

**A-Engrossed**  
**House Bill 4038**

Ordered by the House February 15  
Including House Amendments dated February 15

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

**Corrected 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.

*[Modifies statutes related to income and excise tax credits. Removes provisions requiring submission of jobs-related data by applicants for energy tax credits.]*

**Provides that taxpayer may not claim qualified research activities credit for amount deducted. Imposes sunset on tax credit for insurers providing workers' compensation coverage. Provides that auction of tax credits for certified film development contributions may occur no later than April 15 following tax year. For purposes of farmworker housing tax credit, requires Housing and Community Services Department to verify farmworker housing is compliant with certain conditions. Requires information about farmworker housing tax credits to be posted on Oregon transparency website maintained by Oregon Department of Administrative Services.**

Takes effect on 91st day following adjournment sine die.

**A BILL FOR AN ACT**

1  
2 Relating to tax credits; creating new provisions; amending ORS 184.484, 315.164, 315.514, 315.516 and  
3 317.154 and sections 20 and 28, chapter 913, Oregon Laws 2009, and section 2, chapter 199,  
4 Oregon Laws 2011; and prescribing an effective date.

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

6 **SECTION 1.** ORS 317.154 is amended to read:

7 317.154. (1) A credit against taxes otherwise due under this chapter shall be allowed for quali-  
8 fied research expenses that exceed 10 percent of Oregon sales.

9 (2) For purposes of this section:

10 (a) "Oregon sales" shall be computed using the laws and administrative rules for calculating the  
11 numerator of the Oregon sales factor under ORS 314.665.

12 (b) "Qualified research" has the meaning given the term under section 41(d) of the Internal Re-  
13 venue Code and shall consist only of research conducted in Oregon.

14 (3) The credit under this section is equal to five percent of the amount by which the qualified  
15 research expenses exceed 10 percent of Oregon sales.

16 (4) The credit under this section shall not exceed \$10,000 times the number of percentage points  
17 by which the qualifying research expenses exceed 10 percent of Oregon sales.

18 (5) The maximum credit under this section may not exceed \$1 million.

19 **(6) A deduction may not be taken for the portion of expenses or payments, otherwise**  
20 **allowable as a deduction, that is equal to the amount of the credit claimed under this section.**

21 ~~[(6)]~~ (7) Any tax credit that is otherwise allowable under this section and that is not used by  
22 the taxpayer in that year may be carried forward and offset against the taxpayer's tax liability for

**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 the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may  
2 be carried forward and used in the second succeeding tax year, and likewise any credit not used in  
3 that second succeeding tax year may be carried forward and used in the third succeeding tax year,  
4 and any credit not used in that third succeeding tax year may be carried forward and used in the  
5 fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be car-  
6 ried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax  
7 year thereafter.

8 **SECTION 2. The amendments to ORS 317.154 by section 1 of this 2012 Act apply to tax**  
9 **years beginning on or after January 1, 2012.**

10 **SECTION 3.** Section 20, chapter 913, Oregon Laws 2009, as amended by section 4, chapter 730,  
11 Oregon Laws 2011, is amended to read:

12 **Sec. 20. (1)** A credit may not be claimed under ORS 317.122 (1) for tax years beginning on or  
13 after January 1, 2018.

14 **(2) A credit may not be claimed under ORS 317.122 (2) for tax years beginning on or after**  
15 **January 1, 2012.**

16 **SECTION 4.** ORS 315.514 is amended to read:

17 315.514. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the  
18 taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer for certified film  
19 production development contributions made by the taxpayer during the tax year to the Oregon  
20 Production Investment Fund established under ORS 284.367.

21 (2)(a) The Department of Revenue shall, in cooperation with the Oregon Film and Video Office,  
22 conduct an auction of tax credits under this section. **The auction may be conducted no later than**  
23 **April 15 following the end of any tax year for which the credit is allowed.** The department may  
24 conduct the auction in the manner that it determines is best suited to maximize the return to the  
25 state on the sale of tax credit certifications and shall announce a reserve bid prior to conducting  
26 the auction. The reserve amount shall be at least 95 percent of the total amount of the tax credit.  
27 Moneys necessary to reimburse the department for the actual costs incurred by the department in  
28 administering an auction, not to exceed 0.25 percent of auction proceeds, are continuously appro-  
29 priated to the department. The department shall deposit net receipts from the auction required un-  
30 der this section in the Oregon Production Investment Fund.

31 (b) The Oregon Film and Video Office shall adopt rules in order to achieve the following goals:

32 (A) Subject to paragraph (a) of this subsection, generate contributions for which tax credits of  
33 \$6 million are certified for each fiscal year;

34 (B) Maximize income and excise tax revenues that are retained by the State of Oregon for state  
35 operations; and

36 (C) Provide the necessary financial incentives for taxpayers to make contributions, taking into  
37 consideration the impact of granting a credit upon a taxpayer's federal income tax liability.

38 (3) Contributions made under this section shall be deposited in the Oregon Production Invest-  
39 ment Fund.

40 (4)(a) Upon receipt of a contribution, the Oregon Film and Video Office shall, except as provided  
41 in ORS 315.516, issue to the taxpayer written certification of the amount certified for tax credit  
42 under this section to the extent the amount certified for tax credit, when added to all amounts  
43 previously certified for tax credit under this section, does not exceed \$6 million for the fiscal year  
44 in which certification is made.

45 (b) The Oregon Film and Video Office and the department are not liable, and a refund of a

1 contributed amount need not be made, if a taxpayer who has received tax credit certification is  
2 unable to use all or a portion of the tax credit to offset the tax liability of the taxpayer.

3 (5) To the extent the Oregon Film and Video Office does not certify contributed amounts as el-  
4 igible for a tax credit under this section, the taxpayer may request a refund of the amount the tax-  
5 payer contributed, and the office shall refund that amount.

6 (6)(a) Except as provided in paragraph (b) of this subsection, a tax credit claimed under this  
7 section may not exceed the tax liability of the taxpayer and may not be carried over to another tax  
8 year.

9 (b) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a  
10 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next  
11 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried  
12 forward and used in the second succeeding tax year, and likewise, any credit not used in that second  
13 succeeding tax year may be carried forward and used in the third succeeding tax year but may not  
14 be carried forward for any tax year thereafter.

15 (c) A taxpayer is not eligible for a tax credit under this section if the first tax year for which  
16 the credit would otherwise be allowed begins on or after January 1, 2018.

17 (7) If a tax credit is claimed under this section by a nonresident or part-year resident taxpayer,  
18 the amount shall be allowed without proration under ORS 316.117.

19 (8) If the amount of contribution for which a tax credit certification is made is allowed as a  
20 deduction for federal tax purposes, the amount of the contribution shall be added to federal taxable  
21 income for Oregon tax purposes.

22 **SECTION 5.** ORS 315.516 is amended to read:

23 315.516. (1) **In any fiscal year, the amount of tax credits allowed under ORS 315.514 may**  
24 **be reduced or eliminated, and the Legislative Assembly may, no later than 30 days prior to**  
25 **the end of each fiscal year,** in lieu of the issuance of certifications for tax credit under ORS  
26 315.514 by the Oregon Film and Video Office, *[the Legislative Assembly may, no later than 30 days*  
27 *prior to the end of each fiscal year, appropriate]* **make an appropriation** to the Oregon Business  
28 Development Department for deposit into the Oregon Production Investment Fund *[an amount equal*  
29 *to the total amount that would otherwise be certified for tax credits during the upcoming fiscal year,*  
30 *based on the amount of contributions and accompanying applications for credit received by the office*  
31 *during the fiscal year].*

32 (2) If the Legislative Assembly makes the election allowed in subsection (1) of this section[:],  
33 [(a)] any contributions to the Oregon Production Investment Fund made for the upcoming fiscal  
34 year and for which an application for a credit under ORS 315.514 is *[pending]* **denied** shall, at the  
35 request of the taxpayer, be refunded by the Oregon Film and Video Office[: and]

36 [(b) A credit under ORS 315.514 may not be claimed for any contribution made during the current  
37 fiscal year].

38 **SECTION 6. The amendments to ORS 315.514 and 315.516 by sections 4 and 5 of this 2012**  
39 **Act apply to tax credit certifications issued by the Oregon Film and Video Office on or after**  
40 **June 30, 2012.**

41 **SECTION 7.** ORS 315.164 is amended to read:

42 315.164. (1) A taxpayer who is the owner or operator of farmworker housing is allowed a credit  
43 against the taxes otherwise due under ORS chapter 316, if the taxpayer is a resident individual, or  
44 against the taxes otherwise due under ORS chapter 317, if the taxpayer is a corporation. The total  
45 amount of the credit shall be equal to 50 percent of the eligible costs actually paid or incurred by

1 the taxpayer to complete a farmworker housing project, to the extent the eligible costs actually paid  
2 or incurred by the taxpayer do not exceed the estimate of eligible costs approved by the Housing  
3 and Community Services Department under ORS 315.167.

4 (2) A taxpayer who is otherwise eligible to claim a credit under this section may elect to  
5 transfer all or a portion of the credit to a contributor in the manner provided in ORS 315.169.

6 (3)(a) The credit allowed under this section may be taken for the tax year in which the  
7 farmworker housing project is completed or in any of the nine tax years succeeding the tax year in  
8 which the project is completed.

9 (b) The credit allowed in any one tax year may not exceed 20 percent of the amount determined  
10 under subsection (1) of this section.

11 (4)(a) To claim a credit under this section, a taxpayer must show in each year following the  
12 completion of a farmworker housing project that the housing continues to be operated as  
13 farmworker housing.

14 (b) A taxpayer need not make the showing required in paragraph (a) of this subsection if the  
15 Housing and Community Services Department waives the requirement after the taxpayer has suc-  
16 cessfully met the requirement for the first five years after completion of the housing project.

17 (c) The Housing and Community Services Department shall determine by rule the factors nec-  
18 cessary to grant a waiver. Such factors may include a documented decline in a particular area for  
19 farmworker housing.

20 (5) The credit shall apply only to a farmworker housing project that is located within this state  
21 and physically begun on or after January 1, 1990.

22 (6)(a) A credit may not be allowed under this section unless the taxpayer claiming credit under  
23 this section:

24 (A) Obtains a letter of credit approval from the Housing and Community Services Department  
25 pursuant to ORS 315.167; and

26 (B) Files with the Department of Revenue an annual certification providing that all occupied  
27 units for which credit is being claimed are occupied by farmworkers, including farmworkers who are  
28 retired or disabled, and their immediate families.

29 **(b) Prior to issuing a letter of credit approval under ORS 315.167, the Housing and Com-**  
30 **munity Services Department shall verify with the Department of Consumer and Business**  
31 **Services that the farmworker housing is in compliance with subsection (10)(a) to (c) of this**  
32 **section.**

33 [(b)] (c) The certification described under this subsection shall be made on the form and in the  
34 time and manner prescribed by the Department of Revenue.

35 (7) Except as provided under subsection (8) of this section, the credit allowed in any one year  
36 may not exceed the tax liability of the taxpayer.

37 (8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a  
38 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next  
39 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried  
40 forward and used in the second succeeding tax year, and likewise any credit not used in that second  
41 succeeding tax year may be carried forward and used in the third succeeding tax year, and any  
42 credit not used in that third succeeding tax year may be carried forward and used in the fourth  
43 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried  
44 forward and used in the fifth succeeding tax year, and any credit not used in that fifth succeeding  
45 tax year may be carried forward and used in the sixth succeeding tax year, and any credit not used

1 in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax  
2 year, and any credit not used in that seventh succeeding tax year may be carried forward and used  
3 in the eighth succeeding tax year, and any credit not used in that eighth succeeding tax year may  
4 be carried forward and used in the ninth succeeding tax year, but may not be carried forward for  
5 any tax year thereafter.

6 (9)(a) The credit provided by this section is not in lieu of any depreciation or amortization de-  
7 duction for the project to which the taxpayer otherwise may be entitled under ORS chapter 316 or  
8 317 for the year.

9 (b) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by  
10 any tax credits allowed under this section.

11 (10) For a taxpayer to receive a credit under this section, the farmworker housing must:

12 (a) Comply with all occupational safety or health laws, rules, regulations and standards;

13 (b) If registration is required, be registered as a farmworker camp with the Department of  
14 Consumer and Business Services under ORS 658.750;

15 (c) Upon occupancy and if an indorsement is required, be operated by a person who holds a valid  
16 indorsement as a farmworker camp operator under ORS 658.730; and

17 (d) Continue to be operated as farmworker housing for a period of at least 10 years after the  
18 completion of the farmworker housing project, unless a waiver has been granted under subsection  
19 (4) of this section.

20 (11)(a) Pursuant to the procedures for a contested case under ORS chapter 183, the Department  
21 of Revenue may order the disallowance of the credit allowed under this section if it finds, by order,  
22 that:

23 (A) The credit was obtained by fraud or misrepresentation; or

24 (B) In the event that an owner or operator claims or claimed the credit:

25 (i) The taxpayer has failed to continue to substantially comply with the occupational safety or  
26 health laws, rules, regulations or standards;

27 (ii) After occupancy and if registration is required, the farmworker housing is not registered as  
28 a farmworker camp with the Department of Consumer and Business Services under ORS 658.750;

29 (iii) After occupancy and if an indorsement is required, the farmworker housing is not operated  
30 by a person who holds a valid indorsement as a farmworker camp operator under ORS 658.730; or

31 (iv) The taxpayer has failed to make a showing that the housing continues to be operated as  
32 farmworker housing as required under subsection (4)(a) of this section and the taxpayer has not been  
33 granted a waiver by the Housing and Community Services Department under subsection (4)(b) of this  
34 section.

35 (b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or  
36 other law, all prior tax relief provided to the taxpayer shall be forfeited and the Department of  
37 Revenue shall proceed to collect those taxes not paid by the taxpayer as a result of the prior  
38 granting of the credit.

39 (c) If the tax credit is disallowed pursuant to this subsection, the taxpayer shall be denied any  
40 further credit provided under this section, in connection with the farmworker housing project, as the  
41 case may be, from and after the date that the order of disallowance becomes final.

42 (12) In the event that the farmworker housing is destroyed by fire, flood, natural disaster or act  
43 of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if  
44 no destruction had taken place. In the event of fire, if the fire chief of the fire protection district  
45 or unit determines that the fire was caused by arson, as defined in ORS 164.315 and 164.325, by the

1 taxpayer or by another at the taxpayer's direction, then the fire chief shall notify the Department  
2 of Revenue. Upon conviction of arson, the Department of Revenue shall disallow the credit in ac-  
3 cordance with subsection (11) of this section.

4 (13)(a) A nonresident individual shall be allowed the credit computed in the same manner and  
5 subject to the same limitations as the credit allowed a resident by this section. However, the credit  
6 shall be prorated using the proportion provided in ORS 316.117.

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

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

13 (14) The Department of Revenue may adopt rules for carrying out the provisions of this section.

14 **SECTION 8.** Section 28, chapter 913, Oregon Laws 2009, is amended to read:

15 **Sec. 28.** Except as provided in ORS 315.164 (8), a credit may not be claimed under ORS 315.164  
16 for tax years beginning on or after January 1, [2014] 2020.

17 **SECTION 9.** ORS 184.484 is amended to read:

18 184.484. (1) For each statute authorizing a tax expenditure that has a purpose connected to  
19 economic development and is listed in subsection (2) of this section, the state agency charged with  
20 certifying or otherwise administering the tax expenditure shall submit a report to the Oregon De-  
21 partment of Administrative Services. If no agency is authorized by statute, or if the statute does not  
22 provide for certification or administration of the tax expenditure, the Department of Revenue shall  
23 submit the report.

24 (2) This section applies to ORS 285C.175, 285C.309, 285C.362, 307.123, 307.455, 307.462, **315.164**,  
25 **315.169**, 315.507, 315.514, 316.698, 316.778, 317.124, 317.391 and 317.394 and to ORS 315.354 except  
26 as applicable in ORS 469B.145 (2)(a)(L) or (N).

27 (3) The following information, if it is already available in an existing database maintained by the  
28 agency, must be included in the report required under this section:

29 (a) The name of each taxpayer approved for the allowance of a tax expenditure.

30 (b) The address of each taxpayer.

31 (c) The total amount of credit against tax liability, reduction in taxable income or exemption  
32 from property taxation granted to each taxpayer.

33 (d) Specific outcomes or results required by the tax expenditure program and information about  
34 whether the taxpayer meets those requirements. This information shall be based on data already  
35 collected and analyzed by the agency in the course of administering the tax expenditure. Statistics  
36 must be accompanied by a description of the methodology employed in their generation.

37 (e) An explanation of the agency's certification decision for each taxpayer, if applicable.

38 (f) Any additional information submitted by the taxpayer and relied upon by the agency in its  
39 certification determination.

40 (g) Any other information that agency personnel deem valuable as providing context for the in-  
41 formation described in this subsection.

42 (4) The information reported under subsection (3) of this section may not include proprietary  
43 information or information that is exempt from disclosure under ORS 192.410 to 192.505 or 314.835.

44 (5) No later than September 30 of each year, agencies described in subsection (1) of this section  
45 shall submit to the Oregon Department of Administrative Services the information required under

1 subsection (3) of this section as applicable to applications for allowance of tax expenditures ap-  
2 proved by the agency during the agency fiscal year ending during the current calendar year. The  
3 information shall then be posted on the Oregon transparency website required under ORS 184.483  
4 no later than December 31 of the same year.

5 (6) The information described in this section that is available on the Oregon transparency  
6 website must be accessible in the format and manner required by the Oregon Department of Ad-  
7 ministrative Services.

8 (7) The information described in this section shall be furnished to the Oregon transparency  
9 website by posting reports and providing links to existing information systems applications in ac-  
10 cordance with standards established by the Oregon Department of Administrative Services.

11 **SECTION 10.** Section 2, chapter 199, Oregon Laws 2011, is amended to read:

12 **Sec. 2.** [*Section 1 of this 2011 Act*] **ORS 184.484** applies to:

13 (1) Applications for tax expenditures pursuant to ORS 307.123, **315.164, 315.169**, 315.354, 316.778  
14 and 317.391 that are approved or certified by state agencies in agency fiscal years ending on or after  
15 June 30, 2011.

16 (2) Applications for tax expenditures pursuant to ORS 285C.175, 285C.309, 285C.362, 315.507 and  
17 317.124 that are approved on or after June 30, 2011.

18 (3) Applications for tax expenditures pursuant to ORS 307.455, 307.462, 315.514, 316.698 and  
19 317.394 that are approved or certified by state agencies in agency fiscal years ending on or after  
20 June 30, 2013.

21 **SECTION 11.** **This 2012 Act takes effect on the 91st day after the date on which the 2012**  
22 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

23