

House Committee on Revenue

February 5, 2018

## HB 4028 Tax Credit Technical Fix bill

### Summary

Makes technical changes to the Working Family Dependent Care credit under ORS 315.264, the Bovine Manure credit under ORS 315.176 and 315.184, and the affordable housing lender's credit under ORS 317.097. Also makes conforming amendments to ORS 314.752 for the Bovine Manure credit.

### Comments

—SECTION ONE—*Working Family Household and Dependent Care credit*

In 2015, the legislature made substantial changes to the WFC and CDCC by merging them into one more beneficial credit for Oregonians. The legislature tied the credits to IRC section 21 for everything but the limitation. Under federal law, the limit is \$3K for one qualifying person and \$6K for two or more, Oregon's limit is \$12K and \$24K respectively.

We came to LRO to fulfill our duty to point out inconsistencies between federal and state laws that impact taxpayer situations or our administration of the tax system. The result is this draft bill although we do believe additional amendments are necessary.

Under federal law, "employment-related expenses" include expenses incurred while working or looking for work, but they do not include expenses incurred while attending school. There are special provisions in federal law that allow married taxpayers the ability to claim expenses while one spouse is attending school on a full-time basis. Because of the earned income requirement of the federal credit, federal law attributes earned income to the married student in an amount that equals the federal limits. In other words, federal law deems a student to have earned \$250 a month for one qualifying person and \$500 a month for two. This equals the annual federal limits of \$3K/\$6K. This only applies to students that are married and allows them to claim a credit of up to \$3K/\$6K.

Under Oregon law, the credit is expanded to include students that are single as long as they are considered a full or part-time student. However, because the Oregon credit does not impute income to the single student in the way federal law does, the student would not have any qualified expenses, even if they actually incurred expenses because they do not also have earned income. Federal law resolves this issue for married students, which Oregon follows up to \$3K and \$6K because of the tie to qualifying expenses.

## Legislative Testimony

Finally, the provisions are applicable to tax years that begin on or after January 1, 2019 but should be applicable to tax years beginning on or after January 1, 2018 to conform to and correct the changes the legislature made in the 2017 session.

The inconsistency in administering this credit is described below:

<b>Taxpayer</b>	<b>Federal Law</b>	<b>Oregon Law</b>	<b>Issue</b>	<b>Possible solution</b>
Resident taxpayers	n/a	Current law only allows the credit if the earned income is actually earned within Oregon.	Equity—This results in Oregonians who earn their income in another state not being eligible for the credit.	Clarify the intent that Oregonians qualify if the income is earned anywhere as long as it's taxable by Oregon and reportable on the Oregon return.
Married student	Full-time status only	Full-time status only	Equity—Single students can be a part-time student and qualify	Expand part-time status to married students
Married student	Imputed income \$3K/\$6K	Ties to federal law of qualifying expenses.	These students may never reach Oregon's limit of \$12K/\$24K because of the earned income requirement and the imputed income limits. These students may only have qualifying expenses of up to \$3K/\$6K because it's the least of their earned income, the spouse's earned income, or the Oregon cap (\$12K/\$24K)	Exempt students from the earned income requirement from periods when they are qualifying students.  OR Address the imputed income cap in Oregon and allow it to be calculated following federal rules, but with Oregon limits.
Unmarried	Not eligible	Full or part-	Equity—Married	Remove part-time

## Legislative Testimony

student— status		time status	students cannot be part-time	status from unmarried students
Unmarried student— imputed income	Not eligible	Not addressed in Oregon law	Equity—these students, although they have otherwise qualifying expenses, because they don't have “earned income” their credit equals zero.	Exempt students from the earned income requirements under federal law during periods when they are qualifying students.  OR  Address the imputed income cap in Oregon and allow it to be calculated following federal rules, but with Oregon limits.

### —SECTION TWO—*Bovine manure credit*

HB 2066 (2017) established a new transferable credit, the bovine manure credit, certified by the Department of Agriculture (DOA). The provisions for earning the credit are essentially the same as the biomass producer or collector credit (ORS 315.141) including the credit rate of \$3.50 per wet ton, except the total credit amount was capped at \$5 million dollars per “tax year.” Changes to the credit reporting requirements, clarifying which “bovine” animals qualified, and changing “tax year” to “calendar year” came at the request of the department as technical fixes.

The suggested reporting requirement changes were to address the rule-authority provided to the department. We currently use Interagency Agreements (IA) with all agencies that provide the department with certified credit data. An IA is very flexible based on changing circumstances whereas rules (which are primarily for taxpayers, not other agencies) are time-consuming to change. As well, the information outlined in ORS 315.176(7)(a) is not exactly what we need for the purposes of pass-through entity reporting. We just need enough information to allocate the distributive share of the credit to each owner in the Business Credit Manager (BCM).

Replacing “bovine” with a scientific name of the intended animal was suggested by the department as “bovine” can include animals other than cattle such as bison, elk, antelopes, and

## Legislative Testimony

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water buffalos among others. The term “cow” indicates only a female animal so we suggest using the scientific name to refer to the intended animal for purposes of this credit.

Changing “tax year” to “calendar year” was suggested to help the certification process because “tax years” include fiscal years as well as calendar years. This modification was made in conjunction with the DOA and credit recipient stakeholders and allows the agency to certify credits on a calendar year basis.

Finally, the provisions are applicable to tax years that begin on or after January 1, 2019 but should be applicable to tax years beginning on or after January 1, 2018 to conform to and correct the changes the legislature made in the 2017 session.

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