

House Bill 2387

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of State Treasurer Tobias Read)

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**.

Establishes refundable credit against personal income taxes for contributions to higher education savings network account or ABLE account. Applies to tax years beginning on or after January 1, 2020, and before January 1, 2026. Eliminates subtraction for contribution to ABLE account or higher education savings network account. Applies to tax years beginning on or after January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the Oregon 529 Savings Network; creating new provisions; amending ORS 314.752,
3 316.680 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 2019 Act are added to and made a part of ORS**
6 **chapter 315.**

7 **SECTION 2. (1) A credit against taxes otherwise imposed under ORS chapter 316 shall**
8 **be allowed for amounts contributed during the tax year to a savings network account for**
9 **higher education established under ORS 178.300 to 178.355 or an ABLE account established**
10 **under ORS 178.380. A taxpayer who makes contributions to both types of account may claim**
11 **the credit for the amounts listed in subsection (2) of this section for each type of account.**

12 **(2) The amount of the credit allowed under this section shall be based on the taxpayer's**
13 **adjusted gross income, whether reported on a joint return or any other type of return, and**
14 **shall be computed as follows:**

15 **(a) The lesser of \$500 or the amount contributed, if the taxpayer's adjusted gross income**
16 **does not exceed \$30,000;**

17 **(b) The lesser of \$500 or 50 percent of the amount contributed, if the taxpayer's adjusted**
18 **gross income exceeds \$30,000 but does not exceed \$70,000;**

19 **(c) The lesser of \$500 or 25 percent of the amount contributed, if the taxpayer's adjusted**
20 **gross income exceeds \$70,000 but does not exceed \$100,000; or**

21 **(d) The lesser of \$500 or 10 percent of the amount contributed, if the taxpayer's adjusted**
22 **gross income exceeds \$100,000.**

23 **(3) If the amount allowable as a credit under this section, when added to the sum of the**
24 **amounts allowable as payment of tax under ORS 316.187 (withholding), ORS 316.583 (esti-**
25 **ated tax), other tax prepayment amounts and other refundable credit amounts, exceeds the**
26 **taxes imposed by ORS chapters 314 and 316 for the tax year (reduced by any nonrefundable**
27 **credits allowable for purposes of ORS chapter 316 for the tax year), the amount of the excess**
28 **shall be refunded to the taxpayer as provided in ORS 316.502.**

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) The credit shall be claimed on a form prescribed by the Department of Revenue that**
2 **contains the information required by the department.**

3 **(5) Spouses in a marriage who file separate returns for a taxable year may each claim a**
4 **share of the tax credit that would have been allowed on a joint return in proportion to the**
5 **adjusted gross income of each.**

6 **(6) In the case of a credit allowed under this section:**

7 **(a) A nonresident shall be allowed the credit in the proportion provided in ORS 316.117.**

8 **(b) If a change in the status of the taxpayer from resident to nonresident or from non-**
9 **resident to resident occurs, the credit shall be determined in a manner consistent with ORS**
10 **316.117.**

11 **(c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,**
12 **or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit**
13 **shall be prorated or computed in a manner consistent with ORS 314.085.**

14 **SECTION 3. (1) As provided in subsection (2) of this section, prior tax relief afforded a**
15 **taxpayer by virtue of the credit allowed under section 2 of this 2019 Act shall be forfeited and**
16 **the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer as**
17 **a result of the tax credit allowed the taxpayer if any of the following are taken:**

18 **(a) A nonqualified withdrawal from an account, as defined in ORS 178.300;**

19 **(b) A withdrawal from a savings network account for higher education established under**
20 **ORS 178.300 to 178.355 to pay expenses in connection with enrollment or attendance at an**
21 **elementary or secondary school; or**

22 **(c) A distribution from an ABLE account that is not a qualified disability expense of the**
23 **designated beneficiary as provided in ORS 178.375 and 178.380 and rules adopted by the**
24 **Oregon 529 Savings Board.**

25 **(2) The amount of credit forfeited shall equal the amount of the disallowed withdrawal**
26 **or distribution.**

27 **SECTION 4. ORS 316.680, as amended by section 2, chapter 57, Oregon Laws 2018, is amended**
28 **to read:**

29 316.680. (1) There shall be subtracted from federal taxable income:

30 **(a) The interest or dividends on obligations of the United States and its territories and pos-**
31 **sessions or of any authority, commission or instrumentality of the United States to the extent**
32 **includable in gross income for federal income tax purposes but exempt from state income taxes un-**
33 **der the laws of the United States. However, the amount subtracted under this paragraph shall be**
34 **reduced by any interest on indebtedness incurred to carry the obligations or securities described in**
35 **this paragraph, and by any expenses incurred in the production of interest or dividend income de-**
36 **scribed in this paragraph to the extent that such expenses, including amortizable bond premiums,**
37 **are deductible in determining federal taxable income.**

38 **(b) The amount of any federal income taxes accrued by the taxpayer during the taxable year as**
39 **described in ORS 316.685, less the amount of any refunds of federal taxes previously accrued for**
40 **which a tax benefit was received.**

41 **(c) Amounts allowable under sections 2621(a)(2) and 2622(b) of the Internal Revenue Code to the**
42 **extent that the taxpayer does not elect under section 642(g) of the Internal Revenue Code to reduce**
43 **federal taxable income by those amounts.**

44 **(d) Any supplemental payments made to JOBS Plus Program participants under ORS 411.892.**

45 **(e)(A) Federal pension income that is attributable to federal employment occurring before Oc-**

1 tober 1, 1991. Federal pension income that is attributable to federal employment occurring before
2 October 1, 1991, shall be determined by multiplying the total amount of federal pension income for
3 the tax year by the ratio of the number of months of federal creditable service occurring before
4 October 1, 1991, over the total number of months of federal creditable service.

5 (B) The subtraction allowed under this paragraph applies only to federal pension income re-
6 ceived at a time when:

7 (i) Benefit increases provided under chapter 569, Oregon Laws 1995, are in effect; or

8 (ii) Public Employees Retirement System benefits received for service prior to October 1, 1991,
9 are exempt from state income tax.

10 (C) As used in this paragraph:

11 (i) "Federal creditable service" means those periods of time for which a federal employee earned
12 a federal pension.

13 (ii) "Federal pension" means any form of retirement allowance provided by the federal govern-
14 ment, its agencies or its instrumentalities to retirees of the federal government or their benefici-
15 aries.

16 (f) Any amount included in federal taxable income for the tax year that is attributable to the
17 conversion of a regular individual retirement account into a Roth individual retirement account
18 described in section 408A of the Internal Revenue Code, to the extent that:

19 (A) The amount was subject to the income tax of another state or the District of Columbia in
20 a prior tax year; and

21 (B) The taxpayer was a resident of the other state or the District of Columbia for that prior tax
22 year.

23 (g) Any amounts awarded to the taxpayer by the Public Safety Memorial Fund Board under ORS
24 243.954 to 243.974 to the extent that the taxpayer has not taken the amount as a deduction in de-
25 termining the taxpayer's federal taxable income for the tax year.

26 (h) If included in taxable income for federal tax purposes, the amount withdrawn during the tax
27 year in qualified withdrawals from a savings network account for higher education established under
28 ORS 178.300 to 178.355.

29 (i) Any federal deduction that the taxpayer would have been allowed for the production, pro-
30 cessing or sale of marijuana items authorized under ORS 475B.010 to 475B.545 or 475B.785 to
31 475B.949 but for section 280E of the Internal Revenue Code.

32 (j) If included in taxable income for federal tax purposes, any distributions from an ABLE ac-
33 count that do not exceed the qualified disability expenses of the designated beneficiary as provided
34 in ORS 178.375 and 178.380 and rules adopted by the Oregon 529 Savings Board.

35 (2) There shall be added to federal taxable income:

36 (a) Interest or dividends, exempt from federal income tax, on obligations or securities of any
37 foreign state or of a political subdivision or authority of any foreign state. However, the amount
38 added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the
39 obligations or securities described in this paragraph and by any expenses incurred in the production
40 of interest or dividend income described in this paragraph.

41 (b) Interest or dividends on obligations of any authority, commission, instrumentality and terri-
42 torial possession of the United States that by the laws of the United States are exempt from federal
43 income tax but not from state income taxes. However, the amount added under this paragraph shall
44 be reduced by any interest on indebtedness incurred to carry the obligations or securities described
45 in this paragraph and by any expenses incurred in the production of interest or dividend income

1 described in this paragraph.

2 (c) The amount of any federal estate taxes allocable to income in respect of a decedent not
3 taxable by Oregon.

4 (d) The amount of any allowance for depletion in excess of the taxpayer's adjusted basis in the
5 property depleted, deducted on the taxpayer's federal income tax return for the taxable year, pur-
6 suant to sections 613, 613A, 614, 616 and 617 of the Internal Revenue Code.

7 (e) For taxable years beginning on or after January 1, 1985, the dollar amount deducted under
8 section 151 of the Internal Revenue Code for personal exemptions for the taxable year.

9 (f) The amount taken as a deduction on the taxpayer's federal return for unused qualified busi-
10 ness credits under section 196 of the Internal Revenue Code.

11 (g) The amount of any increased benefits paid to a taxpayer under chapter 569, Oregon Laws
12 1995, under the provisions of chapter 796, Oregon Laws 1991, and under section 26, chapter 815,
13 Oregon Laws 1991, that is not includable in the taxpayer's federal taxable income under the Internal
14 Revenue Code.

15 (h) The amount of any long term care insurance premiums paid or incurred by the taxpayer
16 during the tax year if:

17 (A) The amount is taken into account as a deduction on the taxpayer's federal return for the
18 tax year; and

19 (B) The taxpayer claims the credit allowed under ORS 315.610 for the tax year.

20 (i) Any amount taken as a deduction under section 1341 of the Internal Revenue Code in com-
21 puting federal taxable income for the tax year, if the taxpayer has claimed a credit for claim of right
22 income repayment adjustment under ORS 315.068.

23 *[(j) If the taxpayer makes a nonqualified withdrawal, as defined in ORS 178.300, from a savings
24 network account for higher education established under ORS 178.300 to 178.355, the amount of the
25 withdrawal that is attributable to contributions that were subtracted from federal taxable income under
26 ORS 316.699.]*

27 *[(k) If a taxpayer makes a withdrawal from a savings network account for higher education es-
28 tablished under ORS 178.300 to 178.355 to pay expenses in connection with enrollment or attendance
29 at an elementary or secondary school, the amount of the withdrawal that is attributable to contributions
30 that were subtracted from federal taxable income under ORS 316.699 and the amount of the withdrawal
31 that is attributable to previously untaxed earnings and gains.]*

32 *[(L) If the taxpayer makes a distribution from an ABLE account that is not a qualified disability
33 expense of the designated beneficiary as provided in ORS 178.375 and 178.380 and rules adopted by
34 the Oregon 529 Savings Board, the amount of the distribution that is attributable to contributions that
35 were subtracted from federal taxable income under ORS 316.699.]*

36 (3) Discount and gain or loss on retirement or disposition of obligations described under sub-
37 section (2)(a) of this section issued on or after January 1, 1985, shall be treated for purposes of this
38 chapter in the same manner as under sections 1271 to 1283 and other pertinent sections of the
39 Internal Revenue Code as if the obligations, although issued by a foreign state or a political subdivi-
40 sion of a foreign state, were not tax exempt under the Internal Revenue Code.

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

43 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
44 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
45 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are

1 allowable to the shareholders of the S corporation.

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

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

11 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
12 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
13 316.117, then that provision shall apply to the nonresident shareholder.

14 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
15 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
16 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture
17 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS
18 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
19 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
20 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
21 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
22 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
23 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
24 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
25 315.521 (university venture development funds), ORS 315.523 (employee training programs), ORS
26 315.533 (low income community jobs initiative), ORS 315.675 (Trust for Cultural Development Ac-
27 count contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise
28 zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-
29 search expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter
30 774, Oregon Laws 2013 (alternative fuel vehicle contributions), and section 2, chapter 108, Oregon
31 Laws 2018 (Opportunity Grant Fund contributions), **and section 2 of this 2019 Act (529 account
32 contributions).**

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

35 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
36 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
37 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
38 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
39 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523 and 315.533 and section
40 2, chapter 108, Oregon Laws 2018, **and section 2 of this 2019 Act** (all only to the extent applicable
41 to a corporation) and ORS chapter 317.

42 **SECTION 7. Except as provided in ORS 316.699 (4), a taxpayer:**

43 (1) **May use a subtraction under ORS 316.699 only for contributions made in tax years**
44 **beginning before January 1, 2020; and**

45 (2) **May carry forward and use a subtraction under ORS 316.699 (4) only in tax years be-**

1 **ginning before January 1, 2025.**

2 **SECTION 8. (1) Sections 2 and 3 of this 2019 Act apply to tax years beginning on or after**
3 **January 1, 2020, and before January 1, 2026.**

4 **(2) The amendments to ORS 316.680 by section 4 of this 2019 Act apply to tax years be-**
5 **ginning on or after January 1, 2020.**

6 **SECTION 9. This 2019 Act takes effect on the 91st day after the date on which the 2019**
7 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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