House Bill 4103

Sponsored by Representative FREEMAN; Representatives CAMERON, ESQUIVEL, KENNEMER, LINDSAY, WINGARD (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Creates income tax credit for capital improvements to business facilities or homes that are commenced prior to May 30, 2012, or effective date of Act, whichever is later. Limits amount each taxpayer may claim. Establishes requirements for certification of capital improvements.

Applies to tax years beginning on or after January 1, 2012.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to capital improvements income tax credit; creating new provisions; amending ORS 314.752 and 318.031; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 4 of this 2012 Act are added to and made a part of ORS chapter 315.

SECTION 2. (1) As used in sections 2 to 4 of this 2012 Act:

(a) "ADA-compliant" means that a capital improvement results in a business facility that is compliant with the Americans with Disabilities Act.

(b) "Business facility" means a physical asset that is used by a business in the operation of a revenue-producing enterprise including, but not limited to, manufacturing, assembly, fabrication, processing, shipping, storage, retail sales or services, child care, housing, retail food service, health care, tourism, entertainment, financial services, professional services, energy development or construction.

(c) "Capital improvement" means a project that:

(A) Raises the value of a business facility owned or operated by the taxpayer;

(B) Raises the value of a home owned by the taxpayer;

(C) Is a capital expenditure as described in section 263 of the Internal Revenue Code; or

(D) Involves a purchase of machinery or equipment that becomes a permanent fixture of a business facility owned or operated by the taxpayer.

(d) "Energy efficient" means that a capital improvement has been certified by the State Department of Energy to produce premium energy efficiency characteristics.

(2) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317) shall be allowed for a taxpayer's expenses for capital improvements that qualify under this section and section 3 of this 2012 Act. The amount of the credit allowed under this section may not exceed $50,000 for a capital improvement to a home or $500,000 for a capital improvement to a business facility, and shall equal:

(a) The certified cost of a capital improvement that is certified as energy efficient or ADA-compliant under section 3 of this 2012 Act; or

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

(b) Fifty percent of the certified cost for all other capital improvements.

(3) For a credit to be allowed under this section:

(a) The certified cost of a capital improvement must be:

(A) At least $5,000 for a capital improvement to a home; or

(B) At least $25,000 for a capital improvement to a business facility.

(b) The taxpayer must:

(A) Be the owner or lessee of the business facility or owner of the home that is the subject of the capital improvement;

(B) Commence construction or implementation of the capital improvement prior to May 30, 2012, or the effective date of this 2012 Act, whichever is later;

(C) Complete construction or implementation of the capital improvement before or during the tax year for which the credit is claimed; and

(D) Receive all necessary certifications as provided in section 3 of this 2012 Act before claiming the credit.

(4) The credit allowed under this section is not in lieu of any depreciation or amortization deduction for the investment to which the taxpayer otherwise may be entitled under ORS chapter 316 or 317 for any tax year.

(5)(a) The credit allowed under this section may not exceed the tax liability of the taxpayer for the tax year and may not be carried over to another tax year.

(b) Notwithstanding paragraph (a) of this subsection, if the certified cost exceeds $100,000, the credit allowed in each of four succeeding tax years shall be 25 percent of the total credit.

(6) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(7) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed under this section shall be determined in a manner consistent with ORS 316.117.

(8) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxable year of a taxpayer under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

(9) No credit shall be allowed under this section for any portion of a certified cost for which the taxpayer claims a tax credit or ad valorem tax relief under ORS 307.405, 315.304, 315.354, 315.356, 316.116 and 469B.130 to 469B.169, or any similar state or federal tax incentive program.

<u>SECTION 3.</u> (1) Subject to standards and procedures that the Department of Revenue shall establish by rule, the department shall certify taxpayers' expenses as eligible costs for purposes of claiming the credit allowed under section 2 of this 2012 Act. The department may establish standards:

(a) For determining whether the value of a business facility or home is likely to be improved by a taxpayer's expenses described in section 2 of this 2012 Act.

(b) Requiring a certain ratio between a taxpayer's expenses for the capital improvement and the likely amount of improvement in value of the business facility or home.

(c) Requiring taxpayers to receive preliminary certification before claiming a credit for certain capital improvements.

(2) In addition to the certification procedures required by subsection (1) of this section:

(a) The State Department of Energy shall establish by rule standards for certifying capital improvements as energy efficient.

(b) The Department of Human Services shall establish by rule standards for certifying capital improvements as ADA-compliant.

SECTION 4. (1) A person may apply to the Department of Revenue for certification under section 3 of this 2012 Act of the expenses of a capital improvement.

(2) The application shall be made in writing in a form prescribed by the department and shall contain information on the capital improvement.

(3) The application shall be accompanied by the fee established under subsection (4) of this section. The fee may be refunded if the application for certification is rejected.

(4) By rule and after public hearing, the department may adopt a schedule of reasonable fees that the department may require of applicants for certification under section 3 of this 2012 Act. The fees may vary according to the size and complexity of the capital improvement. The fees shall not be considered by the department as part of the cost of the capital improvement to be certified.

SECTION 5. ORS 314.752 is amended to read:

314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are allowable to the shareholders of the S corporation.

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(4) If the shareholder is a nonresident and there is a requirement applicable for the business tax credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing

facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.533 (low income community jobs initiative) and ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) **and section 2 of this 2012 Act (capital improvements)**.

SECTION 6. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.141, 315.156, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.507 and 315.533 **and section 2 of this 2012 Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

SECTION 7. Sections 2 to 4 of this 2012 Act and the amendments to ORS 314.752 and 318.031 by sections 5 and 6 of this 2012 Act apply to tax years beginning on or after January 1, 2012.

SECTION 8. This 2012 Act takes effect on the 91st day after the date on which the 2012 regular session of the Seventy-sixth Legislative Assembly adjourns sine die.