken into account under this section.

(6) **Value of trees growing on woodlands.** In the case of qualified woodland, the value of trees growing on the woodland may be deducted if otherwise qualified under this section.

(7) **Tenant farmers.** If the following criteria are met the estate of a tenant farmer may deduct from the Washington taxable estate the value of the agricultural personal property:

(a) Decedent at the time of his or her death was a citizen or resident of the United States;

(b) Fifty percent or more of the estate adjusted value must be in agricultural personal property;

(iii) On the date of the decedent's death the personal property must have been used for a qualified use (farming) by the decedent or a member of the decedent' family; and

(iv) The personal property must pass from the decedent to a qualified heir.

(8) **Examples.**

(a) The decedent died May 18, 2005 with a federal taxable estate valued at \$4 million. The decedent was a dry land wheat farmer and owned 2000 acres of land valued at \$2 million (\$1,000 per acre) and \$500,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last twenty years, and left the farm to his son, a qualified heir. The value of the farm acreage and equipment exceeds the required 50% or more of the gross estate ($\$2,000,000 + \$500,000 > \$4,000,000 \times 50\%$). The value of the 2000 acres and the farm equipment can be deducted from the decedent's gross estate. In this example estate tax is not due. The calculations are shown below:

Federal Taxable Estate	\$4,000,000
Less \$2,500,000 farm deduction	- \$2,500,000
Less \$1,500,000 statutory exemption	<u>- \$1,500,000</u>
Washington Taxable Estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

(b) The decedent died August 28, 2005 with a federal taxable estate valued at \$5 million. The decedent was a hay farmer and owned 600 acres of land valued at \$1.8 million (\$3,000 per acre) and \$500,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last twenty years, and left the farm to his son, a qualified heir. The value of the farm acreage and equipment did not meet the required 50% or more of the gross estate therefore the estate cannot deduct the value of the farm and farm equipment ($\$1,800,000 + \$500,000 < \$5,000,000 \times 50\%$). Here are the calculations:

Federal taxable estate	\$5,000,000
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Less \$1,500,000 statutory exemption - \$1,500,000
Washington Taxable Estate \$3,500,000

Based on the tax table, the estate owes \$470,000 in Washington estate tax.

(c) The decedent died May 23, 2005 with a federal taxable estate valued at \$1.6 million. The decedent was a tenant hay farmer that owned \$400,000 of hay in storage that had been harvested but not sold and \$800,000 in farm equipment. The decedent was a U.S. citizen, used the farm equipment in a qualified use for the last six years, and left the equipment to his son-in-law, a qualified heir. The value of the farm equipment met the required 50% or more of the gross estate so it can be deducted from the decedent's gross estate ($\$800,000 = \$1,600,000 \times 50\%$). In this example no estate tax is due. The calculations are shown below:

Federal taxable estate \$1,600,000
Less \$800,000 farm deduction - \$800,000
Less \$1,500,000 statutory exemption - \$1,500,000
Washington Taxable Estate \$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

(d) The decedent died April 7, 2006 with a federal taxable estate valued at \$2.5 million. The decedent owed 100 acres of timberland valued at \$100,000 (\$1,000 per acre), timber valued at \$800,000 (\$80,000 per acre), 200 acres of pasture land valued at \$500,000 (\$2,500 per acre) and \$50,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last ten years, and left the timber and farm land to his daughter, a qualified heir. The value of the timberland and farm acreage and equipment exceeded the required 50% or more of the gross estate therefore the estate can deduct the value of the timber and farm land and farm equipment ($\$100,000 + \$800,000 + \$500,000 + \$50,000 > \$2,500,000 \times 50\%$). The calculations are shown below:

Federal taxable estate \$2,500,000
Less \$1,450,000 farm deduction - \$1,450,000
Less \$2,000,000 statutory exemption - \$2,000,000
Washington Taxable Estate \$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.