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Improving Oregon’s Natural Resource Estate Tax Exemption to Better Support Local Stewardship and Rural Minorities

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INTRODUCTION

My grandmother had a framed portrait in her dining room—she and her brother, at a young age, standing in front of a modest wooden shack on a windswept prairie. A bundle of dried wheat accompanied the picture, inside the frame. I remember looking at it as a child and not quite understanding what it meant. Now, I know that my grandmother was honoring our roots and instilling in our family a strong sense of where we came from and who we are.

I did not grow up on a farm. My ancestors did. They moved west from Kansas, Texas, and Oklahoma to pursue employment in the shipyards and industry of the early twentieth century. Their move west, like many former farming families, was primarily driven by economic conditions. Today, many Americans are out of touch with our agricultural system and its institutions, like the family farm.¹ Yet, in the face of climate change, population expansion, and nutrition deficits, perhaps our society should prioritize and protect family farms, forests, and fisheries. In doing so, we may reframe our values and align our realities with our aspirations.

This Comment examines a recent change to Oregon’s estate tax exemption for natural resource properties, Senate Bill 498. Part I examines the new exemption in light of Oregon and federal tax law. Part II assesses the new exemption under traditional tax policy criteria, such as practicality and equity. Part III analyzes how well S.B. 498

¹ See Sheril Kirshenbaum & Douglas Buhler, *Americans Are Confused About Food and Unsure Where to Turn for Answers, Study Shows*, ALL. FOR SCI. (Mar. 9, 2018), <https://allianceforscience.org/blog/2018/03/americans-confused-food-unsure-turn-answers> [<https://perma.cc/B24K-JFDH>] (“[Forty-eight] percent of Americans say they never or rarely seek information about where their food was grown or how it was produced.”).

preserves family ownership of farms, forests, and fisheries and incentivizes environmental stewardship. Part IV depicts the exemption's mixed implications for minority groups. Part V argues that the federal government should adopt a similar exemption. Lastly, Part VI offers a brief conclusion.

In general, the exemption supports sustainable land use, but it needs reform to offset its negative impacts. The exemption simplifies qualification requirements, so it is practical. However, the exemption is vertically inequitable because it unduly benefits wealthy natural resource estates that are well-positioned to pay the estate tax. The exemption furthers environmental and sustainability goals because it supports the family farm. It also helps address burdens unfairly plaguing rural communities. However, it needs to do more for rural minorities. To remedy the exemption's shortcomings for family farms, environmental goals, and rural minorities, Oregon should revise the exemption to exclude the wealthiest estates and incentivize farm ownership by long-standing farm employees. This revised tax policy should be mirrored by other states and on the federal level.

I

THE CONTEXT OF OREGON'S ESTATE TAX AND S.B. 498

This Part examines S.B. 498 in the context of Oregon's revenue code and explores the exemption's requirements. Then, this Part describes comparable federal law and presents a general assessment; S.B. 498 differs in nature and scope from comparable federal policies. Overall, the exemption furthers several important goals but should be revised.

A. Senate Bill 498 Changed Oregon's Tax Code

Senate Bill 498 exempts natural resource properties from Oregon's estate tax.² Natural resource properties include farms, commercial forest properties of less than 5,000 acres, commercial fisheries, animals and assets on these lands, and property used to operate these lands.³ Oregon's estate tax generally generates less than 3% of Oregon's general fund.⁴ The Oregon general fund accounted for 23% of the

² S.B. 498, 82nd Or. Legis. Assemb. (2023).

³ OR. REV. STAT. § 118.140(1)(i) (2024).

⁴ LEGIS. REVENUE OFF., 81ST OR. LEGIS. ASSEMB. REP. 1-22, 2022 OREGON PUBLIC FINANCE: BASIC FACTS F5 (2022).

2021–2023 state budget.⁵ Oregon taxes estates at relatively high rates and has the lowest exemption in the country at only \$1 million without adjustments for inflation.⁶ Thus, the exemption from the estate tax has important revenue implications. Before S.B. 498, Oregon law gave a tax credit of up to \$7.5 million to family-owned natural resource properties,⁷ but only if the estate was worth \$15 million or less, and the estate’s natural resource value was at least 50% of the estate’s value.⁸ Senate Bill 498 revised Oregon’s tax code to exempt up to \$15 million in family-owned natural resource property from the estate tax regardless of the natural resources’ value compared to the estate.⁹

Senate Bill 498 applies when materially participating decedents or decedents with materially participating family members transfer their property to a family member.¹⁰ To qualify, succeeding family members must “materially participate” in the property’s operation before and after acquiring the property.¹¹ The material participation requirement mirrors federal law.¹² Someone materially participates if they work to the extent necessary to personally manage the farm or thirty-five hours per week; further, physical work and management decisions are key considerations to assess material participation.¹³ Leasing farmland to tenants alone does not establish material participation, and principals cannot impute the actions of their agents to establish material participation.¹⁴

⁵ *Government Finance: State Government*, SECRETARY OF STATE, OREGON BLUE BOOK 2023–2024 (2023), <https://sos.oregon.gov/blue-book/Pages/facts/finance-state.aspx> [<https://perma.cc/S9CT-SXE9>] (last visited Dec. 27, 2023).

⁶ Andrey Yushkov, *Estate and Inheritance Taxes by State, 2023*, TAX FOUND. (Oct. 10, 2023), <https://taxfoundation.org/data/all/state/state-estate-tax-inheritance-tax-2023/> [<https://perma.cc/9CZT-Y2L3>]. Only a minority of states levy an estate tax. *Id.* The current federal estate tax exemption is more than eleven times higher than Oregon’s exemption but sunsets in 2025. *Id.* Popular and political opposition might explain why the majority of states have no estate tax. *See, e.g.*, Susan K. Hill, Comment, *Leaping Before We Look?: Repeal of the State Estate Tax Credit and the Consequences for States, Americans, and the Federal Government*, 32 PEPP. L. REV. 151, 152 (2004); Lee Anne Fennell, *Death, Taxes, and Cognition*, 81 N.C. L. REV. 567, 568–70, 570 n.5 (2003) (acknowledging the “threatened demise” of the estate tax). This Comment focuses on the efficacy of a recent exemption to Oregon’s estate tax, not the estate tax itself.

⁷ OR. REV. STAT. § 118.140(2)(a)–(b) (2024).

⁸ OR. REV. STAT. § 118.140(3)(a)–(b) (2024).

⁹ S.B. 498, 82nd Or. Legis. Assemb., § 2 (2023).

¹⁰ *Id.* § 2(1)(b), (2)(b)–(c).

¹¹ *Id.* § 2(2)(b)–(c).

¹² *Id.* § 2(1)(b).

¹³ Treas. Reg. § 20.2032A-3; I.R.C. § 2032A.

¹⁴ Roger A. McEowen & Neil E. Harl, *Selected Farm and Small Business Tax Issues*, 10 DRAKE J. AGRIC. L. 57, 66 n.54 (2005).

The decedent must have held the property for at least five years before the transfer.¹⁵ During this period, the inheriting decedent must have materially participated in the operations of the natural resource property for 75% of the days of each year.¹⁶ The inheriting decedent must also materially participate for 75% of the days in each of the next five years.¹⁷ Thus, the inheriting decedent must have materially participated in 75% of the days of each year over ten years. If the heir does not materially participate, or the property is transferred to someone other than a family member, the estate is subject to the tax that would have been imposed without the exemption.¹⁸ A family member is “a person within the third degree of relation, by blood, marriage, adoption, civil union or domestic partnership.”¹⁹

Notably, S.B. 498 explicitly references “natural resource property”—a term that accompanies more than just family farms.²⁰ The policy also functions as an exemption as opposed to a change in valuation.²¹ Finally, S.B. 498 applies to civil unions.²² These three characteristics contrast notably with similar federal policies, as discussed below.

B. Comparable Federal Tax Policies

Federal policies also reduce the tax liability for farm and natural resource properties, as embodied in Section 2032A of the Internal Revenue Code.²³ Section 2032A enables farmers to pay taxes on their land as valued according to its use instead of its market value.²⁴ This value is generally lower because it reflects the value of the property as used for farming instead of the value of the land if it were developed.²⁵

¹⁵ S.B. 498 § 2(2)(a).

¹⁶ *Id.* § 2(2)(c)–(d).

¹⁷ *Id.*

¹⁸ *Id.* § 2(3)–(4).

¹⁹ *Id.* § 2(1)(a).

²⁰ *Id.* § 2(1)(C), (2); OR. REV. STAT. § 118.140(1)(i).

²¹ S.B. 498 § 2.

²² *Id.* § 2(1)(a).

²³ Kevin O’Shaunessy O’Brien, *Estate Planning for Farmers and Ranchers Under Section 2032A*, 55 DENV. L. REV. 347, 347 (1978).

²⁴ I.R.C. § 2032A; Megan Nelson, *Time to Update Section 2032A Special Use Valuation*, AM. FARM BUREAU (Nov. 20, 2019), <https://www.fb.org/market-intel/time-to-update-section-2032a-special-use-valuation> [<https://perma.cc/D4XA-6HB3>].

²⁵ See Nelson, *supra* note 24; see also Dean Krishna et al., *Section 2032A — Special Use Valuation (Portfolio 833)*, BLOOMBERG TAX, <https://pro.bloombergtax.com/portfolio>

Importantly, this does not function as an exemption but rather changes the valuation of farm properties.²⁶ Further, Section 2032A focuses on the family farm, not forests or fisheries, so heirs to forestry and fishery properties may encounter difficulty meeting Section 2032A requirements.²⁷ Section 2032A also requires that the property pass to a qualifying member of the decedent's family,²⁸ which includes the decedent's ancestor, spouse, lineal descendant, and adopted children (adopted children are treated like blood-related children).²⁹ However, civil unions do not form a qualifying relationship with the decedent.³⁰ This is a major shortcoming in federal law further discussed in Section V.B.

Thus, S.B. 498 differs from Section 2032A because its scope more clearly extends to fishing and forestry properties, and it functions as an exemption instead of a change in valuation. Additionally, S.B. 498 does not exclude civil unions, which, more appropriately, includes a larger portion of nontraditional relationships than the federal definition.³¹

C. Consolidation of and Threats to Family Farms

In addition to the estate tax exemption, Oregon protects its family farms through policies like right-to-farm laws³² and urban growth

/section-2032a-special-use-valuation-portfolio-833 [https://perma.cc/2UFR-MU2H] (last visited Dec. 27, 2023).

²⁶ See Nelson, *supra* note 24; see also Krishna, *supra* note 25.

²⁷ See T. Carter Heyward Jr., *The Application of Section 2032A to the Valuation of Timberland for Federal Estate Tax Purposes*, 29 S.C. L. REV. 577, 578 (1978).

²⁸ I.R.C. § 2032A(b)(1).

²⁹ *Id.* § 2032A(e)(2).

³⁰ *Id.*; Matthew Fry, Comment, *One Small Step for Federal Taxation, One Giant Leap for Same-Sex Equality: Revising § 2702 of the Internal Revenue Code to Apply Equally to All Marriages*, 81 TEMP. L. REV. 545, 554 (2008); see Anthony C. Infanti, *Decentralizing Family: An Inclusive Proposal for Individual Tax Filing in the United States*, 2010 UTAH L. REV. 605, 644 (2010) (“[T]he . . . estate . . . tax rules permit the shifting of substantial amounts of property within most nuclear and extended traditional families free of concerns about federal taxes.”).

³¹ See *Who Is Living Together? Same-Sex Couples in the United States*, U.S. CENSUS BUREAU (Nov. 19, 2019), <https://www.census.gov/library/visualizations/2019/comm/living-together-same-sex.html> [https://perma.cc/T57C-JWA8]. There are 543,000 same-sex married couple households and 469,000 households with same-sex unmarried partners living together. *Id.*

³² See, e.g., OR. REV. STAT. § 30.936 (2023) (insulating farmers from nuisance claims arising from farm operations); *Hood River County v. Mazzara*, 193 Or. App. 272, 276, 278, 89 P.3d 1195, 1198–99 (2004) (insulating farmer from public nuisance claim because dog barking was farm practice).

boundaries.³³ For the most part, these instruments have helped stave off the trend in consolidation³⁴ of small farms; from 1997 to 2022, the average farm size in Oregon decreased by 2.7%, while the average farm size in the United States increased by 7.4%.³⁵ However, these efforts have not completely countered consolidation and farm number decline; the number of farms in Oregon decreased by 5.9% between 1997 and 2022.³⁶ Even so, data show that Oregon's farm numbers are declining more slowly than in the United States: Nationally, the number of farms decreased by 14.2% over the same period.³⁷ While several significant economic factors contribute to these statistics,³⁸ S.B. 498 makes clear that Oregon continues to protect the social and environmental benefits of family-owned farms and natural resource properties.

II

SENATE BILL 498 COULD BETTER SATISFY RECONSIDERED TRADITIONAL TAX POLICY CRITERIA

A classic tax policy analysis presents seven macro-criteria to evaluate a tax policy: adequacy, practicality, equity, reduced economic inequality, stability, free market compatibility, and political order.³⁹ Oregon's resource property estate tax exemption is practical because it makes it easier to understand whether an estate meets the exemption's requirements. The exemption is also horizontally equitable because it treats family-owned natural resource properties similarly. However, the exemption is vertically inequitable because the bulk of its savings

³³ See, e.g., OR. REV. STAT. § 197A.355 (2023); 1000 Friends of Or. v. Land Conservation & Dev. Comm'n, 244 Or. App. 239, 271, 259 P.3d 1021, 1039–40 (2011) (exemplifying how Oregon's urban growth boundaries protect agricultural land from urban expansion).

³⁴ See generally James M. MacDonald, *Consolidation in U.S. Agriculture Continues*, U.S. DEP'T OF AGRIC., ECON. RSCH. SERV. (Feb. 3, 2020), <https://www.ers.usda.gov/amber-waves/2020/february/consolidation-in-us-agriculture-continues> [https://perma.cc/BJP8-TV25] (“The shift of acreage to larger operations has been widespread . . .”).

³⁵ See NAT'L AGRIC. STAT. SERV., U.S. DEP'T OF AGRIC., 2022 CENSUS OF AGRIC., OREGON STATE AND COUNTY DATA 3 tbl.1 (2024) [hereinafter OR. AG CENSUS DATA]; NAT'L AGRIC. STAT. SERV., U.S. DEP'T OF AGRIC., 2022 CENSUS OF AGRIC., UNITED STATES SUMMARY AND STATE DATA 3 tbl.1 (2024) [hereinafter U.S. AG CENSUS DATA].

³⁶ OR. AG CENSUS DATA, *supra* note 35.

³⁷ U.S. AG CENSUS DATA, *supra* note 35.

³⁸ See *infra* text accompanying notes 109–11.

³⁹ Joseph T. Sneed, *The Criteria of Federal Income Tax Policy*, 17 STAN. L. REV. 567, 568, 601–02 (1965) (ranking the criteria in order of importance as practicality, equity, free market compatibility, concerns with the political order, reduced economic inequality, stability, and adequacy).

applies to a few wealthy estates. The exemption could be reformed to enhance efficiency, and it is also moderately incompatible with the adequacy criteria.

However, these macro-criteria were formulated to analyze the federal income tax,⁴⁰ not a state tax exemption; therefore, a thorough analysis of Oregon's S.B. 498 requires some alteration to these criteria.⁴¹ Moreover, an equitable approach to tax policy analysis also necessitates changes. Nevertheless, the criteria lend a useful lens to frame the analysis.

A. Senate Bill 498 Is Practical

Practicality is a varied criterion, but a practical tax policy has clear, certain impacts and convenient administration.⁴² A practical tax policy also operates economically.⁴³ S.B. 498 resolves valuation and definitional issues for rural property owners and is, therefore, practical.

Under S.B. 498, a taxpayer seeking a tax exemption need not establish the worth of the estate's natural resources relative to the whole estate because the policy does not hinge on the value of the resources in the estate relative to the estate as a whole.⁴⁴ The taxpayer need not establish the entire value of the estate.⁴⁵ Instead, they can exempt up to \$15 million in natural resource property, so they only need to appraise the value of the natural resource properties on their estate.⁴⁶

Eliminating the requirement that the natural resources are worth 50% of the total estate⁴⁷ is particularly relevant for properties that provide environmental benefits like carbon sequestration or habitat preservation. The value of these benefits poses a potential external

⁴⁰ *Id.* at 567–68.

⁴¹ The best criteria to analyze S.B. 498 are (1) practicality; (2) equity; (3) adequacy; (4) efficiency; (5) political considerations; and (6) stability. Of these, practicality is the most important followed by equity, then efficiency, adequacy, political considerations, and stability. This Comment directly examines the practicality, equity, adequacy, and efficiency of S.B. 498. The remaining criteria are addressed indirectly.

⁴² Sneed, *supra* note 39, at 572–73.

⁴³ *Id.*

⁴⁴ OR. REV. STAT. § 118.140(3)(a)–(b) (2021); S.B. 498, 82nd Or. Legis. Assemb., § 2(1)(C), (2)(6) (2023).

⁴⁵ S.B. 498 § 2(1)(C), (2)(6).

⁴⁶ *Id.*

⁴⁷ *See supra* Section I.A.

benefit that most appraisal methods do not account for.⁴⁸ By eliminating these concerns, S.B. 498 takes a more practical approach: Estates that perform the environmental and social benefits the tax exemption seeks to elicit can qualify even if the true value of the estate's natural resources is difficult to measure. Estate owners will not be penalized if the natural resources on their estate do not produce a quantifiable value because those resources need not be 50% of their estate's value. Thus, S.B. 498 better enables estates with difficult-to-quantify natural resources to qualify for the exemption.

Additionally, S.B. 498 mirrors the federal requirement for material participation under Section 2032A.⁴⁹ This definition reduces confusion because it is well-known and is clarified with federal case law.⁵⁰ For example, landlords would not qualify only through leasing, and principals could not qualify through their agents' actions.⁵¹ The exemption also mirrors federal definitions of fisheries.⁵² This coupling with federal law clarifies what estates must do to qualify for the exemption. As a result, S.B. 498 clearly states its obligations and impacts, allows for convenient administration, and is efficient in its operation.

B. Senate Bill 498 Is Horizontally Equitable

The equity criterion embraces horizontal equity: the idea that people similarly situated should bear a similar tax burden.⁵³ A horizontally equitable tax policy applies evenhandedly to taxpayers "who are equal in the relevant aspects."⁵⁴ Thus, examining horizontal equity requires determining if the policy targets individuals who are similar in important ways and treats them similarly.⁵⁵ Senate Bill 498 is horizontally equitable because it applies broadly to qualifying family-owned resource properties.

⁴⁸ See, e.g., WHITE HOUSE COUNCIL ON ENV'T QUALITY ET AL., OPPORTUNITIES TO ACCELERATE NATURE-BASED SOLUTIONS: A ROADMAP FOR CLIMATE PROGRESS, THRIVING NATURE, EQUITY, & PROSPERITY 15 (2022) ("[M]any of the benefits that nature-based solutions provide fall outside of conventional economic accounting systems and methods.")

⁴⁹ S.B. 498 § 2(1)(b).

⁵⁰ McEowen & Harl, *supra* note 14, at 66.

⁵¹ *Id.* at 66 n.54.

⁵² OR. REV. STAT. § 118.140(1)(e) (2021).

⁵³ Sneed, *supra* note 39, at 574.

⁵⁴ *Id.*

⁵⁵ *Id.*

Senate Bill 498 divides rural properties into two groups: those that are owned by materially participating families, and those that are not.⁵⁶ This division is appropriate because family-owned natural resource properties generally practice more sustainable farming methods.⁵⁷ Additionally, family farms are a key socioeconomic unit in rural America; their prosperity is more likely to translate into benefits for rural communities than large, corporate resource properties.⁵⁸ As a result, S.B. 498 recognizes that the defining similarity in natural resource property ownership is the involvement of the owners and heirs with the land. Since it treats these estates evenhandedly, S.B. 498 is horizontally equitable.

Yet, S.B. 498 does not favor rural estates that do not have natural resource properties. As a result, it is arguably horizontally inequitable because it excludes rural businesses on main street. Indeed, like family-owned resource properties, family-owned rural businesses benefit rural communities.⁵⁹ Their prosperity keeps money in the community and provides employment opportunities.⁶⁰ However, small businesses excluded from S.B. 498 are not situated to remedy rural environmental dilemmas like natural resource properties because the exemption already applies to small businesses whose operations directly affect natural resources.⁶¹ As a result, expanding the exemption to rural small businesses does not further the environmental goals of the exemption. Since rural small businesses and natural resource properties offer dissimilar benefits, S.B. 498 is justified in treating them as dissimilar groups, and the exemption is a horizontally equitable policy.

C. Senate Bill 498 Needs Reform to Improve Vertical Equity

Under traditional analysis, reduced economic inequality presents the idea that taxpayers in different situations should be treated differently and that tax policy should attempt to reduce economic inequality.⁶² The traditional framework considers reduced economic inequality

⁵⁶ S.B. 498, 82nd Or. Legis. Assemb., § 2 (2023).

⁵⁷ See G.W. Bird & John Ikerd, *Sustainable Agriculture: A Twenty-First-Century System*, 529 ANNALS AM. ACAD. POL. & SOC. SCI. 92, 101–02 (1993).

⁵⁸ See *infra* Section III.B.

⁵⁹ See UNIV. MINN., EXPLORING BUSINESS ch. 5.2 (2016), https://saylordotorg.github.io/text_exploring-business-v2.0/ [<https://perma.cc/DE7D-T2JB>].

⁶⁰ *Id.*

⁶¹ See S.B. 498 § 2.

⁶² Sneed, *supra* note 39, at 581–82.

separately from equity.⁶³ However, equity should embrace more than just the goal of treating like individuals similarly and embrace vertical equity by “addressing the extent to which unequals should be treated unequally.”⁶⁴ Thus, a more suitable equity criterion employs both horizontal and vertical equity. A tax policy is vertically equitable if its impact varies according to differences in taxpayers.⁶⁵ Vertical equity is partly rooted in the idea that taxes have a different cost to higher and lower wealth classes; marginal increases in taxes have a higher impact at lower income and wealth levels.⁶⁶

Senate Bill 498 does not differentiate according to estate size or value.⁶⁷ But S.B. 498 disproportionately benefits large, valuable estates.⁶⁸ As Table 1 illustrates, legislators anticipate S.B. 498 to create new tax savings of \$5.9 million in 2024.⁶⁹ Yet, more than half of the savings (\$3.4 million) benefit just six estates, each with a taxable value of more than \$5.5 million.⁷⁰ In contrast, 136 estates with a taxable value under \$2.5 million receive aggregate tax benefits of \$1.2 million—just 35% of the benefit anticipated for the six wealthiest estates.⁷¹

⁶³ *Id.* at 568.

⁶⁴ Mona L. Hymel, *Consumerism, Advertising, and the Role of Tax Policy*, 20 VA. TAX REV. 347, 360 (2000).

⁶⁵ *Id.* at 359–60 & n. 43; *see also* Sneed, *supra* note 39, at 581.

⁶⁶ Sneed, *supra* note 39, at 576.

⁶⁷ S.B. 498, 82nd Or. Legis. Assemb., § 2 (2023).

⁶⁸ *See Pub. Hearing on S.B. 498 Before the H. Comm. on Revenue, Estimated Revenue Impact*, 82nd Or. Legis. Assemb. (2023) (this source can be found at <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2023061104> under House Committee on Revenue 06/23/2023 12:45 PM [<https://perma.cc/33WP-DYNP>]).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

Table 1. *Senate Bill 498's Estimated Benefits to Newly Eligible Estates by Estate Value*⁷²

Taxable Estate	Number Claiming Exclusion	Average Tax Benefit (thousands)	Total Benefit (millions)
Under \$2.5 million	136	\$8.6	\$1.2
\$2.5–\$5.5 million	28	\$45.9	\$1.3
More than \$5.5 million	6	\$560.4	\$3.4
Total	170	\$34.5	\$5.9

These statistics reveal the fundamental vertical equity issue with S.B. 498: It does more for large wealthy estates than small ones. Thereby, S.B. 498 fails to recognize the differences between the environmental benefits of small and large resource properties and that large estates are well-positioned to pay the estate tax but still retain the property.⁷³ These issues will be discussed in Section III.C below.

D. Senate Bill 498 Could Be Changed to Better Serve Efficiency

On one hand, S.B. 498 is arguably inefficient because it prevents asset transfers and favors wealth accumulation. On the other hand, S.B. 498 helps counter negative effects associated with the consolidation of agricultural land. Ultimately, these considerations favor a change to S.B. 498.

Traditional free market compatibility theorizes that tax policies that (1) reach all items within a class and (2) target items for which there is little substitution are less disruptive to the economy.⁷⁴ An equitable view of our economy also requires reexamining free market compatibility criteria. Specifically, negative externalities and market failures show some pitfalls of emphasizing compatibility with free markets.⁷⁵ Thus, the economic criteria should be more broadly defined as efficiency, recognizing that tax policies should avoid creating

⁷² *Id.*

⁷³ See *infra* Section III.C.

⁷⁴ Sneed, *supra* note 39, at 587–88.

⁷⁵ See Thomas Helbling, *Externalities: Prices Do Not Capture All Costs*, INT'L MONETARY FUND, FIN. & DEV., May 2017, at 38, 38 (“When there are differences between private and social costs or private and social returns, the main problem is that market outcomes may not be efficient.”).

waste.⁷⁶ Additionally, stability emphasizes a broad tax base with flexible rates.⁷⁷

One economic effect of the estate tax is to incentivize the transfer of assets before death⁷⁸ and encourage proper allocation of capital.⁷⁹ The estate tax also counters the accumulation of wealth and the negative externalities that accompany it.⁸⁰ Exemptions frustrate these two purposes; they incentivize the retention of assets, discourage capital allocation, and favor the concentration of wealth.⁸¹ For this reason, S.B. 498 produces an arguably inefficient outcome; it favors the retention of resource properties and prevents their allocation to more economically successful buyers. An estate tax exemption, however, counters societal issues resulting from rural property distribution.

Estate taxes can cause families to sell or develop environmentally sensitive land; joint congressional findings have shown that millions of acres of farm and forestland have been sold or harvested to pay the estate tax.⁸² The most likely buyer in these situations are large farms because economic factors like specialization and technological advancement coupled with policy changes favor farm consolidation.⁸³ This is particularly relevant for Oregon's natural resources estate exemption because the exemption seeks to recognize the social and environmental external benefits of family farms and resource properties.⁸⁴ Therefore, the estate tax exemption reduces waste because it helps internalize the external benefits of family farming and prevents consolidation that compromises these external benefits, as discussed in Part II.

Coupling these considerations with a preference for flexible rates suggests that S.B. 498 could produce a more efficient outcome if it better separated estates that create positive externalities from those that do not. Part III(C) argues that excluding the wealthiest estates from the exemption would reconcile these efficiency concerns.

⁷⁶ JAMES M. STONE, 5 EASY THESES 15 (2016).

⁷⁷ Sneed, *supra* note 39, at 592.

⁷⁸ *Estate Tax*, LEGAL INFO. INST., CORNELL L. SCH., https://www.law.cornell.edu/wex/estate_tax [<https://perma.cc/C7HC-LDZ9>] (last visited Dec. 27, 2023).

⁷⁹ OECD, INHERITANCE TAXATION IN OECD COUNTRIES at 59–60 (2021).

⁸⁰ *Id.* at 60–62.

⁸¹ *See id.* at 61–62.

⁸² J. ECON. COMM., 108TH CONG., THE ECONOMICS OF THE ESTATE TAX: AN UPDATE, at i, 10 (2003).

⁸³ HANNAH ANDREW, ADDRESSING CONSOLIDATION IN AGRICULTURE 2–3 (2022).

⁸⁴ *See infra* Section II.A.

E. Senate Bill 498 Is Moderately Incompatible with Adequacy

Adequacy means “the aggregate revenue impact” of the tax policy.⁸⁵ Adequacy endorses changes to the existing tax structure that increase tax revenue but not changes that reduce revenue.⁸⁶ Unlike the federal government, Oregon is constitutionally obligated to balance its budget.⁸⁷ As a result, adequacy takes on slightly higher significance.

On its face, S.B. 498 exempts certain estates from tax and, thereby, decreases revenues.⁸⁸ Senate Bill 498’s average estimated tax biannual benefit (and revenue loss) is \$14.5 million from Oregon’s general fund.⁸⁹ Yet, Oregon’s general fund for the 2021–2023 budget amounts to \$27.9 billion,⁹⁰ meaning S.B. 498 creates a revenue loss of roughly 0.05% of the general fund.⁹¹ So, the exemption does reduce tax revenue, but its cost represents a very small share of Oregon’s budget; as a result, it is moderately incompatible with the adequacy criteria.

III

THE EXEMPTION FURTHERS IMPORTANT MICRO-CRITERIA

A tax policy should satisfy its “particularized ends” at least as well as nontax policies.⁹² This analysis involves assessing the aims of a tax policy “on its own terms,” independently from the macro-criteria.⁹³ Senate Bill 498 invokes two particular goals: (1) recognition of the environmental benefits of natural resource properties and (2) preservation of family farms and resource properties. This Part considers how well the exemption serves each “particularized end” and assesses whether a nontax policy could more easily achieve these ends.

⁸⁵ Sneed, *supra* note 39, at 571.

⁸⁶ *Id.*

⁸⁷ OR. CONST. art. IX, § 2.

⁸⁸ S.B. 498, 82nd Or. Legis. Assemb. (2023).

⁸⁹ See LEGIS. REVENUE OFF., 82ND LEGIS. ASSEMB. REVENUE IMPACT OF PROPOSED LEGISLATION S.B. 498 (2023).

⁹⁰ LEGIS. FISCAL OFF., 82ND OR. LEGIS. ASSEMB. BUDGET HIGHLIGHTS UPDATE 1 (2023).

⁹¹ See *id.*; See *Pub. Hearing on S.B. 498 Before the H. Comm. on Revenue, Estimated Revenue Impact*, 2023 Reg. Sess. (Or. 2023) (this source can be found at <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2023061104> under House Committee on Revenue 06/23/2023 12:45 PM [<https://perma.cc/33WP-DYNP>]).

⁹² Sneed, *supra* note 39, at 597–98.

⁹³ *Id.* at 598.

A. Senate Bill 498 Incentivizes Environmentally Friendly Practices

Agriculture presents unique opportunities and challenges to combat climate change. On one hand, farmers view themselves as stewards of the land,⁹⁴ and sustainable agriculture confers ecological benefits like pollution reduction and habitat preservation.⁹⁵ On the other hand, some agricultural practices like monocropping and large-scale pesticide application can damage soil health and contaminate water sources.⁹⁶ Generally, the family farm model better serves stewardship goals than its industrialized counterpart.⁹⁷ As a result, policies that seek to encourage agricultural practices benefiting the environment should specifically preserve family farming.⁹⁸

However, the interactions between agriculture, the environment, the population, and the food supply are dynamic, and no “silver bullet” presents a perfect solution. For example, organic agriculture presents strong ecological benefits⁹⁹ but produces lower yields than conventional agriculture.¹⁰⁰ Yields, although not the be-all and end-all, are an important factor in considering how to improve agriculture in a world where “between 720 and 811 million people face[] hunger,”¹⁰¹ and healthy diets are out of reach for 3 billion people worldwide.¹⁰² The problem will not solve itself; by 2030, 660 million people—almost double the current population of the United States—may still face hunger.¹⁰³ Thus, our society faces a dilemma: How do we produce enough good food to feed the world while achieving the ecological benefits associated with sustainable farming? The solution might be found on the family farm.

⁹⁴ See, e.g., *4 Ways Farmers Steward the Land*, AM. FARM BUREAU FOUND. FOR AGRIC. (Jan. 3, 2019), <https://www.agfoundation.org/news/4-ways-farmers-steward-the-land> [<https://perma.cc/WB6Q-N484>].

⁹⁵ See, e.g., Mona L. Hymel, *The Population Crisis: The Stork, the Plow, and the IRS*, 77 N.C. L. REV. 13, 91 (1998).

⁹⁶ See, e.g., John P. Reganold et al., *Sustainable Agriculture*, 262 SCI. AM. 112, 114 (1990).

⁹⁷ See Bird & Ikerd, *supra* note 57.

⁹⁸ *Id.* at 101.

⁹⁹ See, e.g., Hymel, *supra* note 95.

¹⁰⁰ H.L. Tuomisto et al., *Does Organic Farming Reduce Environmental Impacts? A Meta-Analysis of European Research*, 112 J. ENV'T MGMT. 309, 314 (2012).

¹⁰¹ *The State of Food Security and Nutrition in the World 2021*, FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, <https://www.fao.org/state-of-food-security-nutrition/2021/en/> [<https://perma.cc/9LCV-9VZM>] (last visited Sep. 2, 2024).

¹⁰² *Id.*

¹⁰³ *Id.*

Family farmers are incentivized to steward their land. Family farmers depend on the land for their livelihood and are invested in the land's health and in their community. This investment is especially true when families seek to retain the property across generations because the descendants will rely on the same land,¹⁰⁴ creating a goal to maintain agricultural productivity and “preserve the natural resource base for intergenerational equity.”¹⁰⁵ In other words, intergenerational family farms have a functional constraint; they cannot maximize yields at the expense of the land's long-term health. Therefore, the family farm structure offers an effective answer to our dilemma because the stewardship constraint mirrors the calculus required on a global scale. Put simply, the incentive structure of intergenerational family farms reflects an ideal solution to our global problem. As a result, we should seek to strengthen intergenerational resource properties with policies like S.B. 498.

Oregon's estate tax exemption furthers family resource property ownership in two ways. First, the stipulation that the decedent or a family member materially participates¹⁰⁶ ensures that qualifying estates are actively engaged in farming. Second, the heir must materially participate for five years after the decedent's death or face the tax that would have been assessed absent the exemption.¹⁰⁷ Taken together, these provisions serve as screening mechanisms to ensure that S.B. 498 is not overinclusive; heirs who inherit properties but do not engage in the farm or resource activity will not keep their exemption. Similarly, when a decedent or a decedent's family member does not materially participate, the exemption is denied. These screening mechanisms sort out natural resource property owners who are less likely to “preserve the natural resource base for intergenerational equity.”¹⁰⁸ Accordingly, S.B. 498 recognizes that the ecological benefits of family-owned natural resource properties are grounded in the desire to preserve them for future generations.

¹⁰⁴ Bird & Ikerd, *supra* note 57.

¹⁰⁵ *Id.* at 101.

¹⁰⁶ S.B. 498, 82nd Or. Legis. Assemb., § 2(2)(b)–(c) (2023).

¹⁰⁷ *Id.* § 2(3)(a)–(4).

¹⁰⁸ Bird & Ikerd, *supra* note 57, at 101.

*B. The Estate Tax Exemption Is Mostly an Appropriate Means to
Preserve Family Resource Properties*

The key attribute of family natural resource properties is that families manage their land with an eye to the future. Families must preserve the land if their descendants are to be successful farm or resource owners. While small farms and resource properties face many threats, including economic factors favoring consolidation,¹⁰⁹ climate change,¹¹⁰ and urbanization,¹¹¹ actions to keep the property in the family are most necessary when the time for ownership changes.¹¹² Thus, estate tax exemptions are suitable from a temporal perspective because they target the time when ownership of the property changes hands. While a government subsidy or income tax deduction could provide relief to successors in their tax return or at proof of inheritance, they are less likely to provide relief at the moment of succession. Oregon's high estate tax rate and low exemption¹¹³ make this consideration even more relevant.

An estate tax exemption enables the transfer of estates more effectively than a subsidy or other policy. First, the value of resource properties is tied to the land,¹¹⁴ especially for natural resource properties that preserve the land rather than leverage its use. Accordingly, a natural resource property, in some cases, may not yield highly liquid benefits to its owner but has a high valuation. In these cases, an estate tax exemption eases the burden of succession because it avoids an estate tax payment that is more likely to be apportioned to the heirs when the estate lacks sufficient liquidity.¹¹⁵ While other

¹⁰⁹ See, e.g., MacDonald, *supra* note 34.

¹¹⁰ See, e.g., *Climate Change Impacts on Agriculture and Food Supply*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/climateimpacts/climate-change-impacts-agriculture-and-food-supply> [<https://perma.cc/BA78-UEK3>] (last updated June 4, 2024).

¹¹¹ See, e.g., David Satterthwaite et al., *Urbanization and Its Implications for Food and Farming*, 365 PHIL. TRANSACTIONS OF THE ROYAL SOC'Y B 2809, 2815 (2010).

¹¹² See Caitlin Ehlers, *Young Farmers Are Locked Out of the System, and the Asset Economy Is to Blame*, CIVIL EATS (Dec. 15, 2021), <https://civileats.com/2021/12/15/op-ed-young-farmers-are-locked-out-of-the-system-and-the-asset-economy-is-to-blame/> [<https://perma.cc/K4MF-ECPD>] (detailing the difficulty for young farmers to succeed their parents' estates).

¹¹³ Yushkov, *supra* note 6.

¹¹⁴ See *Farmland Value*, U.S. DEP'T OF AGRIC., ECON. RSCH. SERV., <https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-value/> [<https://perma.cc/72RG-4AMJ>] (last updated June 7, 2024).

¹¹⁵ See Stephen E. Kantor, *Overview of Estate Tax Apportionment*, OR. EST. PLAN. & ADMIN. SECTION NEWSL. (Or. State Bar, Tigard, Or.), Dec. 2015, at 1.

policies may also alleviate the burden, the estate tax exemption is the most suitable since it meets the issue at the most appropriate time.

Oregon's estate tax exemption is an effective means to preserve the family resource property and encourage environmental stewardship. It most readily achieves this end because it recognizes that family succession and land stewardship are complimentary. In operation, the estate tax exemption is an effective means because it most appropriately addresses a significant challenge to family ownership. However, some estates covered by S.B. 498 do not face similar challenges and do not confer the same environmental benefits.

C. Senate Bill 498 Should Exclude Very Wealthy Farms

Senate Bill 498 fails to differentiate estates according to their value.¹¹⁶ More valuable natural resource estates are better positioned to pay the estate tax and retain the farm than smaller estates. Larger farms tend to have higher incomes and gross receipts than small farms.¹¹⁷ In fact, data show that the largest farms¹¹⁸ have average net income levels over twenty times that of family farms.¹¹⁹ This income disparity strikes at the heart of vertical equity theory: Those possessing a higher ability to pay taxes should pay more than those who are less well positioned.¹²⁰ Therefore, S.B. 498 is vertically inequitable because it does not differentiate its impact according to estate wealth.

Large farms might not create the same environmental and social benefits as smaller ones. Large farms tend to have less crop diversity and biodiversity than small farms¹²¹ but may be more efficient than small farms.¹²² Even so, smaller farms tend to produce more social and environmental benefits that, when accounted for, suggest small farms

¹¹⁶ S.B. 498, 82nd Or. Legis. Assemb., (2023).

¹¹⁷ *Farm-Level Average Net Cash Income*, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., <https://data.ers.usda.gov/reports.aspx?ID=17841> [<https://perma.cc/U9T2-TPN6>] (last updated Sept. 5, 2024).

¹¹⁸ *Id.* (categorizing farms with more than one million dollars in gross sales as the largest category of farm).

¹¹⁹ *See id.*

¹²⁰ Sneed, *supra* note 39, at 575–76 (discussing the need for “equal sacrifice” amongst taxpayers).

¹²¹ Vincent Ricciardi et al., *Higher Yields and More Biodiversity on Smaller Farms*, 4 NATURE SUSTAINABILITY 651 (2021).

¹²² Aaron Smith, *More of Our Food Is Coming from Big Farms Far Away*, UC DAVIS DEP'T OF AGRIC. & RES. ECON. (Oct. 20, 2021), <https://asmith.ucdavis.edu/news/local> [<https://perma.cc/4N94-9X9C>].

may even be more efficient than large farms.¹²³ Therefore, very wealthy and large estates fundamentally differ from less valuable estates for purposes of the positive environmental and social impacts of S.B. 498.

Oregon should revise S.B. 498 to recognize these differences in wealth and income. Identifying wealthy farms, however, is difficult because of diversity in agricultural operations and fluctuations in estate value. Oregon could revise S.B. 498 to exclude estates with the highest gross sales or to exclude estates based on their value. The average value of farmland and buildings on rural properties in Oregon was approximately \$1.3 million in 2022.¹²⁴ And, irrigated cropland is more than twice as valuable in Oregon than nonirrigated cropland.¹²⁵ The takeaway from these statistics is that drawing an upper limit on farm estate values is challenging because some farm property is more valuable even when accounting for size. Nonetheless, Oregon could exclude natural resource properties receiving the highest income levels; only 2.6% of farms in Oregon have gross sales above \$1 million.¹²⁶ This high bar would likely eliminate some of S.B. 498's disproportionate tax benefits without unfairly excluding certain agricultural practices. A second option would be to exclude estates with high taxable values. This approach could more directly focus the tax benefit of S.B. 498 on smaller estates. For example, the legislature could simply exclude estates valued above \$5.5 million and recoup the \$3.4 million in expected tax benefits to those estates.¹²⁷ Both solutions could help address the vertical inequity of S.B. 498 but would require further analysis than presented here.

¹²³ Christopher T. Bastian, *Strange, Marty. Family Farming: A New Economic Vision*, 93 AM. J. AGRIC. ECON., 247, 248 (2011) (book review).

¹²⁴ See NAT'L AGRIC. STAT. SERV., U.S. DEP'T OF AGRIC., LAND VALUES 2023 SUMMARY at 20 (2023); OR. DEP'T AGRIC., OREGON AGRICULTURAL STATISTICS AND DIRECTORY 2022 at 11 (2022). Statistics calculated by dividing the total value of farmland and buildings in 2022 by the number of farms in 2020.

¹²⁵ See NAT'L AGRIC. STAT. SERV., *supra* note 124, at 16.

¹²⁶ See OR. DEP'T AGRIC., *supra* note 124.

¹²⁷ See *Pub. Hearing on S.B. 498 Before the H. Comm. on Revenue, Estimated Revenue Impact*, 2023 Reg. Sess. (Or. 2023) (this source can be found at <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2023061104> under House Committee on Revenue 06/23/2023 12:45 PM [<https://perma.cc/33WP-DYNP>]).

IV

THE NATURAL RESOURCE PROPERTY ESTATE TAX EXEMPTION
HAS MIXED IMPLICATIONS FOR MINORITY GROUPS

Senate Bill 498 helps alleviate unfair burdens suffered by rural communities. Yet, it perpetuates the status quo of rural land ownership and does not directly help racial or ethnic minorities own farmland. Senate Bill 498 does bring indirect benefits to racial minorities and reduces causes of rural harms that disproportionately affect people of color. Nonetheless, S.B. 498 should be revised to better support rural minorities without compromising the exemption's stewardship goals.

A. Senate Bill 498 Addresses Rural Inequities

Oregonians living in rural areas are more likely to face poverty than Oregonians living in urban areas.¹²⁸ Similarly, national rural poverty rates exceed urban poverty rates by 3%.¹²⁹ The poverty gap between rural and urban areas is not a new phenomenon: Nationwide poverty rates in rural counties have outpaced those in urban counties since 1959.¹³⁰ This disparity is partially due to the pursuit of societal goals at the expense of rural communities.¹³¹ In particular, rural communities have suffered a disproportionate share of economic and environmental injuries.¹³² Indeed, economic forces drive some of these burdens; in 2019, urban employment was seven times higher than rural employment.¹³³ As a result, some say rural individuals should simply relocate to urban areas.¹³⁴ This approach, however, ignores that rural communities were shaped to supply population centers with resources, food, and necessities.¹³⁵ Relatedly, rural communities bear

¹²⁸ Audrey Mechling, *A Portrait of Poverty in Oregon*, OR. CENT. FOR PUB. POL'Y (Aug. 7, 2020), <https://www.ocpp.org/2020/08/07/poverty-oregon> [<https://perma.cc/RXK9-JDQ2>] (“From 2014-2018, the poverty rate was more than 16 percent among rural Oregonians, compared to the 14 percent rate for Oregonians living in urban areas.”).

¹²⁹ *Many Rural Americans Are Still “Left Behind,”* INST. FOR RSCH. ON POVERTY, UNIV. OF WISCONSIN-MADISON (Jan. 2020), https://www.irp.wisc.edu/resource/many-rural-americans-are-still-left-behind/#_ednref3 [<https://perma.cc/DHC7-5WW8>].

¹³⁰ Ann M. Eisenberg, *Distributive Justice and Rural America*, 61 B.C. L. REV. 189, 205 (2020).

¹³¹ *Id.* at 216–17.

¹³² *Id.* at 217.

¹³³ James C. Davis et al., *Rural America at a Glance: 2022 Edition*, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC. 3 (2022), <https://www.ers.usda.gov/webdocs/publications/105155/eib-246.pdf?v=9605.5> [<https://perma.cc/G6H6-GKQY>].

¹³⁴ Eisenberg, *supra* note 130, at 211.

¹³⁵ *Id.* at 212.

the environmental costs associated with resource extraction and intensive production needed to supply population centers.¹³⁶ The disproportionate allocation of these burdens makes clear that policy should right the wrong of using rural communities to benefit the rest of society.

An estate tax exemption for family natural resource properties helps heal this wound. First, family-owned rural businesses are less likely to engage in destructive practices that prioritize intensive production and extraction.¹³⁷ As a result, S.B. 498 helps alleviate unfair environmental burdens in rural communities by countering some of the economic demands driving harmful forestry, farming, and fishing practices. Second, population loss is a major factor driving poverty in rural communities.¹³⁸ Population declines lead to fewer tax revenues, fewer essential services, dilapidated homes, and lost opportunities.¹³⁹ Senate Bill 498 counters this trend by empowering the rural family unit to retain the farm. This is particularly relevant considering that the age of the average farm owner has increased steadily over time and sits at 58.1 years old.¹⁴⁰ Many resource properties will need new owners in the coming years. Senate Bill 498 incentivizes descendants to succeed their family members, but its use is not limited to one succession.¹⁴¹ Instead, the exemption will encourage each coming generation to stay in the rural community and steward the land. Thereby, S.B. 498 helps address the population decline and its negative consequences in rural communities.

B. Senate Bill 498 Does Little for Racial Minority Groups

Data show racial minority groups in rural areas face particularly challenging conditions; they are among the most impoverished groups in the country.¹⁴² In 2019, poverty rates exceeded 30% for rural Black

¹³⁶ *Id.* at 246 (“[Legislation has] concentrated economic losses and environmental burdens on rural communities in the name of cheap, abundant food.”).

¹³⁷ Bird & Ikerd, *supra* note 57.

¹³⁸ Eisenberg, *supra* note 130, at 209.

¹³⁹ *Id.*

¹⁴⁰ NAT’L STAT. SERV., U.S. DEP’T OF AGRIC., FARM PRODUCERS, 2022 CENSUS OF AGRICULTURE (2024) [hereinafter FARM PRODUCERS].

¹⁴¹ See S.B. 498, 82nd Or. Legis. Assemb. (2023).

¹⁴² Eisenberg, *supra* note 130, at 205–06.

Americans and 29% for rural Native Americans.¹⁴³ Moreover, both rates were more than ten percentage points higher than their respective urban group.¹⁴⁴ Hispanic rural Americans also faced higher poverty rates than urban Hispanic Americans.¹⁴⁵ These statistics affirm that racial and ethnic minorities living in rural areas are particularly disadvantaged, and they also highlight that many of the economic and environmental injuries to rural communities disproportionately affect people of color.

The exemption does little to improve the condition of rural racial minorities. The exemption is aimed at family land succession.¹⁴⁶ Barring changes in rural family racial composition,¹⁴⁷ the exemption perpetuates the current racial demographics of rural land ownership. Nationwide, 95% of farm producers are white.¹⁴⁸ The percentage is even higher in Oregon, where 96.6% of farm producers are white.¹⁴⁹ There are more farm producers of Hispanic, Latine, or Spanish origin than any other racial minority in Oregon.¹⁵⁰ Still, these producers make up only 3.3% of all of Oregon's producers¹⁵¹ despite the facts that (1) most farm workers are Latine,¹⁵² and (2) undocumented farmworkers contribute hundreds of millions of dollars to the state's annual economic output and pay more than million in taxes annually.¹⁵³ While these issues persist today, Oregon's history plays a role in the conditions rural minorities currently face.

¹⁴³ *Data Show U.S. Poverty Rates in 2019 Higher in Rural Areas than in Urban for Racial/Ethnic Groups*, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=101903> [<https://perma.cc/6XC9-UFJB>] (last updated Aug. 23, 2021).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ S.B. 498 § 2(2)(b)–(c).

¹⁴⁷ Interracial and interethnic households are increasing in the United States, reaching 10% in 2016. See Rico et al., *Growth in Interracial and Interethnic Married-Couple Households*, U.S. CENSUS BUREAU (July 9, 2018), <https://www.census.gov/library/stories/2018/07/interracial-marriages.html> [<https://perma.cc/JHB6-UTE7>].

¹⁴⁸ FARM PRODUCERS, *supra* note 140.

¹⁴⁹ See OR. AG CENSUS DATA, *supra* note 35, tbl.45.

¹⁵⁰ *Id.* at tbl.52.

¹⁵¹ See *id.*

¹⁵² FARMWORKER NEEDS ASSESSMENT, OR. HUM. DEV. CORP. 14 (2022), https://www.ohdc.org/uploads/1/1/2/4/11243168/ohdc_farmworker_needs_assessment_2022.pdf [<https://perma.cc/3SQA-5GPT>] (“Most Farmworkers (around 92%) in Oregon and Washington are Latinx and over three quarters of them were born in Mexico.”).

¹⁵³ *Id.* at 12. A 2016 article states that undocumented workers account for 18% of Oregon's GDP in the agriculture, forestry, fishing, and hunting industries. Andrew Lomax,

Oregon's historic Black Codes played a significant role in the lack of minority land ownership: Oregon's first constitution barred Black people and other minorities from owning land.¹⁵⁴ Though rendered inoperable by the Fourteenth Amendment, the provision was not removed by Oregon voters until 1926.¹⁵⁵ This historical perspective dispels the notion that racial demographics of land ownership are merely a product of minorities' preference to live in urban areas. Moreover, rural property ownership demographics and Oregon's exclusionary history bring important context to S.B. 498's implications for racial minorities.

Generally, Native American property and land are exempt from the estate tax in Oregon if the land is owned or governed by a tribe or the land is situated on tribal lands.¹⁵⁶ Nonetheless, the natural resource exemption would impact Native Americans because most Native Americans do not live on reservations.¹⁵⁷ Native Americans' share of farming, forestry, and fishing businesses is higher than that of businesses in general.¹⁵⁸ So, S.B. 498 could positively affect the Native American community in Oregon. However, these effects are likely minimal because Native American wealth is low compared to the national average.¹⁵⁹ As a result, S.B. 498, in its current state, only slightly produces direct benefits for Native Americans.

Removing Unauthorized Workers Harms States and Industries Across the Country, CTR. FOR AMER. PROGRESS (Sep. 21, 2016), <https://www.americanprogress.org/article/removing-unauthorized-workers-harms-states-and-industries-across-the-country/>.

¹⁵⁴ Greg Nokes, *Black Exclusion Laws in Oregon*, OR. ENCYCLOPEDIA, https://www.oregonencyclopedia.org/articles/exclusion_laws/ [<https://perma.cc/7N9S-JUTA>] (last updated Apr. 6, 2023).

¹⁵⁵ *Id.*

¹⁵⁶ OR. REV. STAT. § 307.180–81 (2021).

¹⁵⁷ See Elisa Shearer et al., *Coverage of Tribal Governments: In Many Cases, a Struggle for Editorial Independence*, PEW RSCH. CTR. (Apr. 5, 2022), <https://www.pewresearch.org/journalism/2022/04/05/coverage-of-tribal-governments-in-many-cases-a-struggle-for-editorial-independence/#fnref-90572-11> [<https://perma.cc/7HQH-WR9M>] (citing U.S. census data).

¹⁵⁸ See Lynn Weinstein, *Native American Heritage Month: Population and Business Trends*, LIBR. OF CONG.: BLOGS (Nov. 16, 2021), https://blogs.loc.gov/inside_adams/2021/11/native-american-population-business-trends/ [<https://perma.cc/BYK9-UB7L>]. In 2012, Native Americans owned 1% of all business but 2.7% of agriculture, forestry, fishing, and hunting businesses. *Id.*

¹⁵⁹ Dedrick Asante-Muhammad et al., *Racial Wealth Snapshot: Native Americans*, NAT'L CMTY. REINV. COAL. (Feb. 14, 2022), <https://nrc.org/racial-wealth-snapshot-native-americans/> [<https://perma.cc/U3ZV-MAET>] (citing data from 2000 placing Native American wealth at 9% of the national average).

Senate Bill 498 does not directly encourage minority rural land ownership. That does not mean, however, that it does nothing to further it. By encouraging family farms and resource properties, the exemption enables cultural exchange and varied farm ownership.¹⁶⁰ Family-owned rural businesses have “more symbiotic relationships with communities” because these families live and work in the community—their employees live nearby, and their children attend local schools.¹⁶¹ In contrast, corporate landowners often consolidate land, push out independent landowners, and reduce local autonomy.¹⁶² These benefits notwithstanding, S.B. 498 still mostly perpetuates white ownership of rural property. That said, changes to S.B. 498 could enhance opportunities for minority land ownership.

C. Reform Could Benefit Racial and Ethnic Minorities

The exemption could better serve rural minorities without sacrificing its stewardship goals. The most important effect of S.B. 498 is that it encourages land stewardship by steering ownership toward owners interested in cultivating the land without degrading its value for future generations.¹⁶³ But this incentive is not limited to family ownership. Long-standing farm and property employees likely share the stewardship values and incentives of family owners because of their familiarity with the daily operations of the resource property and their participation in the physical labor on the property.¹⁶⁴ Further, many farm and resource property employees are minorities: persons of color accounted for 34% of farm managers in 2021.¹⁶⁵ Thus, including managers in the exemption would create a more racially diverse succession pool for smaller natural resource properties.

Allowing managers to qualify for the exemption does not jeopardize the stewardship benefits of the property so long as succeeding farm managers are equally invested in the long-term care of the land. To that

¹⁶⁰ See Eisenberg, *supra* note 130, at 233.

¹⁶¹ *Id.* at 195; see also Meredith Redlin & Brad Redlin, *Amendment E, Rural Communities and the Family Farm*, 49 S.D. L. REV. 787, 792 (2004).

¹⁶² Eisenberg, *supra* note 130, at 234.

¹⁶³ See *supra* discussion in Section III.A.

¹⁶⁴ See U.S. BUREAU OF LAB. STAT., *What Farmers, Ranchers, and Other Agricultural Managers Do*, OCCUPATIONAL OUTLOOK HANDBOOK, <https://www.bls.gov/ooh/management/farmers-ranchers-and-other-agricultural-managers.htm#tab-2> [https://perma.cc/TV8G-3UBP] (last modified Aug. 29, 2024).

¹⁶⁵ See *Farm Labor*, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., <https://www.ers.usda.gov/topics/farm-economy/farm-labor/> [https://perma.cc/P3GH-4GCG] (last visited Nov. 4, 2023).

end, the period for which a farm manager must materially participate to qualify for the exemption should be longer than that of an owner's family members. This requirement recognizes that farm employees, in the aggregate, may not be as invested in the land as the owners because they are further removed from the possibility of intergenerational use of the land. However, long-standing employees acquire a connection to the property through the duration of their work and practical knowledge,¹⁶⁶ much like that of a family owner. As a result, they are similarly likely to steward the land and maintain its fertility for the next generation. Allowing farm employees to qualify for the exemption is better than explicitly allowing racial minorities to qualify because policies expressing explicit racial preferences face the strict scrutiny test for racial classification under the U.S. Constitution.¹⁶⁷

Practically, it may be unlikely that many natural resource estate owners would transfer their property to long-standing farm employees instead of passing it down to their heirs or selling the property for their benefit. For that reason, alternative policies may incorporate long-standing farm employees into rural property ownership demographics more effectively.

One option would be to incentivize transfer to stewardship trusts. Stewardship trusts allow "people actively involved in a business [to] control the business."¹⁶⁸ In Oregon, these trusts are managed for a stated purpose and controlled by a trust stewardship committee.¹⁶⁹ While the stewardship trust statute does not attempt to determine the exact membership of the committee, it could include family members and former employees.¹⁷⁰ This group could easily incorporate long-standing employees. Additionally, concerns over the membership of the stewardship committee could be controlled through qualifications to the exemption's application. For example, an exemption might mandate that sustainable land use be a purpose of the trust or that at least one member of the stewardship committee be a materially participating employee in the natural resource business.

Thus, S.B. 498 should be reformed to incorporate long-standing employees of natural resource properties. Further, including long-

¹⁶⁶ See U.S. BUREAU OF LAB. STAT., *supra* note 164.

¹⁶⁷ City of Richmond v. J.A. Croson Co., 488 U.S. 469, 493 (1989).

¹⁶⁸ Susan N. Gary, *The Oregon Stewardship Trust: A New Type of Purpose Trust That Enables Steward-Ownership of a Business*, 88 U. CIN. L. REV. 707, 707 (2020).

¹⁶⁹ OR. REV. STAT. § 130.193 (2021).

¹⁷⁰ Gary, *supra* note 168, at 728.

standing employees is consistent with S.B. 498's environmental and community goals. Adding this component may also increase political support amongst urban voters, which, while not defeating S.B. 498 in Oregon,¹⁷¹ could be instrumental in passing a similar federal tax exemption.

V

OREGON'S TAX POLICY MOTIVATES CHANGE IN OTHER STATES AND NATIONALLY

One aspect of our federalist system is that states serve “as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”¹⁷² That the federal government and other states can model one state's policy is fundamental to this idea.¹⁷³ Accordingly, the federal government and other states should model Oregon when taxing the estates of family-owned natural resource properties.

A. Other States Should Pursue Similar Policies

Most states do not have any inheritance or estate tax.¹⁷⁴ Of the states that do, almost all have a higher exemption than Oregon.¹⁷⁵ Some have exemptions for farm and natural resource properties.¹⁷⁶ For example, Washington has a similar exemption to Oregon but does not require heirs to materially participate in the natural resource business.¹⁷⁷ Additionally, Washington requires that 50% of the estate's value be in agricultural real property.¹⁷⁸ Minnesota offers an approach with a lower cap on the exemption (\$2 million in 2021).¹⁷⁹ Minnesota's scheme also does not require material participation but subjects heirs

¹⁷¹ See *2023 Session Senate Bill 498*, THE OREGONIAN, <https://gov.oregonlive.com/bill/2023/SB498/> [<https://perma.cc/25HM-USGD>] (last visited Sep. 2, 2024).

¹⁷² *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

¹⁷³ See *id.* (“There must be power in the States and the Nation to remould” according to these experiments.).

¹⁷⁴ Yushkov, *supra* note 6.

¹⁷⁵ *Id.*

¹⁷⁶ See, e.g., WASH. ADMIN. CODE § 458-57-155 (2023); *Qualified Small Business and Farm Property Deduction*, MINN. DEP'T OF REV., <http://www.revenue.state.mn.us/qualified-small-business-and-farm-property-deduction> [<https://perma.cc/2TML-BEB5>] (last updated June 26, 2023).

¹⁷⁷ § 458-57-155(3)(a) (stating “there is no requirement that the heir to the land and equipment continue farming”).

¹⁷⁸ § 458-57-155(3)(b)(ii).

¹⁷⁹ MINN. STAT. § 291.03 (2023); MINN. DEP'T OF REV., *supra* note 176.

to a recapture tax if they sell the property or alter its agricultural nature.¹⁸⁰ Both Washington and Minnesota should require that heirs materially participate to incentivize stewardship of natural resource properties. Oregon, however, should consider capping the exemption at a lower rate like Minnesota.

*B. The Federal Government Should Adopt a Similar,
Revised Exemption*

The federal government's estate tax exemption¹⁸¹ expires in 2025, after which it will be reduced by \$6 or \$7 million (depending on inflation).¹⁸² Yet, the rationale to exempt natural resource properties in Oregon applies with even more force nationally. Farms are consolidating at a faster rate nationally than in Oregon.¹⁸³ Additionally, climate change transcends local solutions; climate change necessitates national action partly because environmental harms "spillover" into other jurisdictions.¹⁸⁴ Thus, the need to support environmentally friendly farming, forestry, and fishing businesses is even more pressing nationally than in Oregon alone. Moreover, Section 2032A changes the valuation for properties but does not exempt natural resource properties from taxation, and it is not as clearly framed to include forests and fisheries.¹⁸⁵ The federal government should adopt a policy like a revised S.B. 498 to address these shortcomings.

The federal government should include civil unions within the definition of a qualifying relationship. People in civil unions and marriages are similarly situated¹⁸⁶ for purposes of Section 2032A and should be treated as such. Fundamentally, the distinction between civil

¹⁸⁰ See MINN. STAT. § 291.03 subd. 10(1)–(6); MINN. STAT. § 273.13 subd. 23(b).

¹⁸¹ 26 U.S.C. § 2010(c).

¹⁸² *Id.*; Michael Seltzer, *Using the Federal Estate, Gift Tax Exemption Before It Sunsets*, FORBES (Oct. 25, 2023, 7:15 AM), <https://www.forbes.com/sites/forbesfinancecouncil/2023/10/25/using-the-federal-estate-gift-tax-exemption-before-it-sunsets/?sh=380ffb77810c> [<https://perma.cc/3VK7-FJM6>].

¹⁸³ OR. AG CENSUS DATA, *supra* note 35; U.S. AG CENSUS DATA, *supra* note 35.

¹⁸⁴ Jonathan H. Adler, *Jurisdictional Mismatch in Environmental Federalism*, 14 N.Y.U. ENV'T L.J. 130, 140 (2005).

¹⁸⁵ See *supra* text accompanying notes 24–27.

¹⁸⁶ Infanti, *supra* note 30, at 658 (arguing for inclusion of civil unions in tax benefits in part because they are obligated, like married couples, to care for one another). Denying benefits to civil unions in this context also impairs the function of domestic partnerships to give persons certain legal benefits otherwise reserved for marriage. See Bridget J. Crawford, *The Profits and Penalties of Kinship: Conflicting Meanings of Family in Estate Tax Law*, 3 PITT. TAX REV. 1, 43–44 (2005).

union relationships¹⁸⁷ and marriage or lineal relationships does not bear on whether an otherwise materially participating person would manage the land for long-term, sustainable use. As Section 2032A recognizes by incorporating adopted children,¹⁸⁸ the primary concern of family farm tax benefits is that the land is managed for intergenerational equity.¹⁸⁹ Excluding civil unions denies benefits to people who would otherwise steward the land for the future but have a slightly different relationship with the decedent. Using this same reasoning, the federal government should amend Section 2032A to include civil unions.

Therefore, the federal government should add a carve-out to the estate tax like a revised S.B. 498 to Section 2032A when the federal estate tax exemption expires. In doing so, the federal government will make significant strides to alleviate the burdens in rural communities and the environmental harms threatening the nation.

CONCLUSION

Senate Bill 498 is a significant step for supporting local stewardship, but it needs reform to offset its negative impacts. The exemption is practical because it simplifies qualification requirements but overinclusive because it disproportionately benefits wealthy natural resource estates that are well-positioned to pay estate tax. It also has conflicting effects on efficiency and is slightly inadequate. The exemption furthers environmental and sustainability goals by incentivizing an ownership structure that aims to maintain the land for future generations. It also benefits rural communities. However, it should be reformed to better alleviate poverty for rural minorities. To address these shortcomings, S.B. 498 should have a lower cap for the allowable estate and incorporate long-standing farm employees into the succession pool. Lastly, the federal government and other states should adopt a revised version of S.B. 498 to encourage the environmental and social benefits associated with family-owned natural resource properties.

¹⁸⁷ See generally Misha Isaak, Comment, "What's in a Name?": *Civil Unions and the Constitutional Significance of "Marriage,"* 10 U. PA. J. CONST. L. 607, 611, 621–25 (2008) (discussing the denial of tangible government benefits to civil unions in an equal protection context).

¹⁸⁸ I.R.C. § 2032A(e)(2).

¹⁸⁹ See *supra* Section III.A.