

House Bill 3315

Sponsored by Representative WEIDNER; Representatives ESQUIVEL, KRIEGER, THATCHER

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 tax credit for private correctional facilities. Provides for certification by Department of Corrections.

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 tax credit for private correctional facilities; creating new provisions; amending ORS
3 314.752 and 318.031; and prescribing an effective date.

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

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

6 **SECTION 2. (1) As used in sections 2 and 3 of this 2009 Act, "private correctional**
7 **facility" means any facility constructed or operated by a private, non-governmental entity**
8 **and used for the confinement of persons charged with or convicted of a crime or otherwise**
9 **confined under a court order pursuant to a criminal proceeding.**

10 **(2) A taxpayer shall be allowed a credit against the taxes that are otherwise due under**
11 **ORS chapter 317 or 318 if the taxpayer constructs or operates a private correctional facility**
12 **during the tax year. The taxpayer may not claim a credit under this section without first**
13 **obtaining certification from the Department of Corrections as provided by section 3 of this**
14 **2009 Act.**

15 **(3) The amount of the credit allowed under this section shall be equal to 50 percent of**
16 **the certified cost to the taxpayer during the tax year.**

17 **(4) The credit allowed in any one tax year may not exceed the tax liability of the tax-**
18 **payer.**

19 **(5) Any tax credit otherwise allowable under this section that is not used by the taxpayer**
20 **in a particular tax year because of the limitation in subsection (4) of this section may be**
21 **carried forward and offset against the taxpayer's tax liability for the next succeeding tax**
22 **year. Any credit remaining unused in the next succeeding tax year may be carried forward**
23 **and used in the second succeeding tax year, and likewise any credit not used in that second**
24 **succeeding tax year may be carried forward and used in the third succeeding tax year, and**
25 **any credit not used in that third succeeding tax year may be carried forward and used in the**
26 **fourth succeeding tax year, but may not be carried forward for any tax year thereafter.**

27 **(6) A nonresident shall be allowed the credit under this section in the proportion provided**
28 **in ORS 316.117. If a change in the status of a taxpayer from resident to nonresident or from**
29 **nonresident to resident occurs, the credit allowed by this section shall be determined in a**
30 **manner consistent with ORS 316.117.**

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 **(7) The taxpayer shall maintain the certificate issued by the Department of Corrections**
 2 **in the records of the taxpayer for at least five years following the date the certificate is is-**
 3 **sued.**

4 **SECTION 3. (1) The Department of Corrections shall establish criteria for certifying**
 5 **taxpayers that construct or operate private correctional facilities as eligible for the tax**
 6 **credit allowed under section 2 of this 2009 Act. The criteria shall include a requirement that**
 7 **a private correctional facility be maintained in the same manner as an institution or jail**
 8 **operated by the Department of Corrections.**

9 **(2) An person seeking a tax credit under section 2 of this 2009 Act shall apply to the**
 10 **Department of Corrections for certification under this section. The application shall be on a**
 11 **form prescribed by the department and contain the information required by the department.**
 12 **The department shall review applications and approve or deny applications within 60 days of**
 13 **the date of the application. A determination to deny an application may be appealed as a**
 14 **contested case under ORS chapter 183.**

15 **(3) Upon finding that a taxpayer constructing or operating a private correctional facility**
 16 **meets the eligibility criteria established by the department, the department shall certify the**
 17 **taxpayer for the credit established in section 2 of this 2009 Act. The certification must in-**
 18 **clude approval of the cost to the taxpayer of constructing or operating the facility during the**
 19 **tax year. The department shall send a written certificate to the applicant and shall retain a**
 20 **copy of the certificate in the records of the department.**

21 **(4) The Department of Revenue may establish by rule additional criteria and procedures**
 22 **for taxpayers seeking the credit under section 2 of this 2009 Act.**

23 **SECTION 4.** ORS 314.752 is amended to read:

24 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
 25 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 26 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 27 allowable to the shareholders of the S corporation.

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

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

37 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 38 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 39 316.117, then that provision shall apply to the nonresident shareholder.

40 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
 41 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
 42 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
 43 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
 44 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
 45 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS

1 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS
 2 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care
 3 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS
 4 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324
 5 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507
 6 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone
 7 marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel
 8 vehicle) and ORS 315.141 (biomass production for biofuel) **and section 2 of this 2009 Act (private
 9 correctional facility tax credit).**

10 **SECTION 5.** ORS 318.031 is amended to read:

11 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 12 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 13 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 14 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156,
 15 315.204, 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 **and section 2 of this 2009
 16 Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

17 **SECTION 6. Sections 2 and 3 of this 2009 Act and the amendments to ORS 314.752 and
 18 318.031 by sections 4 and 5 of this 2009 Act apply to tax years beginning on or after January
 19 1, 2010.**

20 **SECTION 7. This 2009 Act takes effect on the 91st day after the date on which the reg-
 21 ular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

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