

# House Bill 3422

Sponsored by Representative READ

## 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 investment of realized capital gains in emerging growth business.  
Applies to tax years beginning on or after January 1, 2011.  
Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to venture capital investment; 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. Section 2 of this 2011 Act is added to and made a part of ORS chapter 315.**

6 **SECTION 2. (1) As used in this section, "emerging growth business" has the meaning**  
7 **given that term in ORS 348.701.**

8 **(2) A credit against taxes that are otherwise due under ORS chapter 316 or, if the tax-**  
9 **payer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer who invests in**  
10 **an emerging growth business. The amount of the credit allowed under this section shall equal**  
11 **the amount invested during the tax year, and after the effective date of this 2011 Act, not**  
12 **to exceed the amount that is treated as net capital gain for federal tax purposes and that is**  
13 **included in taxable income in this state, multiplied by the product of the following:**

14 **(a) The percentage of ownership that the taxpayer holds in the emerging growth busi-**  
15 **ness; and**

16 **(b) Nine percent.**

17 **(3) Prior to claiming the credit allowed under this section, a taxpayer is required to re-**  
18 **ceive written certification of eligibility from the Department of Revenue.**

19 **(4) The credit allowed under this section may not exceed the tax liability of the taxpayer**  
20 **for the tax year.**

21 **(5) A nonresident shall be allowed the credit under this section. The credit shall be**  
22 **computed in the same manner and be subject to the same limitations as the credit granted**  
23 **to a resident. However, the credit shall be prorated using the proportion provided in ORS**  
24 **316.117.**

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

29 **(7) If a change in the status of a taxpayer from resident to nonresident or from nonres-**  
30 **ident to resident occurs, the credit allowed by this section shall be determined in a manner**  
31 **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       **(8) The Department of Revenue shall adopt rules for the purposes of this section, in-**  
 2 **cluding policies and procedures for certifying taxpayers as eligible for the credit allowed un-**  
 3 **der this section as provided in subsection (3) of this section.**

4       **SECTION 3.** ORS 314.752, as amended by section 26, chapter 76, Oregon Laws 2010, is amended  
 5 to read:

6       314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a  
 7 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
 8 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
 9 allowable to the shareholders of the S corporation.

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

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

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

22       (5) As used in this section, "business tax credit" means a tax credit granted to personal income  
 23 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive  
 24 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-  
 25 section as a business tax credit or is designated as a business tax credit by law or by the Depart-  
 26 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309  
 27 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (fore-  
 28 station and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-  
 29 pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing),  
 30 ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-  
 31 tributions for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling),  
 32 ORS 315.354 and 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS  
 33 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses),  
 34 ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141  
 35 (biomass production for biofuel) **and section 2 of this 2011 Act (venture capital investment).**

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

37       318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
 38 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
 39 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
 40 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156,  
 41 315.204, 315.208, 315.213, 315.304, 315.507, 315.511 and 315.604 **and section 2 of this 2011 Act** (all  
 42 only to the extent applicable to a corporation) and ORS chapter 317.

43       **SECTION 5. Section 2 of this 2011 Act and the amendments to ORS 314.752 and 318.031**  
 44 **by sections 3 and 4 of this 2011 Act apply to tax years beginning on or after January 1, 2011.**

45       **SECTION 6. This 2011 Act takes effect on the 91st day after the date on which the 2011**

1 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

2

---