Updated Sponsors

House Bill 3637

Sponsored by Representatives BRUUN, SCHAUFLER; Representatives CAMERON, ESQUIVEL, FREEMAN, GILLIAM, HANNA, HUFFMAN, JENSON, MAURER, THOMPSON, WEIDNER, WHISNANT (Presession filed.)

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 hiring of qualified employees by taxpayer. Applies to tax years beginning on or after January 1, 2011, and prior to January 1, 2012.

Permits corporations operating emerging businesses to defer corporate excise and income taxes. Establishes maximum amount and duration of deferred taxes. Directs Oregon Business Development Department to publicize and promote availability of tax deferral. Applies to tax years beginning on or after January 1, 2010, and before January 1, 2018.

Allows deferral of gain, for purposes of state personal income taxes, on sale or other disposition of capital asset if proceeds are reinvested in qualified business interests, qualified investment funds or qualified business assets. Applies to gain incurred from disposition of capital assets in tax years beginning on or after January 1, 2010, and before January 1, 2011.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to business tax incentives; creating new provisions; and amending ORS 314.752 and 318.031 and section 11, chapter 809, Oregon Laws 1995; and prescribing an effective date.

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

SECTION 1. Section 3 of this 2010 Act shall be known and may be cited as the Jobs, Opportunity and Business Success Act of 2010.

SECTION 2. Section 3 of this 2010 Act is added to and made a part of ORS chapter 315.

SECTION 3. (1) As used in this section, "qualified employee" means a person who:

(a) Is first employed by a taxpayer claiming the credit allowed under this section on or after June 1, 2010, and prior to January 1, 2011;

(b) Remains employed by the taxpayer for at least 12 consecutive months;

(c) During the first 12 months of employment by the taxpayer, receives monthly compensation from the taxpayer in an amount equal to or greater than the average monthly unemployment insurance compensation benefit received by unemployed persons in this state; and

(d) Was unemployed, as demonstrated by documentation from the Employment Department or from a previous employer of the employee, for a period of at least four weeks immediately prior to being first employed by the taxpayer.

(2) A credit against taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer who hires a qualified employee. The amount of the credit is $3,000 for each qualified employee hired by the taxpayer. For each qualified employee, the credit is allowed for the tax year in which the 12th calendar month of employment of the qualified employee by the taxpayer is completed.

(3) In order to qualify for the credit allowed under this section, a taxpayer must demon-

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.

strate:

(a) That the taxpayer has done business in this state for at least two years prior to the hiring of any qualified employee for which the credit is claimed;

(b) That the commencement of employment of the qualifying employee creates a net increase in the number of employees compared to the taxpayer's payroll as of May 31, 2010; and

(c) That any employee for whom the taxpayer is claiming a credit meets the requirements of subsection (1)(d) of this section.

(4) Prior to claiming the credit allowed under this section, a taxpayer is required to receive written certification of eligibility from the Department of Revenue.

(5) The credit allowed under this section may not exceed the tax liability of the taxpayer for the tax year.

(6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year but may not be carried forward for any tax year thereafter.

(7) A nonresident shall be allowed the credit under this section. The credit shall be computed in the same manner and be subject to the same limitations as the credit granted to a resident. However, the credit shall be prorated using the proportion provided in ORS 316.117.

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

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

(10) The Department of Revenue shall adopt rules for the purposes of this section, including policies and procedures for certifying taxpayers as eligible for the credit allowed under this section as provided in subsections (3) and (4) of this section.

SECTION 4. ORS 314.752 is amended to read:

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

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

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

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

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141 (biomass production for biofuel) **and section 3 of this 2010 Act (hiring of qualified employees)**.

SECTION 5. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156, 315.204, 315.208, 315.213, 315.304, 315.507, 315.511 and 315.604 **and section 3 of this 2010 Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

SECTION 6. Section 3 of this 2010 Act and the amendments to ORS 314.752 and 318.031 by sections 4 and 5 of this 2010 Act apply to tax years beginning on or after January 1, 2011, and prior to January 1, 2012.

SECTION 7. Section 8 of this 2010 Act is added to and made a part of ORS chapter 317.

SECTION 8. (1) A corporation, other than an S corporation as defined in ORS 314.730, is eligible to defer income or excise taxes otherwise due if:

(a) The corporation has total annual revenue of less than $3.5 million;

(b) The corporation has at least two employees;

(c) The corporation is not a subsidiary of any existing corporation; and

(d) The business operations of the corporation or its predecessor in interest have existed for less than five years.

(2) A corporation meeting the requirements of subsection (1) of this section and seeking deferral shall file an application for the deferral with the Department of Revenue at the time the corporation files the corporation's tax return for the tax year for which deferral is sought.

(3) The department may require the taxpayer to provide proof of eligibility for the tax deferral granted by this section.

(4) Deferral may be granted under this section only if:

(a) The corporation has timely filed the corporation's tax return for the tax year;

(b) The corporation has paid the amount of tax that is not eligible for deferral under subsection (5) of this section for the tax year; and

(c) The corporation and its majority owner are not delinquent in the payment of any tax imposed under this chapter or ORS chapter 316, 318 or 323.

(5) The amount of tax that may be deferred under this section shall equal the lesser of:

(a) Eighty percent of the tax liability of the taxpayer; or

(b) $75,000.

(6) If the corporation meets the requirements for deferral under this section, the department shall grant the deferral. Upon granting the deferral, the department shall have a lien against all real and personal property of the corporation in the amount of the deferred tax. The deferred tax liens shall have the same priority as other income tax liens. The department shall obtain, from the majority owner of the corporation, a personal guarantee of payment of the tax deferred under this section.

(7) Deferred taxes shall accrue interest at the prime rate.

(8)(a) Taxes imposed under this chapter may be deferred only for a maximum period of two years. Following the end of the deferral period, the deferred taxes, together with accrued interest, are immediately due and payable. The taxpayer may elect to pay the deferred taxes and accrued interest in equal quarterly payments over the four-year period immediately following the end of the deferral period.

(b) Payments made in any quarter may exceed the minimum payment amount described in paragraph (a) of this subsection.

(c) The department may enforce the lien for deferred income taxes and collect any delinquent deferred taxes, plus accrued interest, in the same manner as it collects other delinquent income taxes.

(9) The Department of Revenue, in consultation with the Oregon Business Development Department, may adopt rules and prescribe any forms necessary to administer the tax deferral program and may by rule define the eligibility requirements of the program.

(10) The Oregon Business Development Department shall publicize and promote to potential applicants the availability of the tax deferral granted by this section.

SECTION 9. Section 8 of this 2010 Act applies to tax years beginning on or after January 1, 2010, and before January 1, 2018.

SECTION 10. Section 11, chapter 809, Oregon Laws 1995, is amended to read:

Sec. 11. [*(1) Sections 2 to 10 of this Act*] **ORS 316.873 to 316.884** apply to**:**

(1) Gain incurred from the sale or other disposition of a capital asset in tax years beginning on or after January 1, 1997, and to investments in qualified business interests, qualified investment funds or qualified business assets that occur on or before December 31, 1999[.]**; and**

(2) Gain incurred from the sale or other disposition of a capital asset in tax years beginning on or after January 1, 2010, and before January 1, 2011, and to investments in qualified business interests, qualified investment funds or qualified business assets that occur on or before June 30, 2011.

[*(2)(a) The Department of Revenue, in conjunction with the Economic and Community Development Department and the Legislative Revenue Officer, shall prepare a report regarding the economic impact of sections 2 to 10 of this Act and shall present the report to those committees of the Seventieth Legislative Assembly to which revenue matters are assigned. The purpose of the report is to analyze the job creation and tax implications of sections 2 to 10 of this Act.*]

[*(b) The confidentiality requirements applicable to tax returns and the information contained therein shall not be applicable to the Economic and Community Development Department and the Leg-*

islative Revenue Officer for purposes of preparing the report described in paragraph (a) of this subsection.]

SECTION 11. This 2010 Act takes effect on the 91st day after the date on which the special session of the Seventy-fifth Legislative Assembly adjourns sine die.