

Enrolled
House Bill 3364

Sponsored by Representative WITT; Representatives BARNHART, BOONE, BOQUIST, BRUUN, BUCKLEY, CLEM, DALLUM, GARRARD, GIROD, HANNA, HOLVEY, KRIEGER, MORGAN, NOLAN, ROBLAN, ROSENBAUM, SCHAUFLE, G SMITH, P SMITH, WHISNANT (at the request of Oregon Small Woodlands Association)

CHAPTER

AN ACT

Relating to tax credits for reforestation; creating new provisions; amending ORS 314.752, 315.104, 318.031, 526.450, 526.455, 526.465 and 526.475; and repealing ORS 315.104, 315.106 and 315.108.

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

SECTION 1. ORS 315.104 is amended to read:

315.104. (1) A credit against the taxes otherwise due under ORS chapter 316 (or if the taxpayer is a corporation, under ORS chapter 317 or 318) shall be allowed in an amount equal to 50 percent of reforestation project costs actually paid or incurred to reforest underproductive Oregon forestlands. Such costs include, but are not limited to, **any fees established by the State Forester under ORS 315.106 (4)**, site preparation, tree planting and other silviculture treatments considered necessary by the State Forester to establish commercial, hardwood or softwood stands on appropriate sites. Subject to subsection (5) of this section:

(a) One-half of the credit shall be taken in the tax year for which the State Forester, after physical inspection of the forestland, issues a preliminary certificate under ORS 315.106 certifying that the land qualifies as underproductive Oregon forestland and that the reforestation project undertaken meets the requirements of this section and the specifications established by the State Forester and the costs appear to be reasonable; and

(b) One-half of the credit shall be taken in the tax year for which the State Forester, after further physical inspection of the land and project, certifies that the new forest is established in accordance with the specifications of the State Forester.

(2) No credit shall be allowed under either subsection (1)(a) or (b) of this section unless written certification containing the following statements accompanies the claim for the credit or is otherwise filed with the Department of Revenue:

(a) A preliminary certificate issued by the State Forester under ORS 315.106 that the land and project meet the preliminary specifications established by the State Forester or that the new forest is established, whichever is applicable at the time.

(b) A statement by the landowner or person in possession of the land that the land within the project area will be used for the primary purpose of growing and harvesting trees of an acceptable species.

(c) A statement that the landowner or person in possession of the land is aware that maintenance practices, including release, may be needed to insure that a new forest is established and will remain established.

(3) For purposes of this section, reforestation project costs shall not include:

(a) Costs paid or incurred to reforest any forestland that has been commercially logged to the extent that reforestation is required under the Oregon Forest Practices Act, except costs paid or incurred to reforest forestland following a hardwood harvest, conducted for the purposes of converting underproductive forestlands, as determined by administrative rule.

(b) That portion of costs or expenses paid through a federal or state cost share, financial assistance or other incentive program.

(c) Those costs paid or incurred to grow Christmas trees, ornamental trees, shrubs or plants, or those costs paid or incurred to grow hardwood timber described under ORS 321.267 (3) or 321.824 (3).

(d) Any costs paid or incurred to purchase or otherwise acquire the land.

(e) The cost of purchase or other acquisition of tools and equipment with a useful life of more than one year.

(4) To qualify for the credit:

(a) The project must be completed to specifications approved by the State Forester.

(b) The taxpayer's portion of the project costs must be \$500 or more.

(c) The taxpayer must be a private individual, corporation, group, Indian tribe or other native group, association or other nonpublic legal entity owning, purchasing under recorded contract of sale or leasing at least five acres of Oregon commercial forestland.

(d) Prior to December 31, 2022, the taxpayer must file with the State Forester a written request for preliminary certification under ORS 315.106.

(5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, but may not be carried forward for any tax year thereafter. In all cases the taxpayer must be the person who made the investment into the project.

(6) The credit provided by this section shall be in addition to and not in lieu of any depreciation or amortization deduction to which the taxpayer otherwise may be entitled with respect to the reforestation project and the credit shall not affect the computation of basis for the property.

(7) In compliance with ORS chapter 183, the Department of Revenue and the State Forestry Department may adopt rules consistent with law for carrying out the provisions of this section.

(8) As used in this section, "underproductive Oregon forestlands" means Oregon commercial forestlands not meeting the minimum stocking standards of the Oregon Forest Practices Act.

(9) If, for any reason other than those specified in subsection (10) of this section, a new forest is not established by the last day of the second taxable year following the taxable year for which the preliminary certificate was issued, the State Forester shall so report to the Department of Revenue. The report filed under this subsection shall be the basis for the department to recover any credit granted under subsection (1)(a) of this section. If, however, the new forest is not established within the time required by this subsection on account of the reasons specified in subsection (10) of this section, any credit allowed under subsections (1)(a) and (5) of this section shall not be recovered but no further credit as provided under subsections (1)(b) and (5) of this section shall be allowed.

(10) Subject to requalification under this section in the manner applicable for the original claim, including obtaining a new preliminary certificate, a taxpayer may claim an additional credit or credits for reestablishing a new planting in the event that the new forest is destroyed by a natural disaster or is not established for reasons beyond the control of the taxpayer, if the measures taken in completing the original or earlier project would normally have resulted in establishing the minimum number of trees per acre anticipated by the project.

(11) Any owner affected by a determination, regarding the reforestation tax credit made by:

(a) The State Forester, except for a denial of a request for a preliminary certificate due to the annual reforestation credit cost limitation calculated under ORS 315.108, may appeal that determination in the manner provided for in ORS 526.475 (1).

(b) The Department of Revenue, may appeal that determination in the manner provided for in ORS 526.475 (2).

SECTION 2. The amendments to ORS 315.104 by section 1 of this 2007 Act apply to tax credits claimed for tax years beginning on or after January 1, 2008.

SECTION 3. 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), [ORS 315.104 (forestation and reforestation),] ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.156 (crop gleanings), 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 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle).

SECTION 4. 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,] 315.134, 315.156, 315.204, 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 (all only to the extent applicable for a corporation) and ORS chapter 317.

SECTION 5. ORS 526.450 is amended to read:

526.450. ORS [315.104,] 318.031 and 526.450 to 526.475 may be cited as the "Woodland Management Act of 1979."

SECTION 6. ORS 526.455 is amended to read:

526.455. As used in ORS [315.104,] 318.031 and 526.450 to 526.475, unless the context requires otherwise:

(1) "Approved forest management practice" means and includes site preparation, tree planting, precommercial thinning, release, fertilization, animal damage control, insect and disease management or such other young growth management practices that increase wood growth as the State Forester shall approve or determine proper generally with regard to any particular applicant.

(2) "Board" means State Board of Forestry.

(3) "Commercial forestland" means land for which a primary use is the growing and harvesting of forest tree species and other forest resource values.

(4) "Eligible owner" means any private individual, group, Indian tribe or other native group, association, corporation or other nonpublic legal entity owning 10 to 500 acres of Oregon commercial forestland.

(5) "Forest management plan" means an operation plan to reach landowner objectives and assures public benefits as they relate to producing timber and other values. It shall include a cover map, basic forest stand description data, treatment opportunities, landowner objectives and a schedule for implementing the forest management plan.

(6) "Forest management practices" means and includes site preparation, tree planting, precommercial thinning, release, fertilization, animal damage control, insect and disease management and other young growth management practices that increase wood growth.

(7) "Industrial private forestlands" means lands capable of producing crops of industrial wood, greater than 10 acres and owned by other than an eligible owner.

(8) "Industrial wood" means forest products used to sustain a sawmill, plywood mill, pulp mill or other forest industry related manufacturing facility.

(9) "Landowner" means any private individual, group, Indian tribe or other native group, association, corporation or other legal entity, owning both the forestland and any timber thereon.

(10) "Nonindustrial private forestlands" means lands capable of producing crops of industrial wood and owned by an eligible owner.

(11) "State Forester" means the individual appointed pursuant to ORS 526.031, or the authorized representative of the State Forester.

(12) "Timber" means wood growth, mature or immature, growing or dead, standing or down of species acceptable for regeneration under the Oregon Forest Practices Act.

(13) "Underproductive forestlands" means commercial forestlands not meeting the minimum stocking standards of the Oregon Forest Practices Act.

SECTION 7. ORS 526.465 is amended to read:

526.465. The purpose of ORS [315.104,] 318.031 and 526.450 to 526.475 is to encourage long term forestry investments that lead to increased management of Oregon's forestlands by:

[1] *Providing the forest owner with tax relief during the timber growth period.*

[2] (1) Promoting programs that provide forest credit on young stands and encourage harvesting of mature forest crops.

[3] (2) Promoting the establishment of new forest crops on cutover, denuded or underproductive privately owned forestlands.

[4] (3) Protecting the public interest by assuring that the citizens of the state and future generations shall have the benefits to be derived from the continuous production of forest products from the private forestlands of Oregon, including jobs, taxes, water, erosion control and habitat for wild game.

SECTION 8. ORS 526.475 is amended to read:

526.475. (1) Any owner affected by a determination of the State Forester made under ORS [315.104,] 318.031 and 526.450 to 526.475 may appeal to the State Board of Forestry under such rules as it may adopt. An appeal to set aside any decision of the board with respect to ORS [315.104 or] 318.031 may be taken within 60 days of the decision to the Oregon Tax Court in the manner provided for tax cases under ORS chapter 305.

(2) Any owner affected by a determination of the Department of Revenue made under ORS [315.104 or] 318.031 may appeal directly to the tax court under ORS 305.404 to 305.560.

SECTION 9. ORS 315.104, 315.106 and 315.108 are repealed on January 2, 2028.

SECTION 10. The amendments to ORS 314.752, 318.031, 526.450, 526.455, 526.465 and 526.475 by sections 3 to 8 of this 2007 Act become operative on January 2, 2028.

Passed by House June 19, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 25, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State