

House Bill 2068

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Revenue)

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**.

Provides uniform procedures for transfer of certain income and excise tax credits.
Applies to tax years beginning on or after January 1, 2010.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to transfer of tax credits; creating new provisions; amending ORS 315.144, 315.164, 315.514,
3 316.116, 317.147 and 469.206 and section 28, chapter 618, Oregon Laws 2003; and prescribing an
4 effective date.

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

6 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 314.**

7 **SECTION 2. (1) An entity that is allowed a tax credit under ORS 315.141, 315.164, 315.169,
8 315.354, 315.514, 316.116 or 317.147 may transfer the credit to a taxpayer in exchange for a
9 cash payment equal to the present value of the tax credit. The transfer is effective only if
10 the transferor and the transferee jointly file a notice of tax credit transfer with the De-
11 partment of Revenue. The notice must be filed on or before the date on which the income
12 or corporate excise tax return of the transferee, for the first year for which the credit could
13 be claimed, is filed or is due, whichever is earlier. The notice must be given on a form pre-
14 scribed by the department that contains all of the following:**

15 (a) **The name and taxpayer identification number of the transferor;**

16 (b) **The name and taxpayer identification number of the transferee;**

17 (c) **The amount of the tax credit that is being transferred;**

18 (d) **The amount of the tax credit that is being retained by the transferor; and**

19 (e) **Any other information required by the department.**

20 (2)(a) **A state agency listed in subsection (3) of this section may establish by rule uniform
21 discount rates to be used in calculating the present value of a tax credit under this section.**

22 (b) **If requested to do so by the department, a state agency listed in subsection (3) of this
23 section shall supply a list, by tax year, of entities for which a particular tax credit is allow-
24 able.**

25 (3) **Subsection (2) of this section applies:**

26 (a) **In the case of a tax credit under ORS 315.514, to the Oregon Film and Video Office.**

27 (b) **In the case of a tax credit under ORS 315.141, 315.354 or 316.116, to the State De-
28 partment of Energy.**

29 (c) **In the case of a tax credit under ORS 315.164, 315.169 or 317.147, to the Housing and
30 Community Services Department.**

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.

1 **(4) The Department of Revenue shall by rule establish procedures for the transfer of a**
 2 **tax credit under this section.**

3 **SECTION 3.** ORS 469.206 is amended to read:

4 469.206. (1) The owner of a facility may transfer a tax credit for the facility [*in exchange for a*
 5 *cash payment equal to the present value of the tax credit.*]

6 [(2) *The State Department of Energy may establish by rule uniform discount rates to be used in*
 7 *calculating the present value of a tax credit under this section.*] **as provided in section 2 of this 2009**
 8 **Act.**

9 [(3)] (2) Notwithstanding any other provision of law, a tax credit transferred pursuant to this
 10 section does not decrease the amount of taxes required to be reported by a public utility.

11 **SECTION 4.** ORS 315.514 is amended to read:

12 315.514. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the
 13 taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer for certified film
 14 production development contributions made by the taxpayer during the tax year to the Oregon
 15 Production Investment Fund established under ORS 284.367.

16 (2)(a) The amount of the tax credit shall equal the amount certified for credit by the Oregon
 17 Film and Video Office, except that a contribution must equal at least 90 percent of the tax credit.

18 (b) The Oregon Film and Video Office shall adopt rules for determining the amount of tax credit
 19 to be certified by the office. The rules shall be adopted in order to achieve the following goals:

20 (A) Subject to paragraph (a) of this subsection, generate contributions for which tax credits of
 21 \$5 million are certified for each fiscal year;

22 (B) Maximize income and excise tax revenues that are retained by the State of Oregon for state
 23 operations; and

24 (C) Provide the necessary financial incentives for taxpayers to make contributions, taking into
 25 consideration the impact of granting a credit upon a taxpayer's federal income tax liability.

26 (3) A taxpayer seeking a tax credit under this section shall apply for tax credit certification to
 27 the Oregon Film and Video Office on a form supplied by the office. The taxpayer shall include pay-
 28 ment of the contribution at the time of application.

29 (4) Contributions made under this section shall be deposited in the Oregon Production Invest-
 30 ment Fund.

31 (5)(a) Upon receipt of a contribution, the Oregon Film and Video Office shall issue to the tax-
 32 payer written certification of the amount certified for tax credit under this section to the extent the
 33 amount certified for tax credit, when added to all amounts previously certified for tax credit under
 34 this section, does not exceed \$5 million for the fiscal year in which certification is made.

35 (b) The Oregon Film and Video Office is not liable, and a refund of a contributed amount need
 36 not be made, if a taxpayer who has received tax credit certification is unable to use all or a portion
 37 of the tax credit to offset the tax liability of the taxpayer.

38 (6) To the extent the Oregon Film and Video Office does not certify contributed amounts as el-
 39 igible for a tax credit under this section, the taxpayer may request a refund of the amount the tax-
 40 payer contributed, and the office shall refund that amount.

41 (7)(a) Except as provided in paragraph (b) of this subsection, a tax credit claimed under this
 42 section may not exceed the tax liability of the taxpayer and may not be carried over to another tax
 43 year.

44 (b) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
 45 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next

1 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
 2 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
 3 succeeding tax year may be carried forward and used in the third succeeding tax year but may not
 4 be carried forward for any tax year thereafter.

5 (c) A taxpayer is not eligible for a tax credit under this section if the first tax year for which
 6 the credit would otherwise be allowed begins on or after January 1, 2012.

7 (8) If a tax credit is claimed under this section by a nonresident or part-year resident taxpayer,
 8 the amount shall be allowed without proration under ORS 316.117.

9 (9) *[A taxpayer who has received a tax credit certificate]* **A taxpayer that has received certifi-**
 10 **ication for a tax credit** under this section may *[sell the certificate]* **transfer the tax credit as**
 11 **provided in section 2 of this 2009 Act.** *[to another taxpayer. The sale is effective only if a notice of*
 12 *tax credit certificate sale is filed with the Department of Revenue. The notice shall be filed on a form*
 13 *prescribed by the department on or before the date on which the income or corporate excise tax return*
 14 *of the buyer for the first year for which the credit could be claimed is filed or due, whichever is earlier.*
 15 *The notice form shall include the following information:]*

16 *[(a) The name and taxpayer identification number of the seller;]*

17 *[(b) The name and taxpayer identification number of the buyer;]*

18 *[(c) The amount of the tax credit certificate that is being sold to the buyer;]*

19 *[(d) The amount of the tax credit certificate that is being retained by the seller; and]*

20 *[(e) Any other information required by the department.]*

21 *[(10) If requested by the Department of Revenue, the Oregon Film and Video Office shall supply*
 22 *a list of taxpayers that have obtained tax credit certification under this section, and for each listed*
 23 *taxpayer disclose:]*

24 *[(a) The amount of contribution made by the taxpayer; and]*

25 *[(b) The amount certified for tax credit under this section.]*

26 *[(11) If the amount of contribution for which a tax credit certification is made is allowed as a de-*
 27 *duction for federal tax purposes, the amount of the contribution shall be added to federal taxable in-*
 28 *come for Oregon tax purposes.]*

29 **SECTION 5.** ORS 316.116 is amended to read:

30 316.116. (1)(a) A resident individual shall be allowed a credit against the taxes otherwise due
 31 under this chapter for costs paid or incurred for construction or installation of each of one or more
 32 alternative energy devices in a dwelling.

33 (b) A resident individual shall be allowed a credit against the taxes otherwise due under this
 34 chapter for costs paid or incurred to modify or purchase an alternative fuel vehicle or related
 35 equipment.

36 (2)(a) In the case of a category one alternative energy device that is not an alternative fuel
 37 device, the credit shall be based upon the first year energy yield of the alternative energy device
 38 that qualifies under ORS 469.160 to 469.180. The amount of the credit shall be the same whether for
 39 collective or noncollective investment.

40 (b) The credit allowed under this section for each category one alternative energy device for
 41 each dwelling may not exceed the lesser of:

42 (A) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per
 43 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or
 44 domestic water heating for tax years beginning on or after January 1, 1990, and before January 1,
 45 1996.

1 (B) \$1,200 or the first year energy yield in kilowatt hours per year multiplied by 48 cents per
 2 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or
 3 domestic water heating for tax years beginning on or after January 1, 1996, and before January 1,
 4 1998.

5 (C) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per
 6 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or
 7 domestic water heating for tax years beginning on or after January 1, 1998.

8 (c) For each category one alternative energy device used for swimming pool, spa or hot tub
 9 heating, the credit allowed under this section shall be based upon 50 percent of the cost of the de-
 10 vice or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is
 11 lower, up to:

12 (A) \$1,500 for tax years beginning on or after January 1, 1990, and before January 1, 1996.

13 (B) \$1,200 for tax years beginning on or after January 1, 1996, and before January 1, 1998.

14 (C) \$1,500 for tax years beginning on or after January 1, 1998.

15 (d) For each alternative fuel device, the credit allowed under this section is 25 percent of the
 16 cost of the alternative fuel device but the total credit shall not exceed \$750 if the device is placed
 17 in service on or after January 1, 1998.

18 (e)(A) For each category two alternative energy device that is a solar electric system or fuel
 19 cell system, the credit allowed under this section shall equal \$3 per watt of installed output, but the
 20 installed output that is used to determine the amount of credit under this paragraph may not exceed
 21 2,000 watts.

22 (B) For each category two alternative energy device that is a wind electric system, the credit
 23 allowed under this section may not exceed the lesser of \$6,000 or the first year energy yield in
 24 kilowatt hours per year multiplied by \$2.

25 (C) Notwithstanding subparagraph (A) or (B) of this paragraph, the total amount of the credits
 26 allowed in any one tax year may not exceed the tax liability of the taxpayer or \$1,500 for each al-
 27 ternative energy device, whichever is less. Unused credit amounts may be carried forward as pro-
 28 vided in subsection (7) of this section, but may not be carried forward to a tax year that is more
 29 than five tax years following the first tax year for which any credit was allowed with respect to the
 30 category two alternative energy device that is the basis for the credit.

31 (D) Notwithstanding subparagraph (A) or (B) of this paragraph, the total amount of the credit
 32 for each device allowed under this paragraph may not exceed 50 percent of the total installed cost
 33 of the category two alternative energy device.

34 (3)(a) In the case of a credit for a category one alternative energy device that is an energy ef-
 35 ficient appliance, the credit allowed for each appliance to a resident individual under this section
 36 shall equal:

37 (A) 48 cents per first year kilowatt hour saved, or the equivalent for other fuel saved, not to
 38 exceed \$1,200 for each tax year beginning on or after January 1, 1998, and before January 1, 1999;
 39 and

40 (B) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved, not to exceed \$1,000
 41 for each tax year beginning on or after January 1, 1999.

42 (b) Notwithstanding paragraph (a) of this subsection, the credit allowed for an energy efficient
 43 appliance may not exceed 25 percent of the cost of the appliance.

44 (4) To qualify for a credit under this section, all of the following are required:

45 (a) The alternative energy device must be purchased, constructed, installed and operated in ac-

1 cordance with ORS 469.160 to 469.180 and a certificate issued thereunder.

2 (b) Except for credits claimed for alternative fuel devices, the taxpayer who is allowed the credit
3 must be the owner or contract purchaser of the dwelling or dwellings served by the alternative en-
4 ergy device or the tenant of the owner or of the contract purchaser and must:

5 (A) Use the dwelling or dwellings served by the alternative energy device as a principal or
6 secondary residence; or

7 (B) Rent or lease, under a residential rental agreement, the dwelling or dwellings to a tenant
8 who uses the dwelling or dwellings as a principal or secondary residence, unless the basis for the
9 credit is the installation of an energy efficient appliance. If the basis for the credit is the installation
10 of an energy efficient appliance, the credit shall be allowed only to the taxpayer who actually oc-
11 cupies the dwelling as a principal or secondary residence.

12 (c) In the case of an alternative fuel device, if the device is a fueling station necessary to op-
13 erate an alternative fuel vehicle, unless the verification form and certificate are transferred as au-
14 thorized under ORS 469.170 (8), the taxpayer who is allowed the credit must be the contractor who
15 constructs the dwelling that incorporates the fueling station into the dwelling or installs the fueling
16 station in the dwelling. If the category one alternative energy device is an alternative fuel vehicle,
17 the credit must be claimed by the owner as defined under ORS 801.375 or contract purchaser. If the
18 category one alternative energy device is related equipment for an alternative fuel vehicle, the
19 credit may be claimed by the owner or contract purchaser.

20 (d) The credit must be claimed for the tax year in which the alternative energy device was
21 purchased if the device is operational by April 1 of the next following tax year.

22 (5) The credit provided by this section does not affect the computation of basis under this
23 chapter.

24 (6) The total credits allowed under this section in any one year may not exceed the tax liability
25 of the taxpayer.

26 (7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
27 particular year may be carried forward and offset against the taxpayer's tax liability for the next
28 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
29 forward and used in the second succeeding tax year, and likewise any credit not used in that second
30 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
31 credit not used in that third succeeding tax year may be carried forward and used in the fourth
32 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
33 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year
34 thereafter.

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

37 (9) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
38 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-
39 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

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

43 (11) A husband and wife who file separate returns for a taxable year may each claim a share
44 of the tax credit that would have been allowed on a joint return in proportion to the contribution
45 of each. However, a husband or wife living in a separate principal residence may claim the tax

1 credit in the same amount as permitted a single person.

2 (12) As used in this section, unless the context requires otherwise:

3 (a) "Collective investment" means an investment by two or more taxpayers for the acquisition,
4 construction and installation of an alternative energy device for one or more dwellings.

5 (b) "Noncollective investment" means an investment by an individual taxpayer for the acqui-
6 sition, construction and installation of an alternative energy device for one or more dwellings.

7 (c) "Taxpayer" includes a transferee of a verification form under ORS 469.170 (8).

8 (13) Notwithstanding any provision of subsection (1) or (2) of this section, the sum of the credit
9 allowed under subsection (1) of this section plus any similar credit allowed for federal income tax
10 purposes may not exceed the cost to the taxpayer for the acquisition, construction and installation
11 of the alternative energy device.

12 **(14) Notwithstanding subsection (4) of this section, a credit under this section may be**
13 **transferred as provided in section 2 of this 2009 Act, if the taxpayer claiming the credit under**
14 **this section complies with the requirements of subsection (4) of this section.**

15 **SECTION 6.** ORS 317.147 is amended to read:

16 317.147. (1) As used in this section:

17 (a) "Farmworker housing" has the meaning given that term in ORS 315.163.

18 (b) "Lending institution" means a bank, mortgage banking company, trust company, savings
19 bank, savings and loan association, credit union, national banking association, federal savings and
20 loan association, federal credit union maintaining an office in this state, nonprofit community de-
21 velopment financial institution or nonprofit public benefit corporation operating as a lending insti-
22 tution.

23 (2)(a) A lending institution shall be allowed a credit against the taxes otherwise due under this
24 chapter for the tax year equal to 50 percent of the interest income earned during the tax year on
25 loans to finance only costs directly associated with construction or rehabilitation of farmworker
26 housing if, at the time the loan is made, the borrower certifies, to the satisfaction of the lender, that
27 upon completion of the construction or rehabilitation and first occupation by farmworkers, the
28 housing will comply with all occupational safety or health laws, rules, regulations and standards
29 applicable for farmworker housing and that the housing will be occupied only by farmworkers and
30 their immediate families.

31 (b) A copy of the certification described under paragraph (a) of this subsection shall be submit-
32 ted to the Department of Revenue at the time that a credit under this section is first claimed.

33 (3) The credit allowed under this section applies only to loans to construct or rehabilitate
34 farmworker housing located within this state.

35 (4) This credit applies only to loans made on or after January 1, 1990.

36 (5) The credit allowed in any one year may not exceed the tax liability of the taxpayer.

37 (6) If the loan has a term of longer than 10 years, then the credit shall be allowed only for the
38 tax year of the taxpayer during which the loan is made and the nine tax years immediately follow-
39 ing.

40 (7) The credit allowed under this section does not apply to loans in which the interest rate
41 charged exceeds 13-1/2 percent per annum.

42 (8) The credit allowed under this section applies only to interest income from the loan and does
43 not apply to any other loan fees or other charges collected by the lending institution with respect
44 to the loan.

45 (9) The credit allowed under this section applies only to interest income actually collected by

1 the lending institution during the tax year.

2 (10)(a) Except as provided in paragraph (b) of this subsection, if the lending institution sells the
3 loan to another lending institution, then the credit shall pass to the assignee or transferee of the
4 loan, subject to the same conditions and limitations as set forth in this section.

5 (b) A lending institution may assign, sell or otherwise transfer the loan to another person and
6 retain the right to claim the credit granted under this section if the lending institution also retains
7 responsibility for servicing the loan.

8 (c)(A) A lending institution that is not subject to taxation under this chapter may sell or oth-
9 erwise transfer the credit allowed to the lending institution under this section to a taxpayer that
10 is subject to taxation under this chapter.

11 (B) A transferee of a credit under this section shall be allowed the credit for the tax years that
12 would have been allowable to the transferor had the transfer not occurred.

13 (C) *[The Department of Revenue shall by rule establish procedures for transferring a credit under*
14 *this section.]* **A transfer of a credit under this section must comply with the requirements of**
15 **section 2 of this 2009 Act.**

16 **SECTION 7.** ORS 315.164 is amended to read:

17 315.164. (1) A taxpayer who is the owner or operator of farmworker housing is allowed a credit
18 against the taxes otherwise due under ORS chapter 316, if the taxpayer is a resident individual, or
19 against the taxes otherwise due under ORS chapter 317, if the taxpayer is a corporation. The total
20 amount of the credit shall be equal to 50 percent of the eligible costs actually paid or incurred by
21 the taxpayer to complete a farmworker housing project, to the extent the eligible costs actually paid
22 or incurred by the taxpayer do not exceed the estimate of eligible costs approved by the Housing
23 and Community Services Department under ORS 315.167.

24 (2) A taxpayer who is otherwise eligible to claim a credit under this section may elect to
25 transfer all or a portion of the credit to a contributor *[in the manner provided in ORS 315.169.]* **as**
26 **provided in section 2 of this 2009 Act.**

27 (3)(a) The credit allowed under this section may be taken for the tax year in which the
28 farmworker housing project is completed or in any of the nine tax years succeeding the tax year in
29 which the project is completed.

30 (b) The credit allowed in any one tax year may not exceed 20 percent of the amount determined
31 under subsection (1) of this section.

32 (4)(a) To claim a credit under this section, a taxpayer must show in each year following the
33 completion of a farmworker housing project that the housing continues to be operated as
34 farmworker housing.

35 (b) A taxpayer need not make the showing required in paragraph (a) of this subsection if the
36 Housing and Community Services Department waives the requirement after the taxpayer has suc-
37 cessfully met the requirement for the first five years after completion of the housing project.

38 (c) The Housing and Community Services Department shall determine by rule the factors nec-
39 essary to grant a waiver. Such factors may include a documented decline in a particular area for
40 farmworker housing.

41 (5) The credit shall apply only to a farmworker housing project that is located within this state
42 and physically begun on or after January 1, 1990.

43 (6)(a) A credit may not be allowed under this section unless the taxpayer claiming credit under
44 this section:

45 (A) Obtains a letter of credit approval from the Housing and Community Services Department

1 pursuant to ORS 315.167; and

2 (B) Files with the Department of Revenue an annual certification providing that all occupied
3 units for which credit is being claimed are occupied by farmworkers and their immediate families.

4 (b) The certification described under this subsection shall be made on the form and in the time
5 and manner prescribed by the Department of Revenue.

6 (7) Except as provided under subsection (8) of this section, the credit allowed in any one year
7 may not exceed the tax liability of the taxpayer.

8 (8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
9 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next
10 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
11 forward and used in the second succeeding tax year, and likewise any credit not used in that second
12 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
13 credit not used in that third succeeding tax year may be carried forward and used in the fourth
14 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
15 forward and used in the fifth succeeding tax year, and any credit not used in that fifth succeeding
16 tax year may be carried forward and used in the sixth succeeding tax year, and any credit not used
17 in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax
18 year, and any credit not used in that seventh succeeding tax year may be carried forward and used
19 in the eighth succeeding tax year, and any credit not used in that eighth succeeding tax year may
20 be carried forward and used in the ninth succeeding tax year, but may not be carried forward for
21 any tax year thereafter.

22 (9)(a) The credit provided by this section is not in lieu of any depreciation or amortization de-
23 duction for the project to which the taxpayer otherwise may be entitled under ORS chapter 316 or
24 317 for the year.

25 (b) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by
26 any tax credits allowed under this section.

27 (10) For a taxpayer to receive a credit under this section, the farmworker housing must:

28 (a) Comply with all occupational safety or health laws, rules, regulations and standards;

29 (b) If registration is required, be registered as a farmworker camp with the Department of
30 Consumer and Business Services under ORS 658.750;

31 (c) Upon occupancy and if an indorsement is required, be operated by a person who holds a valid
32 indorsement as a farmworker camp operator under ORS 658.730; and

33 (d) Continue to be operated as farmworker housing for a period of at least 10 years after the
34 completion of the farmworker housing project, unless a waiver has been granted under subsection
35 (4) of this section.

36 (11)(a) Pursuant to the procedures for a contested case under ORS chapter 183, the Department
37 of Revenue may order the disallowance of the credit allowed under this section if it finds, by order,
38 that:

39 (A) The credit was obtained by fraud or misrepresentation; or

40 (B) In the event that an owner or operator claims or claimed the credit:

41 (i) The taxpayer has failed to continue to substantially comply with the occupational safety or
42 health laws, rules, regulations or standards;

43 (ii) After occupancy and if registration is required, the farmworker housing is not registered as
44 a farmworker camp with the Department of Consumer and Business Services under ORS 658.750;

45 (iii) After occupancy and if an indorsement is required, the farmworker housing is not operated

1 by a person who holds a valid indorsement as a farmworker camp operator under ORS 658.730; or

2 (iv) The taxpayer has failed to make a showing that the housing continues to be operated as
 3 farmworker housing as required under subsection (4)(a) of this section and the taxpayer has not been
 4 granted a waiver by the Housing and Community Services Department under subsection (4)(b) of this
 5 section.

6 (b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or
 7 other law, all prior tax relief provided to the taxpayer shall be forfeited and the Department of
 8 Revenue shall proceed to collect those taxes not paid by the taxpayer as a result of the prior
 9 granting of the credit.

10 (c) If the tax credit is disallowed pursuant to this subsection, the taxpayer shall be denied any
 11 further credit provided under this section, in connection with the farmworker housing project, as the
 12 case may be, from and after the date that the order of disallowance becomes final.

13 (12) In the event that the farmworker housing is destroyed by fire, flood, natural disaster or act
 14 of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if
 15 no destruction had taken place. In the event of fire, if the fire chief of the fire protection district
 16 or unit determines that the fire was caused by arson, as defined in ORS 164.315 and 164.325, by the
 17 taxpayer or by another at the taxpayer's direction, then the fire chief shall notify the Department
 18 of Revenue. Upon conviction of arson, the Department of Revenue shall disallow the credit in ac-
 19 cordance with subsection (11) of this section.

20 (13)(a) A nonresident individual shall be allowed the credit computed in the same manner and
 21 subject to the same limitations as the credit allowed a resident by this section. However, the credit
 22 shall be prorated using the proportion provided in ORS 316.117.

23 (b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
 24 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-
 25 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

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

29 (14) The Department of Revenue may adopt rules for carrying out the provisions of this section.

30 **SECTION 8.** ORS 315.144 is amended to read:

31 315.144. (1) A person that has obtained a tax credit under ORS 315.141 may transfer the credit
 32 *[for consideration to a taxpayer subject to tax under ORS chapter 316, 317 or 318.]*

33 *[(2) To transfer the tax credit, the taxpayer earning the credit and the taxpayer that will claim the*
 34 *credit shall jointly file a notice of tax credit transfer with the Department of Revenue. The notice shall*
 35 *be given on a form prescribed by the department that contains all of the following:]*

36 *[(a) The name, address and taxpayer identification number of the transferor and transferee;]*

37 *[(b) The amount of the tax credit; and]*

38 *[(c) Any other information required by the department.] as provided in section 2 of this 2009*

39 **Act.**

40 *[(3)]* (2) Notwithstanding subsection (1) of this section, a tax credit may not be transferred under
 41 this section:

42 (a) From an agricultural producer to a biomass collector claiming a credit for collecting the
 43 biomass; or

44 (b) From a biomass collector to an agricultural producer claiming a credit for producing the
 45 biomass.

1 **SECTION 9.** Section 28, chapter 618, Oregon Laws 2003, as amended by section 53, chapter 843,
2 Oregon Laws 2007, and section 17, chapter 855, Oregon Laws 2007, is amended to read:

3 **Sec. 28.** (1) As used in this section and section 29, chapter 618, Oregon Laws 2003:

4 (a) “Combined weight” has the meaning given that term in ORS 825.005.

5 (b) “Motor vehicle” has the meaning given that term in ORS 825.005.

6 (c) “Truck” means a motor vehicle or combination of vehicles that has a combined weight of
7 more than 26,000 pounds.

8 (2) A taxpayer who owns a truck that is registered in Oregon under the provisions of ORS
9 chapter 803 or 826 and that has a diesel engine that was purchased in Oregon on or after [*the ef-*
10 *fective date of this 2007 Act*] **September 27, 2007**, and that is certified by the federal Environmental
11 Protection Agency to emit particulate matter at the rate of 0.01 grams per brake horsepower-hour
12 or less, is allowed a credit against the taxes otherwise due under ORS chapter 316, if the taxpayer
13 is a resident individual, or against the taxes otherwise due under ORS chapter 317, if the taxpayer
14 is a corporation. The total amount of the credit under this section depends on the number of trucks
15 owned by the taxpayer prior to the purchase, as follows:

16 (a) 1 to 10 trucks, \$925 for each qualifying engine purchased.

17 (b) 11 to 50 trucks, \$705 for each qualifying engine purchased.

18 (c) 51 to 100 trucks, \$525 for each qualifying engine purchased.

19 (d) More than 100 trucks, \$400 for each qualifying engine purchased.

20 (3) Notwithstanding subsection (2) of this section, a taxpayer may not claim a credit under this
21 section of more than \$80,000 for purchases in any one year.

22 (4) A credit may not be allowed under this section unless the taxpayer claiming the credit
23 complies with rules adopted by the Environmental Quality Commission and the Department of Re-
24 venue as provided in section 29, chapter 618, Oregon Laws 2003.

25 (5) Except as provided under subsection (6) of this section, the credit allowed in any one year
26 may not exceed the tax liability of the taxpayer.

27 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
28 particular tax year may be carried forward and offset against the taxpayer’s tax liability for the next
29 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
30 forward and used in the second succeeding tax year, any credit not used in the second succeeding
31 tax year may be carried forward and used in the third succeeding tax year and any credit not used
32 in the third succeeding tax year may be carried forward and used in the fourth succeeding tax year
33 but may not be carried forward for any tax year thereafter.

34 (7)(a) The credit provided by this section is not in lieu of any depreciation or amortization de-
35 duction for the truck to which the taxpayer otherwise may be entitled under ORS chapter 316 or
36 317 for the tax year.

37 (b) The taxpayer’s adjusted basis for determining gain or loss may not be further decreased by
38 any tax credit allowed under this section.

39 (8)(a) Pursuant to the procedures for a contested case under ORS chapter 183, the Department
40 of Revenue may order the disallowance of the credit allowed under this section if it finds, by order,
41 that the credit was obtained by fraud or misrepresentation.

42 (b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or
43 other law, all prior tax relief provided to the taxpayer shall be forfeited and the Department of
44 Revenue shall proceed to collect those taxes not paid by the taxpayer as a result of the prior
45 granting of the credit.

1 (c) If the tax credit is disallowed pursuant to this subsection, the taxpayer shall be denied any
 2 further credit provided under this section from and after the date that the order of disallowance
 3 becomes final.

4 (9) If the engine is destroyed by fire, flood, natural disaster or act of God before all of the credit
 5 has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place.
 6 In the event of fire, if the fire chief of the fire protection district or unit determines that the fire
 7 was caused by arson, as described in ORS 164.315 and 164.325, by the taxpayer or by another at the
 8 taxpayer's direction, then the fire chief shall notify the Department of Revenue. If the taxpayer is
 9 convicted of arson, the Department of Revenue shall disallow the credit in accordance with sub-
 10 section (8) of this section.

11 (10)(a) A nonresident individual shall be allowed the credit computed in the same manner and
 12 subject to the same limitations as the credit allowed a resident by this section. However, the credit
 13 shall be prorated using the proportion provided in ORS 316.117.

14 (b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
 15 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-
 16 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

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

20 **(11) A taxpayer may transfer a credit allowed under this section as provided in section**
 21 **2 of this 2009 Act.**

22 **SECTION 10. Section 2 of this 2009 Act and the amendments to ORS 315.144, 315.164,**
 23 **315.514, 316.116, 317.147 and 469.206 and section 28, chapter 618, Oregon Laws 2003, by sections**
 24 **3 to 9 of this 2009 Act apply to tax years beginning on or after January 1, 2010.**

25 **SECTION 11. This 2009 Act takes effect on the 91st day after the date on which the**
 26 **regular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

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