

House Bill 2769

Sponsored by Representative RILEY

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**.

Repeals tax credit allowable to owner or operator of farmworker housing.
Applies to tax years beginning on or after January 1, 2010.

A BILL FOR AN ACT

1
2 Relating to tax expenditures; creating new provisions; amending ORS 215.277, 314.752, 317.147,
3 455.380 and 456.508; repealing ORS 315.163, 315.164, 315.167, 315.169 and 315.172; and providing
4 for revenue raising that requires approval by a three-fifths majority.

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

6 **SECTION 1.** ORS 314.752 is amended to read:

7 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
8 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
9 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
10 allowable to the shareholders of the S corporation.

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

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

20 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
21 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
22 316.117, then that provision shall apply to the nonresident shareholder.

23 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
24 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
25 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
26 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
27 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
28 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS
29 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS
30 315.156 (crop gleanings), [*ORS 315.164 and 315.169 (farmworker housing)*], ORS 315.204 (dependent
31 care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care),

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 ORS 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324
 2 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507
 3 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone
 4 marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel
 5 vehicle) and ORS 315.141 (biomass production for biofuel).

6 **SECTION 2.** ORS 456.508 is amended to read:

7 456.508. As used in ORS 456.510 and 456.513:

8 (1) "Accessible" means that housing complies with federal accessibility guidelines implementing
 9 the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq., as amended and in effect on
 10 January 1, 2004.

11 (2) "Common living space" means a living room, family room, dining room or kitchen.

12 (3) "Contiguous units" means units that are on the same tax lot or on contiguous tax lots that
 13 have a common boundary. Tax lots that are separated by a public road are contiguous tax lots for
 14 purposes of this subsection.

15 (4) "New" means that the housing being constructed did not previously exist in residential or
 16 nonresidential form. "New" does not include the acquisition, alteration, renovation or remodeling
 17 of an existing structure.

18 (5) "Powder room" means a room containing at least a toilet and sink.

19 (6) "Rental housing" means a dwelling unit designed for nonowner occupancy under a tenancy
 20 typically lasting six months or longer.

21 (7) "Subsidized development" means housing that receives one or more of the following devel-
 22 opment subsidies from the Housing and Community Services Department:

23 (a) The federal low-income housing tax credit under 26 U.S.C. 42(a), if no part of the eligible
 24 basis prior to the application of 26 U.S.C. 42(i)(2)(B) was financed with an obligation described in
 25 26 U.S.C. 42(h)(4)(A), all as amended and in effect on January 1, 2004;

26 *[(b) A farmworker housing tax credit, as described in ORS 315.164;]*

27 *[(c) (b) A loan that qualifies the lending institution for a subsidized housing loan tax credit, as*
 28 *described in ORS 317.097;*

29 *[(d) (c) Funding under the federal HOME Investment Partnerships Act, 42 U.S.C. 12721 to*
 30 *12839, as amended and in effect on January 1, 2004;*

31 *[(e) (d) Moneys from the Oregon Housing Fund created under ORS 458.620; or*

32 *[(f) (e) Moneys from other grant or tax incentive programs administered by the Housing and*
 33 *Community Services Department under ORS 456.559.*

34 (8) "Visitable" means capable of being approached, entered and used by individuals with mobility
 35 impairments, including but not limited to individuals using wheelchairs.

36 **SECTION 3.** ORS 215.277 is amended to read:

37 215.277. It is the intent of the Legislative Assembly that the provision of farmworker housing,
 38 as defined in ORS ~~[315.163]~~ **317.147**, not allow other types of dwellings not otherwise permitted in
 39 exclusive farm use zones and that such farmworker housing be consistent with the intent and pur-
 40 poses set forth in ORS 215.243.

41 **SECTION 4.** ORS 317.147 is amended to read:

42 317.147. (1) As used in this section:

43 *[(a) "Farmworker housing" has the meaning given that term in ORS 315.163.]*

44 (a) **"Farmworker" means any person who, for an agreed remuneration or rate of pay,**
 45 **performs temporary or permanent labor for another in the production of farm products or**

1 **in the planting, cultivating or harvesting of seasonal agricultural crops or in the forestation**
 2 **or reforestation of lands, including but not limited to the planting, transplanting, tubing,**
 3 **precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal**
 4 **of brush and slash and other related activities.**

5 **(b) “Farmworker housing” means housing:**

6 **(A) Limited to occupancy by farmworkers and their immediate families; and**

7 **(B) No dwelling unit of which is occupied by a relative of the owner or operator of the**
 8 **farmworker housing.**

9 [(b)] **(c) “Lending institution” means a bank, mortgage banking company, trust company, savings**
 10 **bank, savings and loan association, credit union, national banking association, federal savings and**
 11 **loan association, federal credit union maintaining an office in this state, nonprofit community de-**
 12 **velopment financial institution or nonprofit public benefit corporation operating as a lending insti-**
 13 **tution.**

14 **(d) “Owner” means a person that owns farmworker housing. “Owner” does not include**
 15 **a person that only has an interest in the housing as a holder of a security interest.**

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

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

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

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

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

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

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

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

38 (9) The credit allowed under this section applies only to interest income actually collected by
 39 the lending institution during the tax year.

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

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

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

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

6 (C) The Department of Revenue shall by rule establish procedures for transferring a credit under
7 this section.

8 **SECTION 5.** ORS 455.380 is amended to read:

9 455.380. (1) Notwithstanding the provisions of ORS 455.148 and 455.150, the Department of Con-
10 sumer and Business Services is the final authority in interpretation, execution and enforcement of
11 state and municipal administration of building codes and rules with respect to construction of
12 farmworker housing as defined in ORS [315.163] **317.147**.

13 (2) The department shall provide for a statewide uniform application and method of calculating
14 permit fees for farmworker housing as defined in ORS [315.163] **317.147**.

15 (3) The department shall adopt rules to carry out the provisions of subsections (1) and (2) of this
16 section.

17 **SECTION 6.** ORS 315.163, 315.164, 315.167, 315.169 and 315.172 are repealed.

18 **SECTION 7.** The amendments to ORS 215.277, 314.752, 317.147, 455.380 and 456.508 by
19 sections 1 to 5 of this 2009 Act and the repeal of ORS 315.163, 315.164, 315.167, 315.169 and
20 315.172 by section 6 of this 2009 Act apply to tax years beginning on or after January 1, 2010.
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