

House Bill 2787

Sponsored by COMMITTEE ON HIGHER EDUCATION AND WORKFORCE DEVELOPMENT

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 tax credit for employers that pay wages to youth workers, defined as workers between 16 and 25 years of age. Allows taxpayer to claim credit by retaining portion of withholding tax, calculated as percentage of wages paid to youth worker. Bases percentage to be retained on age of youth worker.

Applies to wages paid to youth workers on or after January 1, 2018, and to tax years beginning on or after January 1, 2018, and before January 1, 2024.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to a withholding tax credit for wages paid to youth workers; creating new provisions;
3 amending ORS 314.752, 316.187, 316.197, 316.202 and 318.031; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS**
6 **chapter 315.**

7 **SECTION 2. (1) As used in this section:**

8 (a) "Wages" has the meaning given that term in ORS 316.162.

9 (b)(A) "Youth worker" means a person who is employed during the tax year and who, on
10 the first day of the tax year, is at least 16 years of age and, on the last day of the tax year,
11 is not older than 24 years of age.

12 (B) "Youth worker" does not include an employee whose services to the employer consist
13 solely of labor in connection with the planting, cultivating or harvesting of seasonal agri-
14 cultural crops.

15 (2) A credit against the taxes otherwise due under ORS chapter 316 (or if the taxpayer
16 is a corporation, under ORS chapter 317 or 318) shall be allowed for wages paid by an em-
17 ployer to youth workers during the tax year. An employer that is a tax-exempt entity or a
18 governmental entity may use the credit under this section. Employers are subject to the
19 certification requirement in section 3 of this 2017 Act.

20 (3) An employer is not allowed the credit under this section unless the employer:

21 (a) Has a net increase in the monthly average number of full-time employees through the
22 tax year, or, if the employer is a tax-exempt or governmental entity, through the calendar
23 year;

24 (b) Does not terminate during the tax year or calendar year, other than for cause, a
25 youth worker for whom the employer claims a credit under this section; and

26 (c) Pays an annual average hourly wage to employees other than youth workers that is
27 at least equal to the annual average hourly wage paid by the employer to employees other
28 than youth workers in the immediately preceding tax year or calendar year.

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 (4) In order to use the credit allowed under this section, the employer shall retain a
 2 portion of the amount that the employer has withheld, as required under ORS 316.167 and
 3 316.172, from the wages of youth workers.

4 (5) The amount that the employer may retain shall be a percentage of the wages paid by
 5 the employer to each youth worker in a payroll period, as follows:

6 (a) For a youth worker who is at least 16 years of age on the first day of the tax year,
 7 and is not older than 18 years of age by the last day of the tax year, three percent of the
 8 youth worker's wages for the payroll period.

9 (b) For a youth worker who is at least 19 years of age on the first day of the tax year,
 10 and is not older than 21 years of age by the last day of the tax year, two percent of the youth
 11 worker's wages for the payroll period.

12 (c) For a youth worker who is at least 22 years of age on the first day of the tax year,
 13 and is not older than 24 years of age by the last day of the tax year, one percent of the youth
 14 worker's wages for the payroll period.

15 (6) The credit allowed under this section may exceed the tax liability of a taxpayer for
 16 the tax year.

17 (7) A nonresident shall be allowed the credit under this section. The credit shall be
 18 computed in the same manner and be subject to the same limitations as the credit granted
 19 to a resident. However, the credit shall be prorated using the proportion provided in ORS
 20 316.117.

21 (8) If a change in the tax year of the taxpayer occurs as described in ORS 314.085, or if
 22 the Department of Revenue terminates the taxpayer's tax year under ORS 314.440, the credit
 23 allowed under this section shall be prorated or computed in a manner consistent with ORS
 24 314.085.

25 (9) If a change in the status of a taxpayer from resident to nonresident or from nonres-
 26 ident to resident occurs, the credit allowed under this section shall be determined in a
 27 manner consistent with ORS 316.117.

28 (10) The Department of Revenue shall adopt rules for the purposes of this section and
 29 section 3 of this 2017 Act.

30 **SECTION 3.** (1) After the close of the tax year, or, in the case of a tax-exempt or gov-
 31 ernmental entity, after the end of the calendar year, an employer that has retained amounts
 32 as provided in section 2 of this 2017 Act shall verify with the Employment Department that
 33 the employer is eligible to claim the credit allowed under section 2 of this 2017 Act. The
 34 Employment Department shall by rule establish procedures for determining eligibility of
 35 employers to claim the credit and shall provide written certification of employer eligibility.

36 (2) At the time of filing the employer's return for the tax year, the employer shall claim
 37 the credit in the form and manner established by the Department of Revenue by rule and
 38 shall include the written certification required by subsection (1) of this section. The Depart-
 39 ment of Revenue shall by rule establish procedures for claiming the credit.

40 (3) If an employer has retained amounts under section 2 of this 2017 Act but the Em-
 41 ployment Department or the Department of Revenue determines that the employer is not
 42 eligible for some or all of the claimed credit amount, the employer shall pay over all im-
 43 properly retained amounts to the Department of Revenue as provided in ORS 316.197. The
 44 employer may not claim the disallowed amount of the credit.

45 (4) The Department of Revenue may treat improperly retained amounts as deficiencies,

1 **which, if still outstanding as of the due date of the employer's return for the tax year, shall**
 2 **accrue interest as provided in ORS 305.220 and 305.265.**

3 **SECTION 4.** ORS 316.187 is amended to read:

4 316.187. The amounts deducted from the wages of an employee during any calendar year in ac-
 5 cordance with ORS 316.167 and 316.172, **including amounts retained by an employer under sec-**
 6 **tion 2 of this 2017 Act, regardless of whether the employer is determined to be eligible for a**
 7 **credit under section 2 of this 2017 Act,** shall be considered to be in part payment of the tax on
 8 such employee's income for the taxable year which begins within such calendar year, and the return
 9 made by the employer pursuant to ORS 316.202 shall be accepted by the Department of Revenue as
 10 evidence in favor of the employee of the amounts so deducted from the employee's wages.

11 **SECTION 5.** ORS 316.197 is amended to read:

12 316.197. (1)(a) Except as provided under ORS 316.191 or paragraph (b) **or (c)** of this subsection,
 13 within the time that each employer is required to pay over taxes withheld for federal income tax
 14 purposes for any period, the employer shall pay over to the Department of Revenue or to a financial
 15 agent of the department the amounts required to be withheld under ORS 316.167 and 316.172 for the
 16 same period. Any employer not required to withhold federal income taxes for any period but who is
 17 required to deduct and retain amounts from wages paid to an employee under ORS 316.167 and
 18 316.172 for the same period shall pay over to the department or financial agent of the department,
 19 taxes withheld for the period, within the time and in the manner, as if the employer were required
 20 to withhold taxes for the period under federal law.

21 (b) Notwithstanding the provisions of paragraph (a) of this subsection, any employer of agricul-
 22 tural employees who is not required to withhold federal income taxes for any period but who is re-
 23 quired to deduct and retain amounts from wages paid to those employees under ORS 316.167 and
 24 316.172 shall pay over to the department, or financial agent of the department, taxes so withheld
 25 at the same time and for the same period for which the employer is required to pay over employer
 26 and employee taxes under chapter 21 of the Internal Revenue Code (Federal Insurance Contributions
 27 Act).

28 **(c) An employer that retains amounts under section 2 of this 2017 Act shall reduce the**
 29 **amount paid over by the amount retained by the employer under section 2 of this 2017 Act**
 30 **for the same period.**

31 (2) Every amount so paid over shall be accounted for as part of the collections under this
 32 chapter. No employee has any right of action against an employer in respect of any moneys deducted
 33 from wages and paid over in compliance or intended compliance with this section.

34 (3) If any amount required to be withheld and paid over to the department is delinquent, interest
 35 shall accrue at the rate prescribed under ORS 305.220 on that amount from the last day of the month
 36 following the end of the calendar quarter within which the amount was required to be paid to the
 37 department to the date of payment. The provisions of this subsection shall not relieve any employer
 38 from liability for a late payment penalty under any other provision of law.

39 **SECTION 6.** ORS 316.202 is amended to read:

40 316.202. (1) With each payment made to the Department of Revenue, every employer shall de-
 41 liver to the department, on a form prescribed by the department showing the total amount of with-
 42 held taxes in accordance with ORS 316.167 and 316.172, and supply such other information as the
 43 department may require. The employer is charged with the duty of advising the employee of the
 44 amount of moneys withheld, in accordance with such regulations as the department may prescribe,
 45 using printed forms furnished or approved by the department for such purpose.

1 (2) Except as provided in subsection (4) of this section, every employer shall submit a combined
2 quarterly return to the department on a form provided by it showing the number of payments made,
3 the withheld taxes paid during the quarter, **amounts retained by the employer under section 2**
4 **of this 2017 Act** and an explanation of federal withholding taxes as computed by the employer. The
5 report shall be filed with the department on or before the last day of the month following the end
6 of the quarter.

7 (3) The employer shall make an annual return to the department on forms provided or approved
8 by it, summarizing the total compensation paid and the taxes withheld for all employees during the
9 calendar year, **including amounts retained by the employer under section 2 of this 2017 Act**,
10 and shall file the same with the department on or before the due date of the corresponding federal
11 return for the year for which report is made. Failure to file the annual report without reasonable
12 excuse on or before the 30th day after notice has been given to the employer of failure subjects the
13 employer to a penalty of \$100. The department may by rule require additional information the de-
14 partment finds necessary to substantiate the annual return, including but not limited to copies of
15 federal form W-2 for individual employees, and may prescribe circumstances under which the filing
16 requirement imposed by this subsection is waived.

17 (4) Notwithstanding the provisions of subsection (2) of this section, employers of agricultural
18 employees may submit returns annually showing the number of payments made and the withheld
19 taxes paid. However, such employers shall make and file a combined quarterly tax report with re-
20 spect to other tax programs, as required by ORS 316.168.

21 (5) In addition to any other penalty required by law:

22 (a) A person who fails to substantiate a report required under subsection (3) of this section, or
23 who files incomplete or incorrect substantiation, shall be subject to a penalty of \$50 per federal form
24 W-2 after the date on which the substantiation is due, up to a maximum penalty of \$2,500.

25 (b) A person who knowingly fails to substantiate a report required under subsection (3) of this
26 section, or who knowingly files incomplete or incorrect substantiation, shall be subject to a penalty
27 of \$250 per federal form W-2 after the date on which the substantiation is due, up to a maximum
28 penalty of \$25,000.

29 **SECTION 7.** ORS 314.752 is amended to read:

30 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
31 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
32 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
33 allowable to the shareholders of the S corporation.

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

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

43 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
44 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
45 316.117, then that provision shall apply to the nonresident shareholder.

1 (5) As used in this section, “business tax credit” means a tax credit granted to personal income
 2 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
 3 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
 4 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
 5 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
 6 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (fore-
 7 station and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
 8 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture
 9 workforce housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facili-
 10 ties), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.326
 11 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS
 12 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing
 13 facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.507 (electronic com-
 14 merce) and ORS 315.533 (low income community jobs initiative) **and section 2 of this 2017 Act**
 15 **(youth worker withholding credit).**

16 **SECTION 8.** ORS 318.031 is amended to read:

17 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 18 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 19 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 20 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.141, 315.156, 315.204,
 21 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.507 and 315.533 **and section 2 of this 2017**
 22 **Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

23 **SECTION 9.** (1) **Sections 2 and 3 of this 2017 Act and the amendments to ORS 316.187,**
 24 **316.197 and 316.202 by sections 4 to 6 of this 2017 Act apply to wages paid to youth workers**
 25 **on or after January 1, 2018, and to tax years beginning on or after January 1, 2018, and before**
 26 **January 1, 2024.**

27 (2) **The amendments to ORS 314.752 and 318.031 by sections 7 and 8 of this 2017 Act apply**
 28 **to tax years beginning on or after January 1, 2018.**

29 **SECTION 10.** This 2017 Act takes effect on the 91st day after the date on which the 2017
 30 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

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