

# Tax Credit Transferability

## How many credits does Oregon currently have?

- 56 tax credits affect revenue in the current biennium (2017-19 Tax Expenditure Report)
- 31 tax credits are “active”
- 6 of the active tax credits are transferable in some form

## Policy Considerations

- Reasons for transferability
  - Monetize multi-year tax credits
  - Extend policy to tax exempt entities
  - Compared to refundable
  - Policy structure
- Transfer Price
  - Set by state
  - Determined by stakeholders
  - Auctions
- Administration
  - Policy Agency
  - Department of Revenue

Tax Credit	Key Language
Biomass	... A person...may transfer the credit...
Conservation	... may transfer...in exchange for a cash payment equal to the present value of the potential tax credit...
Transportation	... may transfer...in exchange for a cash payment equal to the present value of the tax credit.
Residential Energy	...may be transferred to the first purchaser of a dwelling...
Agriculture Workforce Housing	...an owner...may transfer all or a portion of the credit...
Affordable Housing Lender	... may transfer all or part of a tax credit allowed under this section to one or more other lending institutions...

## Outstanding Issues

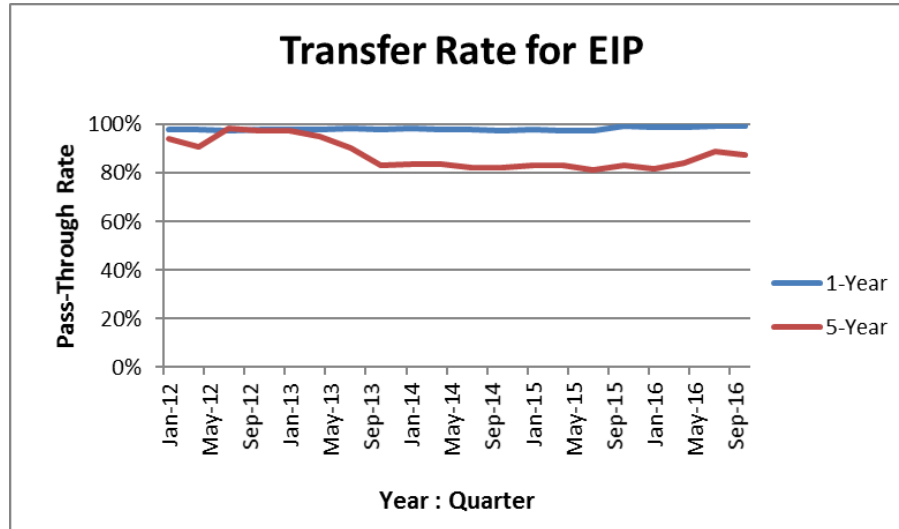
- Transferability Price for energy tax credits
  - Since 2012, ODOE has had to set the transfer price
  - Based on a formula that is updated quarterly
  - Business Energy Tax Credit to Energy Incentives Program

## Business Energy Tax Credits, 2007 - 2014

### 1-year Tax Credits

### 5-year Tax Credits

1-year Tax Credits					5-year Tax Credits				
Pass-Thru Rate	Mode	Number	Credits (\$M)	Amount Paid (\$M)	Pass-Thru Rate	Mode	Number	Credits (\$M)	Amount Paid (\$M)
< 70%		0	\$0	\$0	< 70%	67%	665	\$386	\$259
70% - 79%		0	\$0	\$0	70% - 79%	73%	2,424	\$247	\$181
80% - 89%	87%	3,084	\$13	\$11	80% - 89%	82%	82	\$13	\$11
90%+	97%	234	\$1	\$1	90%+	97%	21	\$0	\$0
<b>Total</b>		<b>3,318</b>	<b>\$14</b>	<b>\$12</b>	<b>Total</b>		<b>3,192</b>	<b>\$646</b>	<b>\$450</b>



### Unsold Tax Credits by Type of Entity (\$M)

	Private	Government	Non-Profit	Total
<b>Conservation</b>	\$14.6	\$9.3	\$0.2	\$24.1
<b>Transportation</b>	\$6.4	\$12.7	\$1.0	\$20.1
<b>Total</b>	\$21.0	\$22.0	\$1.2	\$44.2

HB 2286 Sections	Policy / Tax Credit	HB 3032 Sections
1 - 6	Uniform Transfer Policy	
7 - 8	Biomass	
9 - 10, 12	Ag Worker Housing	
11		
13	RETC	
14	Business Energy Tax Credit	
15 - 16	Conservation	1, 4
17 - 18	Transportation	2, 5
19 - 26	Other tax credits*	

\* Other includes: Electronic Commerce, Qualified Low-income Community Investments, Fish Screening devices, Veterans' Home Physicians, Office of Child Care Contributions, Employer Provided Scholarships, Rural Medical Provider, Individual Development Account Contributions.

## Current Statutes on General Transferability

**315.052 Limitation on transfer or sale of credit.** An income tax credit that is allowed under this chapter or ORS chapter 316, 317 or 318 and that is transferable may be transferred or sold only once, unless expressly provided otherwise by statute.

**315.053 Restriction on types of transferees.** An income tax credit allowed under ORS 315.141, 315.331, 315.336, 315.341 or 315.354 or section 12, chapter 855, Oregon Laws 2007, may be transferred or sold only to one or more of the following:

- (1) A C corporation.
- (2) An S corporation.
- (3) A personal income taxpayer.

## Specific Statutes for Transferable Tax Credits

### 1. Biomass Production or Collection

315.144 (1) A person that has obtained a tax credit under ORS 315.141 may transfer the credit to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

### 2. Energy Conservation Projects

469B.276 (1) The owner of a project may transfer a tax credit for the project in exchange for a cash payment equal to the present value of the potential tax credit, as determined at the time of the application for preliminary certification.

(2) The State Department of Energy shall establish by rule a formula to be employed in the determination of prices of credits transferred under this section. In establishing the formula, the department shall incorporate inflation projections and market real rate of return.

(3) The department shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section.

### 3. Transportation Projects

469B.323 (1) The owner of a transportation project may transfer a tax credit for the project in exchange for a cash payment equal to the present value of the tax credit.

(2) The State Department of Energy shall establish by rule a formula to be employed in the determination of prices of credits transferred under this section. In establishing the formula, the department shall incorporate inflation projections and market real rate of return.

(3) The department shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section.

#### **4. Residential Energy**

469B.106 (8) The verification form and contractor's certificate described under this section may be transferred to the first purchaser of a dwelling who intends to use the dwelling as a principal or secondary residence.

(9) Any person that pays the present value of the tax credit for an alternative energy device provided under ORS 316.116 and 469B.100 to 469B.118 to the person who constructs or installs the alternative energy device shall be entitled to claim the credit in the manner and subject to rules adopted by the Department of Revenue to carry out the purposes of this subsection. The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this subsection.

#### **5. Agriculture Workforce Housing Construction**

315.169 (2) An owner or operator of agriculture workforce housing may transfer all or a portion of the credit allowed to the owner or operator under ORS 315.164 to one or more contributors but the amount transferred may not total more than the total credit the owner or operator may claim.

#### **6. Affordable Housing Lenders**

317.097 (12) Notwithstanding any other provision of law, a lending institution that is a community development corporation organized under the Oregon Nonprofit Corporation Law may transfer all or part of a tax credit allowed under this section to one or more other lending institutions that are stockholders or members of the community development corporation or that otherwise participate through the community development corporation in the making of one or more qualified loans for which the tax credit under this section is allowed.