

House Bill 2237

Sponsored by Representatives BONHAM, MCLAIN, WITT; Representatives BARKER, POST, SMITH DB (Presession filed.)

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 operation costs of housing for agricultural workers. Provides for refundability of credit and for transferability of credit earned by tax-exempt entity. Imposes limitation on total credits allowed to all owners of housing per tax year.

Extends sunset for tax credits for owner or operator of agriculture workforce housing.

Applies to tax years beginning on or after January 1, 2020, and before January 1, 2026.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits for housing agricultural workers; creating new provisions; amending ORS
3 314.752, 318.031 and 456.508 and section 28, chapter 913, Oregon Laws 2009; and prescribing an
4 effective date.

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

6 **SECTION 1. Sections 2 to 4 of this 2019 Act are added to and made a part of ORS chapter**
7 **315.**

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

9 (a) **“Agricultural worker” has the meaning given that term in ORS 315.163.**

10 (b) **“Community-based housing” means housing that is operated by a nonprofit organiza-**
11 **tion or by a housing authority created under ORS 456.055 to 456.235, of which a majority of**
12 **the occupants are agricultural workers.**

13 (c) **“Eligible costs” means operation costs that have been certified by the Housing and**
14 **Community Services Department as eligible for the tax credit under this section.**

15 (d) **“Eligible housing” means farm employment-related housing or community-based**
16 **housing.**

17 (e) **“Farm employment-related housing” means agriculture workforce housing as defined**
18 **in ORS 315.163 that is located on the owner’s property and that is offered in connection with**
19 **an agricultural worker’s employment.**

20 (f)(A) **“Operation costs” includes costs of insurance, property management, repair and**
21 **maintenance, resident services and utilities necessary to operate eligible housing.**

22 (B) **“Operation costs” does not include any expense that may be depreciated or amortized**
23 **as a capital cost.**

24 (g) **“Utilities” includes electricity, gas, oil and water and sewer service.**

25 (2) **A credit against taxes that are otherwise due under ORS chapter 316 or, if the tax-**
26 **payer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer for operation**
27 **costs of eligible housing incurred by an owner of eligible housing during the tax year. The**
28 **credit shall equal 50 percent of eligible costs incurred during the tax year, but shall be re-**

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 duced by any amount of federal or other governmental or private grants or similar funding
2 that the owner receives to compensate for the payment of eligible costs incurred during the
3 tax year.

4 (3) To be eligible for a credit under this section, the eligible housing must:

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

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

8 (c) If farm employment-related housing, on or before 90 days after the first day of the
9 tax year, or 90 days after the housing is occupied, whichever is later, be registered as a
10 farmworker camp with the Department of Consumer and Business Services under ORS
11 658.750; and

12 (d) If community-based housing, meet all certification requirements for agricultural
13 workers established by the Housing and Community Services Department.

14 (4) The credit allowed under this section:

15 (a) May not be claimed for a unit of housing that is occupied during the tax year by
16 temporary H-2A workers admitted to this country under 8 U.S.C. 1188.

17 (b) May not be claimed for any expense that is attributable to payments for utilities if
18 the owner or operator of the eligible housing requires occupants of the eligible housing to
19 pay for utilities.

20 (c) May be claimed for eligible costs of both farm employment-related housing and
21 community-based housing.

22 (5) An owner must obtain a written certification of eligible costs from the Housing and
23 Community Services Department prior to claiming the credit allowed under this section.

24 (6) If the amount allowable as a credit under this section, when added to the sum of the
25 amounts allowable as a payment of tax under ORS 314.505 to 314.525, 316.187 and 316.583,
26 other payments of tax and other refundable credit amounts, exceeds the taxes imposed by
27 ORS chapters 314 to 318 (reduced by any nonrefundable credits allowed for the tax year), the
28 excess shall be treated as an overpayment of tax and shall be refunded or applied in the same
29 manner as other tax overpayments.

30 (7) The credit allowed under this section shall be in addition to and not in lieu of any
31 depreciation or amortization deduction to which the taxpayer otherwise may be entitled with
32 respect to the eligible housing, and the credit does not affect the computation of basis for
33 the property.

34 (8) A nonresident shall be allowed the credit under this section in the same manner and
35 subject to the same limitations as a resident. However, the credit shall be prorated using the
36 proportion provided in ORS 316.117.

37 (9) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,
38 or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440,
39 the credit allowed by this section shall be prorated or computed in a manner consistent with
40 ORS 314.085.

41 (10) The Housing and Community Services Department may by rule allocate annual
42 available credit amounts available under section 4 of this 2019 Act between farm
43 employment-related housing and community-based housing.

44 (11) The Housing and Community Services Department shall adopt rules for the purposes
45 of this section, including rules establishing policies and procedures for providing written

1 certification to entities eligible for the credit allowed under this section, as required by
 2 subsection (5) of this section.

3 **SECTION 3.** (1) A tax-exempt entity that has obtained a tax credit under section 2 of this
 4 2019 Act may transfer the credit to a taxpayer subject to tax under ORS chapter 316, 317 or
 5 318.

6 (2) A tax credit allowed under section 2 of this 2019 Act may be transferred within two
 7 calendar years after the close of the tax year in which the credit may be claimed. After that
 8 date, no portion of a credit allowed under section 2 of this 2019 Act may be transferred.

9 (3) To transfer the tax credit, the entity earning the credit and the taxpayer that will
 10 claim the credit shall, on or before the date prescribed by subsection (2) of this section,
 11 jointly file a notice of tax credit transfer with the Department of Revenue. The notice must
 12 be given on a form prescribed by the department that contains all of the following:

- 13 (a) The name and address of the transferor and transferee;
- 14 (b) The amount of the tax credit that is being transferred;
- 15 (c) The amount of the tax credit that is being retained by the transferor; and
- 16 (d) Any other information required by the department.

17 (4) The Housing and Community Services Department may establish by rule a minimum
 18 discounted value of a tax credit under this section.

19 (5) The Department of Revenue, in consultation with the Housing and Community Ser-
 20 vices Department, may by rule establish procedures for the transfer of tax credits provided
 21 by this section.

22 **SECTION 4.** The total amount of tax credits allowed under section 2 of this 2019 Act to
 23 all owners of housing may not exceed \$_____ million for any tax year.

24 **SECTION 5.** ORS 314.752, as amended by section 7, chapter 108, Oregon Laws 2018, is amended
 25 to read:

26 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
 27 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 28 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 29 allowable to the shareholders of the S corporation.

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

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

39 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 40 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 41 316.117, then that provision shall apply to the nonresident shareholder.

42 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
 43 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
 44 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture
 45 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS

1 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
2 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
3 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
4 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
5 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
6 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
7 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
8 315.521 (university venture development funds), ORS 315.523 (employee training programs), ORS
9 315.533 (low income community jobs initiative), ORS 315.675 (Trust for Cultural Development Ac-
10 count contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise
11 zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-
12 search expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter
13 774, Oregon Laws 2013 (alternative fuel vehicle contributions), and section 2, chapter 108, Oregon
14 Laws 2018 (Opportunity Grant Fund contributions), **and section 2 of this 2019 Act (housing for
15 agricultural workers).**

16 **SECTION 6.** ORS 318.031, as amended by section 8, chapter 108, Oregon Laws 2018, is amended
17 to read:

18 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
19 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
20 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
21 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
22 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523 and 315.533 and section
23 2, chapter 108, Oregon Laws 2018, **and section 2 of this 2019 Act** (all only to the extent applicable
24 to a corporation) and ORS chapter 317.

25 **SECTION 7.** ORS 456.508 is amended to read:

26 456.508. As used in ORS 456.510 and 456.513:

27 (1) "Accessible" means that housing complies with federal accessibility guidelines implementing
28 the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq., as amended and in effect on
29 January 1, 2004.

30 (2) "Common living space" means a living room, family room, dining room or kitchen.

31 (3) "Contiguous units" means units that are on the same tax lot or on contiguous tax lots that
32 have a common boundary. Tax lots that are separated by a public road are contiguous tax lots for
33 purposes of this subsection.

34 (4) "New" means that the housing being constructed did not previously exist in residential or
35 nonresidential form. "New" does not include the acquisition, alteration, renovation or remodeling
36 of an existing structure.

37 (5) "Powder room" means a room containing at least a toilet and sink.

38 (6) "Rental housing" means a dwelling unit designed for nonowner occupancy under a tenancy
39 typically lasting six months or longer.

40 (7) "Subsidized development" means housing that receives one or more of the following devel-
41 opment subsidies from the Housing and Community Services Department:

42 (a) The federal low-income housing tax credit under 26 U.S.C. 42(a), if no part of the eligible
43 basis prior to the application of 26 U.S.C. 42(i)(2)(B) was financed with an obligation described in
44 26 U.S.C. 42(h)(4)(A), all as amended and in effect on January 1, 2004;

45 (b) An agriculture workforce housing tax credit, as described in ORS 315.164;

1 (c) A loan that qualifies the lending institution for a subsidized housing loan tax credit, as de-
2 scribed in ORS 317.097;

3 (d) Funding under the federal HOME Investment Partnerships Act, 42 U.S.C. 12721 to 12839, as
4 amended and in effect on January 1, 2004;

5 (e) Moneys from the Oregon Housing Fund created under ORS 458.620; *[or]*

6 **(f) A tax credit for operation costs of housing agricultural workers under section 2 of this**
7 **2019 Act; or**

8 *[(f)] (g)* Moneys from other grant or tax incentive programs administered by the Housing and
9 Community Services Department under ORS 456.559.

10 (8) "Visitable" means capable of being approached, entered and used by individuals with mobility
11 impairments, including but not limited to individuals using wheelchairs.

12 **SECTION 8. Sections 2 to 4 of this 2019 Act apply to tax years beginning on or after**
13 **January 1, 2020, and before January 1, 2026.**

14 **SECTION 9.** Section 28, chapter 913, Oregon Laws 2009, as amended by section 18, chapter 750,
15 Oregon Laws 2013, is amended to read:

16 **Sec. 28.** Except as provided in ORS 315.164 (8), a credit may not be claimed under ORS 315.164
17 for **agriculture workforce housing projects completed in** tax years beginning on or after January
18 1, ~~2020~~ **2026**.

19 **SECTION 10. This 2019 Act takes effect on the 91st day after the date on which the 2019**
20 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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