

# House Bill 3283

Sponsored by Representative HANNA

## 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 and corporate excise tax credit for employers that establish recycling programs for use by employees. Limits credit to percentage of employer's tax liability and limits number of years for which credit may be claimed.

Requires Environmental Quality Commission to adopt rules establishing minimum criteria for programs to be eligible for credit. Requires Department of Environmental Quality to certify program as eligible for credit following application by employer.

Applies to certifications issued for 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 tax credits for recycling; creating new provisions; amending ORS 314.752 and 318.031;  
3 and prescribing an effective date.

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

5 **SECTION 1. Sections 2 and 8 of this 2009 Act are added to and made a part of ORS**  
6 **chapter 315.**

7 **SECTION 2. (1) A taxpayer shall be allowed a credit against the taxes that are otherwise**  
8 **due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or**  
9 **318, for each tax year for which the taxpayer operates an employer-based recycling program**  
10 **that:**

11 (a) **Is certified by the Department of Environmental Quality under section 7 of this 2009**  
12 **Act; and**

13 (b) **Is continuously operated by the taxpayer for the entire tax year.**

14 (2) **In order to qualify for a credit under this section, the taxpayer must be an employer**  
15 **that employs at least 10 employees who are not related to the taxpayer under section 267 of**  
16 **the Internal Revenue Code.**

17 (3) **The amount of the credit shall equal \_\_\_\_\_ percent of the tax liability of the tax-**  
18 **payer for the tax year, before application of this section and after application of all other**  
19 **credits allowed to the taxpayer for the tax year.**

20 (4) **The tax credit allowed under this section may not be carried over to a different tax**  
21 **year.**

22 (5) **The credit allowed under this section may not be claimed by a taxpayer, or a succes-**  
23 **sor in interest to a taxpayer, for more than \_\_\_\_\_ tax years.**

24 (6) **In the case of a credit allowed under this section:**

25 (a) **A nonresident taxpayer shall be allowed the credit under this section in the propor-**  
26 **tion provided in ORS 316.117.**

27 (b) **If a change in the status of a taxpayer from resident to nonresident or from nonres-**  
28 **ident to resident occurs, the credit allowed by this section shall be determined in a manner**

**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 consistent with ORS 316.117.

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

6 (7) The credit shall be claimed on a form prescribed by the Department of Revenue and  
 7 containing any information as may be required by the Department of Revenue. The taxpayer  
 8 shall maintain a copy of the certification issued by the Department of Environmental Quality  
 9 in the records of the taxpayer for the period of time prescribed by the Department of Re-  
 10 venue.

11 **SECTION 3.** Section 2 of this 2009 Act applies to certifications issued for tax years be-  
 12 ginning on or after January 1, 2010.

13 **SECTION 4.** Sections 5 and 7 of this 2009 Act are added to and made a part of ORS  
 14 chapter 468.

15 **SECTION 5.** (1) The Environmental Quality Commission shall adopt rules establishing the  
 16 minimum criteria an employer must meet in order for a recycling program operated by the  
 17 employer to be certified by the Department of Environmental Quality under section 7 of this  
 18 2009 Act.

19 (2) The criteria shall provide for all of the following:

20 (a) Definitions of the types of recyclable materials that an employer must accept from  
 21 employees in the employer's recycling program.

22 (b) Requirements that the recyclable materials be:

23 (A) Capable of being recycled; and

24 (B) Ineligible for curbside recycling through a publicly operated curbside recycling pro-  
 25 gram that exists at the location of the employer, or at the location where the most number  
 26 of employees of the employer are located if the employer conducts operations at multiple  
 27 locations.

28 (c) The minimum frequency of the employer's delivery of recyclable materials to a facility  
 29 that processes recyclable materials.

30 (d) Minimum requirements for drop-off facilities or equipment that employees use to de-  
 31 liver recyclable materials to an employer.

32 (e) The information that an employer must provide in an application for certification  
 33 under section 7 of this 2009 Act.

34 (f) Any other definitions or requirements the commission determines are necessary or  
 35 desirable to implement an employer-based recycling program tax credit or a certification  
 36 process for determining eligibility for the tax credit, including establishing a certification  
 37 application fee.

38 (3) The commission shall consult with the Department of Revenue before adopting rules  
 39 under this section.

40 **SECTION 6.** The Environmental Quality Commission shall adopt rules under section 5  
 41 of this 2009 Act within 30 days after the effective date of this 2009 Act.

42 **SECTION 7.** (1) At least 60 days prior to the beginning of the first tax year for which an  
 43 employer seeks to claim an employer-based recycling program tax credit under section 2 of  
 44 this 2009 Act, the employer shall apply to the Department of Environmental Quality for re-  
 45 cycling program certification under this section.

1 (2) The department may accept an application only if:

2 (a) The application is substantially complete and contains the information required to be  
 3 submitted for an application for certification under rules adopted by the Environmental  
 4 Quality Commission under section 5 of this 2009 Act; and

5 (b) The application is accompanied by the payment of any certification processing fee  
 6 required by the commission.

7 (3)(a) The department shall review an accepted application to determine whether the ap-  
 8 plication describes an employer-based recycling program that meets the minimum criteria  
 9 to be certified as eligible for a tax credit under section 2 of this 2009 Act.

10 (b) The department may request further information from the employer, and the em-  
 11 ployer shall either provide the requested information or withdraw the application for certif-  
 12 ication. If the employer withdraws the application under this paragraph, any certification  
 13 processing fee paid in connection with the application shall be refunded.

14 (c)(A) The department shall certify a program as eligible for tax credit under section 2  
 15 of this 2009 Act if the application describes a program that meets the minimum criteria to  
 16 be certified, and shall send a written certification to the employer. If the application does  
 17 not describe a program that meets the minimum criteria, the department shall deny certif-  
 18 ication and send the employer written notice of the denial. If certification is denied, the de-  
 19 partment shall refund any certification processing fee paid in connection with the  
 20 application. A decision by the department to deny certification may not be appealed.

21 (B) The department shall makes its determination under this paragraph within 30 days  
 22 following acceptance of a completed application.

23 (4)(a) Following certification under this section, the Department of Environmental Qual-  
 24 ity may request an audit or inspection of the employer-based recycling program. If the em-  
 25 ployer does not permit an audit or inspection of the program or if, following the audit or  
 26 inspection, the department determines that the program does not meet the minimum criteria  
 27 for an employer-based recycling program to be eligible for a tax credit under section 2 of this  
 28 2009 Act, the department shall revoke certification.

29 (b) Following revocation under paragraph (a) of this subsection, the Department of En-  
 30 vironmental Quality shall inform the Department of Revenue of the revocation.

31 **SECTION 8.** (1) Upon receipt of notice of the revocation of a certification of an  
 32 employer-based recycling program under section 7 (4) of this 2009 Act, the Department of  
 33 Revenue immediately shall collect any taxes due by reason of the revocation, and shall have  
 34 the benefit of all laws of this state pertaining to the collection of income and excise taxes.  
 35 No assessment of such taxes shall be necessary and no statute of limitation shall preclude  
 36 the collection of such taxes. The amount to be collected shall equal the cumulative amount  
 37 of tax credit allowed the taxpayer under section 2 of this 2009 Act for all prior tax years.

38 (2) A tax credit under section 2 of this 2009 Act may not be allowed for any tax year in  
 39 which the revocation occurs or following the date of revocation.

40 **SECTION 9.** ORS 314.752 is amended to read:

41 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a  
 42 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
 43 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
 44 allowable to the shareholders of the S corporation.

45 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on

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

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

9 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
 10 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
 11 316.117, then that provision shall apply to the nonresident shareholder.

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

27 **SECTION 10.** ORS 318.031 is amended to read:

28 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
 29 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
 30 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
 31 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156,  
 32 315.204, 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 **and section 2 of this 2009**  
 33 **Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

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

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