

House Bill 2978

Sponsored by Representative MCKEOWN, Senator ROBLAN; Representatives FINDLEY, LEWIS, MEEK, NOBLE

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 short line railroad rehabilitation projects. Provides for certification and administration of tax credits by Department of Revenue. Limits total amount of potential tax credits available for short line railroad rehabilitation projects in biennium.

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 short line railroads; creating new provisions; amending ORS 314.752 and 318.031; and
3 prescribing an effective date.

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

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

7 **SECTION 2. As used in sections 2 to 7 of this 2019 Act:**

8 (1) **"Infrastructure" includes tracks, switches, sidings, roadbeds, railroad bridges and in-**
9 **dustrial leads owned by a short line railroad.**

10 (2) **"Short line railroad" means a class II or class III railroad as defined in 49 C.F.R. 1201.**

11 (3) **"Short line railroad rehabilitation project" means a project that involves the mainte-**
12 **nance, reconstruction or replacement of infrastructure.**

13 (4) **"Short line railroad rehabilitation project costs" means costs that are directly related**
14 **to the work necessary to maintain, reconstruct or replace infrastructure. "Short line rail-**
15 **road rehabilitation project costs" does not include costs that are funded by any state or**
16 **federal grants.**

17 **SECTION 3. (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer**
18 **is a corporation, under ORS chapter 317 or 318) is allowed to a taxpayer, based upon short**
19 **line railroad rehabilitation project costs actually paid or incurred by the taxpayer.**

20 (2) **The credit allowed under this section shall be the lesser of:**

21 (a) **\$3,500 multiplied by the number of miles of short line railroad track the taxpayer**
22 **owns or leases in this state on the day the short line railroad rehabilitation project is com-**
23 **pleted; or**

24 (b) **Fifty percent of the short line railroad rehabilitation project costs.**

25 (3) **For the credit to be allowed under this section:**

26 (a) **The infrastructure must be located in Oregon; and**

27 (b) **The taxpayer must:**

28 (A) **Own or lease the infrastructure;**

29 (B) **Be a short line railroad;**

30 (C) **Complete construction of the short line railroad rehabilitation project before or dur-**

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 ing the tax year for which the credit is claimed; and

2 (D) Receive a tax credit certificate under section 5 of this 2019 Act before claiming the
3 credit.

4 (4) The credit allowed under this section for any one tax year may not exceed the tax
5 liability of the taxpayer.

6 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer
7 in a particular year may be carried forward and offset against the taxpayer's tax liability for
8 the next succeeding tax year. Any credit remaining unused in that next succeeding tax year
9 may be carried forward and used in the second succeeding tax year, and likewise, any credit
10 not used in that second succeeding tax year may be carried forward and used in the third
11 succeeding tax year, and likewise, any credit not used in that third succeeding tax year may
12 be carried forward and used in the fourth succeeding tax year, and likewise, any credit not
13 used in that fourth succeeding tax year may be carried forward and used in the fifth suc-
14 ceeding tax year but may not be carried forward for any tax year thereafter.

15 (6) The credit allowed under this section is not in lieu of any depreciation or amortization
16 deduction for the short line railroad rehabilitation project to which the taxpayer otherwise
17 may be entitled for purposes of ORS chapter 316, 317 or 318 for such year.

18 (7) The taxpayer's adjusted basis for determining gain or loss may not be decreased by
19 any tax credit allowed under this section.

20 **SECTION 4.** (1) A person that has been issued a tax credit certificate under section 5 of
21 this 2019 Act may transfer the tax credit to a taxpayer subject to tax under ORS chapter 316,
22 317 or 318.

23 (2) The Department of Revenue may require that the person that has been issued the tax
24 credit certificate and the taxpayer that intends to claim the credit jointly file a notice of tax
25 credit transfer with the department on or before the earliest of the following dates:

- 26 (a) A date 30 days after the transfer of the credit;
- 27 (b) The date on which the transferee files a return; or
- 28 (c) The due date, including extensions, of the transferee's return.
- 29 (3) The notice shall be given on a form prescribed by the department that contains:
 - 30 (a) The name and address of the transferor and of the transferee;
 - 31 (b) The taxpayer identification number of the transferor and of the transferee;
 - 32 (c) The date on which the tax credit certificate was issued to the taxpayer under section
33 5 of this 2019 Act;
 - 34 (d) The amount of the credit that is certified, the amount that is being transferred and
35 the amount, if any, that is being retained by the transferor; and
 - 36 (e) Any other information required by the department.

37 (4) A transferor may separately transfer the entirety of the available tax credit to one
38 or more transferees, subject to subsection (5) of this section.

39 (5)(a) Any transfer of a tax credit or a portion of a tax credit must be completed no later
40 than the earliest of the following dates in relation to the tax return on which it is claimed:

- 41 (A) The original due date, including extensions, of the transferor's return;
- 42 (B) The date on which the transferor's return is actually filed;
- 43 (C) The original due date, including extensions, of the transferee's return; or
- 44 (D) The date on which the transferee's return is actually filed.
- 45 (b) Any transfer of a tax credit or a portion of a tax credit must occur on or before the

1 last day of the fifth tax year following the tax year in which the tax credit could have first
2 been claimed by the transferor.

3 (6) The department may by rule establish procedures for the transfer of tax credits pro-
4 vided by this section.

5 **SECTION 5.** Prior to claiming the tax credit allowed under section 3 of this 2019 Act, a
6 taxpayer that has completed construction of a short line railroad rehabilitation project shall
7 apply to the Department of Revenue for a tax credit certificate during the six-month period
8 ending on the last day of the tax year for which the credit is to be claimed. The application
9 must include the total short line railroad rehabilitation project costs and the number of
10 miles of short line railroad track the taxpayer owned or leased in this state on the day the
11 short line railroad rehabilitation project was completed. The department shall issue the tax
12 credit certificate or deny the application within 30 days after receiving the application.

13 **SECTION 6.** The total amount of potential tax credits under section 3 of this 2019 Act for
14 all short line railroad rehabilitation projects in this state may not, at the time of certificate
15 issuance under section 5 of this 2019 Act, exceed \$_____ for any biennium.

16 **SECTION 7.** The Department of Revenue shall by rule establish standards, policies and
17 procedures for the administration and enforcement of the provisions of sections 2 to 7 of this
18 2019 Act, including standards for what constitutes completion of a short line railroad reha-
19 bilitation project.

20 **SECTION 8.** ORS 314.752, as amended by section 7, chapter 108, Oregon Laws 2018, is amended
21 to read:

22 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
23 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
24 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
25 allowable to the shareholders of the S corporation.

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

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

35 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
36 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
37 316.117, then that provision shall apply to the nonresident shareholder.

38 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
39 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
40 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
41 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS
42 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
43 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
44 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
45 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-

1 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
 2 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
 3 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
 4 315.521 (university venture development funds), ORS 315.523 (employee training programs), ORS
 5 315.533 (low income community jobs initiative), ORS 315.675 (Trust for Cultural Development Ac-
 6 count contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise
 7 zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-
 8 search expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter
 9 774, Oregon Laws 2013 (alternative fuel vehicle contributions), and section 2, chapter 108, Oregon
 10 Laws 2018 (Opportunity Grant Fund contributions), **and section 3 of this 2019 Act (short line**
 11 **railroads).**

12 **SECTION 9.** ORS 318.031, as amended by section 8, chapter 108, Oregon Laws 2018, is amended
 13 to read:

14 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 15 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 16 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 17 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
 18 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523 and 315.533 and section
 19 2, chapter 108, Oregon Laws 2018, **and section 3 of this 2019 Act** (all only to the extent applicable
 20 to a corporation) and ORS chapter 317.

21 **SECTION 10.** **Sections 2 to 7 of this 2019 Act apply to tax years beginning on or after**
 22 **January 1, 2020, and before January 1, 2026.**

23 **SECTION 11.** **This 2019 Act takes effect on the 91st day after the date on which the 2019**
 24 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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