

Requested by Representative MCKEOWN

**PROPOSED AMENDMENTS TO
HOUSE BILL 2978**

1 On page 1 of the printed bill, line 16, after “grants” insert “or costs that
2 are used to claim a federal tax credit”.

3 Delete lines 17 through 30 and delete page 2.

4 On page 3, delete lines 1 through 15 and insert:

5 **“SECTION 3. (1) A credit against taxes imposed by ORS chapter 316**
6 **(or, if the taxpayer is a corporation, under ORS chapter 317 or 318) is**
7 **allowed to a taxpayer, based upon short line railroad rehabilitation**
8 **project costs actually paid or incurred by the taxpayer during the tax**
9 **year in which the credit is claimed.**

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

11 **“(a) \$3,500 multiplied by the number of miles of short line railroad**
12 **track the taxpayer owns or leases in this state on the day the short**
13 **line railroad rehabilitation project is completed; or**

14 **“(b) Fifty percent of the short line railroad rehabilitation project**
15 **costs paid or incurred by the taxpayer during the tax year in which**
16 **the credit is claimed.**

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

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

19 **“(b) The taxpayer must:**

20 **“(A) Own or lease the infrastructure;**

21 **“(B) Be a short line railroad; and**

1 “(C) Receive written certification from the Department of Trans-
2 portation before claiming the credit.

3 “(4) The amount of the credit claimed under this section for any
4 one tax year may not exceed the tax liability of the taxpayer.

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

17 “(6) The credit allowed under this section is not in lieu of any de-
18 preciation or amortization deduction for the short line railroad reha-
19 bilitation project to which the taxpayer otherwise may be entitled for
20 purposes of ORS chapter 316, 317 or 318 for such year.

21 “(7) The taxpayer’s adjusted basis for determining gain or loss may
22 not be decreased by any tax credit allowed under this section.

23 “(8)(a) The Department of Transportation may establish by rule
24 procedures and criteria for determining the amount of the tax credit
25 to be certified under this section, including standards for what con-
26 stitutes completion of a short line railroad rehabilitation project. The
27 department shall provide written certification to taxpayers that are
28 eligible to claim the credit under this section.

29 “(b) The department may charge and collect a fee from taxpayers
30 for certification of credits under this section. The fee may not exceed

1 the cost to the department of issuing certifications.

2 “(c) All fees collected under this subsection shall be deposited in the
3 State Treasury to the credit of the Railroad Fund. Moneys deposited
4 under this section are continuously appropriated to the department for
5 the purpose of administering and enforcing the provisions of this sec-
6 tion.

7 “(9)(a) The Department of Revenue may by rule require that the
8 Department of Transportation provide information about a certifica-
9 tion issued under this section, including the name and taxpayer iden-
10 tification number of the taxpayer or other person receiving
11 certification, the date the certification was issued in its final form, the
12 approved amount of credit and the first tax year for which the credit
13 may be claimed.

14 “(b) A taxpayer that is a pass-through entity that has received
15 certification under this section shall provide to the Department of
16 Revenue, within two months after the close of the tax year in which
17 the certification was issued, the name, taxpayer identification number
18 and any other information required by the department of each owner
19 receiving a distributive share of the credit, in a manner prescribed by
20 the department.

21 “(10) The Department of Revenue shall prescribe by rule the manner
22 and the timing of submission of the information described in sub-
23 section (9) of this section to the department.

24 “(11) The credit shall be claimed on a form prescribed by the De-
25 partment of Revenue that contains the information required by the
26 department.

27 “(12) In the case of a credit allowed under this section:

28 “(a) A nonresident shall be allowed the credit under this section in
29 the proportion provided in ORS 316.117.

30 “(b) If a change in the status of a taxpayer from resident to non-

1 resident or from nonresident to resident occurs, the credit allowed by
2 this section shall be determined in a manner consistent with ORS
3 316.117.

4 “(c) If a change in the taxable year of a taxpayer occurs as de-
5 scribed in ORS 314.085, or if the Department of Revenue terminates a
6 taxpayer’s taxable year under ORS 314.440, the credit allowed under
7 this section shall be prorated or computed in a manner consistent with
8 ORS 314.085.

9 **“SECTION 4. (1) A person that has obtained a tax credit under**
10 **section 3 of this 2019 Act may transfer the credit to a taxpayer under**
11 **ORS chapter 316, 317, or 318. A transfer that occurs on or after Janu-**
12 **ary 1, 2020, is conditioned upon compliance with this section and ORS**
13 **315.052 and 315.053.**

14 “(2) The Department of Revenue may require that the person that
15 has earned the credit and the taxpayer that intends to claim the credit
16 jointly file a notice of tax credit transfer with the department on or
17 before the earliest of the following dates:

18 “(a) A date 30 days after the transfer of the credit;

19 “(b) The date on which the transferee files a return; or

20 “(c) The due date, including extensions, of the transferee’s return.

21 “(3) The notice shall be given on a form prescribed by the depart-
22 ment that contains:

23 “(a) The name and address of the transferor and of the transferee;

24 “(b) The taxpayer identification number of the transferor and of the
25 transferee;

26 “(c) The dates on which the person earning the credit received
27 certifications for the credit;

28 “(d) The amount of the credit that is certified, the amount that is
29 being transferred and the amount that is being retained by the
30 transferor; and

1 “(e) Any other information required by the department.

2 “(4)(a) A transferor may separately transfer the entirety of that
3 portion corresponding to the tax year to one or more transferees,
4 subject to subsection (5) of this subsection.

5 “(b) Any amount of credit that would be allowed due only to a
6 carryforward provision may not be transferred.

7 “(5) Any transfer of a tax credit or a portion of a tax credit must
8 be completed no later than the earliest of the following dates in re-
9 lation to the tax return on which it is claimed:

10 “(a) The original due date, including extensions, of the transferor’s
11 return;

12 “(b) The date on which the transferor’s return is actually filed;

13 “(c) The original due date, including extensions, of the transferee’s
14 return; or

15 “(d) The date on which the transferee’s return is actually filed.

16 “(6) Notwithstanding subsection (5) of this section, if the transferor
17 is a tax-exempt entity, the transfer must be completed on or before a
18 date one year after the close of the tax year for which the credit was
19 certified. As used in this subsection, ‘tax-exempt entity’ means a
20 government agency or an organization that is recognized as exempt
21 under section 501(c)(3) of the Internal Revenue Code.

22 “(7) The transferee shall claim the credit in accordance with the
23 credit provisions for the tax years in which the credit is allowed.

24 “(8) The department by rule may establish policies and procedures
25 for the implementation of this section.

26 “SECTION 5. The total amount of tax credits certified under section
27 3 of this 2019 Act for all short line railroad rehabilitation projects in
28 this state may not exceed \$_____ for any biennium.

29 “SECTION 6. (1) Under the procedures for a contested case under
30 ORS chapter 183, the Director of Transportation may order the sus-

1 **pension, revocation or forfeiture of a tax credit certification or of a**
2 **portion thereof if the director finds that:**

3 **“(a) The certification was obtained by fraud or misrepresentation;**

4 **“(b) The certification was obtained by mistake or miscalculation;**

5 **or**

6 **“(c) The taxpayer otherwise violates or has violated a condition or**
7 **requirement for eligibility for the tax credit.**

8 **“(2) As soon as an order of revocation under this section becomes**
9 **final, the director shall notify the Department of Revenue and the**
10 **person that received the tax credit certification of the order of revo-**
11 **cation. Upon notification, the Department of Revenue immediately**
12 **shall proceed to collect:**

13 **“(a) If no portion of a credit has been transferred, those taxes not**
14 **paid by the holder of the certification as a result of the tax credits**
15 **provided to the holder under the revoked approval, from the holder**
16 **or a successor in interest to the business interests of the holder. All**
17 **tax credits provided to the holder and attributable to the fraudulently**
18 **or mistakenly obtained certification or portion of the certification**
19 **shall be forfeited.**

20 **“(b) If all of a credit has been transferred, an amount equal to the**
21 **amount of the tax credits allowable to the transferee under the re-**
22 **voked certification, from the transferor.**

23 **“(c) If a portion of a tax credit has been transferred, those taxes**
24 **not paid by the transferor as a result of the tax credits provided to the**
25 **transferor pursuant to the revoked certification from the transferor**
26 **or a successor in interest to the business interests of the transferor,**
27 **and an amount equal to the amount of the tax credits allowable to the**
28 **transferee pursuant to the revoked certification from the transferor.**

29 **“(3)(a) The Department of Revenue shall have the benefit of all laws**
30 **of the state pertaining to the collection of income and excise taxes and**

1 may proceed to collect the amounts described in subsection (2) of this
2 section from the person that obtained certification or a successor in
3 interest to the business interests of that person. An assessment of tax
4 is not necessary and the collection of taxes described in this subsection
5 is not precluded by any statute of limitations.

6 “(b) For purposes of this subsection, a lender, bankruptcy trustee
7 or other person that acquires an interest through bankruptcy or
8 through foreclosure of a security interest is not considered to be a
9 successor in interest to the business interests of the person that ob-
10 tained certification.

11 “(4) If the certification is ordered revoked pursuant to this section,
12 the holder of the certification shall be denied any further relief in
13 connection with the credit from and after the date that the order of
14 revocation becomes final.

15 “(5) Notwithstanding subsections (1) to (4) of this section, a certi-
16 fication or portion of a certification held by a transferee may not be
17 considered revoked for purposes of the transferee, the tax credit al-
18 lowable to the transferee may not be reduced and a transferee is not
19 liable under this section.

20 “(6) Interest under this section shall accrue at the rate established
21 in ORS 305.220 beginning the day after the due date of the return on
22 which the credit may first be claimed.

23 “(7) The Department of Revenue may collect amounts owed under
24 this section by a partnership from the partnership.” .

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