

A-Engrossed
House Bill 2777

Ordered by the House April 30
Including House Amendments dated April 30

Sponsored by Representative NATHANSON; Representatives BARKER, BERGER, CLEM, C EDWARDS, D EDWARDS, ESQUIVEL, GARRARD, READ, ROBLAN, SCHAUFLEER, STIEGLER, VANORMAN, WITT

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.

Creates income tax credit for qualified investments in machinery and equipment. **Requires taxpayer, to claim credit, to use machinery or equipment for at least 36 consecutive months following date on which it is put in service.** Limits total amount of credit that may be claimed in biennium and limits amount each taxpayer may claim.

Applies to tax years beginning on or after January 1, 2010, but permits qualified investments purchased on or after July 1, 2009, to be considered qualified investments for 2010 tax year. Sunsets program by prohibiting certification of new qualified investments on or after July 1, [2015] **2014.**

A BILL FOR AN ACT

1
2 Relating to investment tax credits; creating new provisions; and amending ORS 314.752 and 318.031.

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

4 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 315.**

5 **SECTION 2. (1) As used in this section, "qualified investment" means a purchase of ma-**
6 **chinery or equipment that:**

7 (a) **Is used in a trade or business or for the production of income;**

8 (b) **Is installed or used in a facility located in this state;**

9 (c) **Is used in a trade or business operating in a traded sector, as defined in ORS 285A.010;**

10 (d) **Is used by a small business, as defined in ORS 285A.010;**

11 (e) **Is put in service during the tax year in which it is purchased;**

12 (f) **If installed and used by the taxpayer, is not likely to result in a net loss of employees**
13 **by the taxpayer; and**

14 (g) **Meets any other criteria for certification of a qualified investment under this section**
15 **established by the Economic and Community Development Department by rule.**

16 (2) **A credit against taxes that are otherwise due under ORS chapter 316 or, if the tax-**
17 **payer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer for _____**
18 **percent of the total certified amount of qualified investments made by the taxpayer during**
19 **the tax year, if the machinery or equipment is used by the taxpayer for at least 36 consec-**
20 **utive months following the date that it is put in service. The amount of the credit may not**
21 **exceed the lesser of:**

22 (a) **\$_____;** or

23 (b) **The tax liability of the taxpayer for the tax year.**

24 (3)(a) **A taxpayer seeking a credit under this section shall first obtain credit certification**
25 **from the Economic and Community Development Department by applying for certification**

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 on a form prescribed by the department. The application shall state the date of purchase, the
2 amount of the qualified investment made by the taxpayer during the tax year and any other
3 information required by the department.

4 (b) The department shall review applications and issue certifications for those applica-
5 tions that describe qualified investments. The department shall maintain a record of the
6 cumulative amounts certified under this subsection and may not issue a certification during
7 a biennium if the amount proposed to be certified, when added to the total of previously
8 certified amounts for the biennium, exceeds \$30 million.

9 (c) A taxpayer may not claim a credit under this section without first obtaining certif-
10 ication under this subsection.

11 (d) A taxpayer may not obtain credit certification for, and may not claim, a credit under
12 this section for any amount of qualified investment for which the taxpayer claims a credit
13 under any other provision of this chapter or ORS chapter 285C, 316 or 317.

14 (4) If machinery or equipment for which a credit is claimed is not used as required by
15 subsections (1) and (2) of this section, the Economic and Community Development Depart-
16 ment may revoke the certification granted under subsection (3) of this section. Following
17 revocation, and upon notification of the taxpayer, the Department of Revenue shall imme-
18 diately proceed to collect any taxes not paid by the taxpayer as a result of the credit allowed
19 under this section. If the machinery or equipment is placed in service, but used as required
20 for less than 36 months, the department may prorate the amount of credit allowed under this
21 section.

22 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer
23 in a particular tax year because of the limitation in subsection (2)(b) of this section may be
24 carried forward and offset against the taxpayer's tax liability for the next succeeding tax
25 year. Any credit remaining unused in the next succeeding tax year may be carried forward
26 and used in the second succeeding tax year, and likewise any credit not used in that second
27 succeeding tax year may be carried forward and used in the third succeeding tax year, and
28 any credit not used in that third succeeding tax year may be carried forward and used in the
29 fourth succeeding tax year, but may not be carried forward for any tax year thereafter.

30 (6) A nonresident shall be allowed the credit allowed under subsection (2) or (5) of this
31 section. The credit shall be computed in the same manner and be subject to the same limi-
32 tations as the credit granted to a resident.

33 (7) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,
34 or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit
35 allowed by this section shall be prorated or computed in a manner consistent with ORS
36 314.085.

37 (8) If a change in the status of a taxpayer from resident to nonresident or from nonres-
38 ident to resident occurs, the credit allowed by this section shall be determined in a manner
39 consistent with ORS 316.117.

40 (9) If the qualified investment consists of property for which the taxpayer claims a de-
41 duction for depreciation for federal tax purposes, the adjusted basis of the property shall be
42 further adjusted by reducing the federal adjusted basis by the total amount of credit allow-
43 able under this section for Oregon tax purposes.

44 **SECTION 3.** ORS 314.752 is amended to read:

45 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a

1 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 2 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 3 allowable to the shareholders of the S corporation.

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

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

13 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 14 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 15 316.117, then that provision shall apply to the nonresident shareholder.

16 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
 17 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
 18 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
 19 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
 20 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
 21 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS
 22 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS
 23 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care
 24 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS
 25 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324
 26 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507
 27 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone
 28 marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel
 29 vehicle) and ORS 315.141 (biomass production for biofuel) **and section 2 of this 2009 Act (invest-**
 30 **ment tax credit).**

31 **SECTION 4.** ORS 318.031 is amended to read:

32 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 33 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 34 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 35 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156,
 36 315.204, 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 **and section 2 of this 2009**
 37 **Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

38 **SECTION 5. Section 2 of this 2009 Act and the amendments to ORS 314.752 and 318.031**
 39 **by sections 3 and 4 of this 2009 Act apply to tax years beginning on or after January 1, 2010.**

40 **SECTION 6. Notwithstanding sections 2 and 5 of this 2009 Act:**

41 (1) **The Economic and Community Development Department may certify qualified in-**
 42 **vestment amounts with respect to qualified investments that are purchased on or after July**
 43 **1, 2009; and**

44 (2) **Qualified investments described in subsection (1) of this section shall be deemed to**
 45 **have been purchased during the tax year of the taxpayer that begins on or after January 1,**

1 2010, and before January 1, 2011.

2 SECTION 7. The Economic and Community Development Department may not certify
3 qualified investments under section 2 (3) of this 2009 Act after July 1, 2014.

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