

HB 2978-5
(LC 2058)
5/28/19 (CMT/stn/ps)

Requested by HOUSE COMMITTEE ON REVENUE (at the request of Representative Nancy Nathanson)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2978**

1 On page 1 of the printed bill, line 5, delete “7” and insert “9”.

2 In line 7, delete “7” and insert “9”.

3 In line 15, after “by” insert “or used to qualify for”.

4 In line 16, delete the period and insert “, or costs that are used to claim
5 a federal tax credit.

6 “(5) ‘Tier I short line railroad’ means a short line railroad owned or
7 leased by a person for whom the total length of short line railroad track
8 owned or leased in Oregon is equal to or greater than 200 miles. The total
9 amount of short line railroad track in Oregon calculated under this sub-
10 section includes any short line railroad track owned or leased by the person,
11 or if the person is a corporation, by the person’s parent corporation or sub-
12 sidiaries, regardless of whether the track is owned or leased by one or more
13 railroads.

14 “(6) ‘Tier II short line railroad’ means a short line railroad that is not a
15 tier I short line railroad or is a short line railroad owned or leased by the
16 state, a city, a county, a port or any other public or municipal
17 corporation.”.

18 Delete lines 17 through 30 and delete page 2.

19 On page 3, delete lines 1 through 19 and insert:

20 **“SECTION 3. (1) A credit against taxes imposed by ORS chapter 316
21 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318) is**

1 allowed to a taxpayer, based upon short line railroad rehabilitation
2 project costs actually paid or incurred by the taxpayer during the tax
3 year for which the credit is claimed.

4 “(2) The credit allowed under this section shall be the least of:

5 “(a) In the case of a tier I short line railroad, \$1,000 multiplied by
6 the number of miles of short line railroad track the taxpayer owns or
7 leases in this state on the day the short line railroad rehabilitation
8 project is completed;

9 “(b) In the case of a tier II short line railroad, \$3,500 multiplied by
10 the number of miles of short line railroad track the taxpayer owns or
11 leases in this state on the day the short line railroad rehabilitation
12 project is completed; or

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

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

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

18 “(b) The taxpayer must:

19 “(A) Own or lease the infrastructure;

20 “(B) Be a short line railroad; and

21 “(C) Receive a final written certification from the Department of
22 Transportation before claiming the credit.

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

25 “(5) Any tax credit otherwise allowable under this section that is
26 not used by the taxpayer in a particular tax year may be carried for-
27 ward and offset against the taxpayer’s tax liability for the next suc-
28 ceeding tax year. Any credit remaining unused in that next succeeding
29 tax year may be carried forward and used in the second succeeding tax
30 year, and likewise, any credit not used in that second succeeding tax

1 year may be carried forward and used in the third succeeding tax year,
2 and likewise, any credit not used in that third succeeding tax year
3 may be carried forward and used in the fourth succeeding tax year,
4 and likewise, any credit not used in that fourth succeeding tax year
5 may be carried forward and used in the fifth succeeding tax year but
6 may not be carried forward for any tax year thereafter.

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

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

13 “(8)(a) The Department of Revenue may by rule require that the
14 Department of Transportation provide information about a certifica-
15 tion issued under section 5 of this 2019 Act, including the name and
16 taxpayer identification number of the taxpayer or other person re-
17 ceiving certification, the date the certification was issued in its final
18 form, the approved amount of credit and the first tax year for which
19 the credit may be claimed.

20 “(b) A taxpayer that is a pass-through entity that has received
21 certification under section 5 of this 2019 Act shall provide to the De-
22 partment of Revenue, within two months after the close of the tax
23 year in which the certification was issued, the name, taxpayer iden-
24 tification number and any other information required by the depart-
25 ment of each owner receiving a distributive share of the credit, in a
26 manner prescribed by the department.

27 “(9) The Department of Revenue shall prescribe by rule the manner
28 and the timing of submission of the information described in sub-
29 section (8) of this section to the department.

30 “(10) The credit shall be claimed on a form prescribed by the De-

1 department of Revenue that contains the information required by the
2 department.

3 “(11) In the case of a credit allowed under this section:

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

6 “(b) If a change in the status of a taxpayer from resident to non-
7 resident or from nonresident to resident occurs, the credit allowed by
8 this section shall be determined in a manner consistent with ORS
9 316.117.

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

15 “SECTION 4. (1) Prior to construction of a short line railroad re-
16 habilitation project, a taxpayer may apply to the Department of
17 Transportation for preliminary certification of the project in the
18 manner prescribed by rules adopted under this section, which must
19 include:

20 “(a) Timelines and deadlines for submission of application materi-
21 als;

22 “(b) A description of the information required by the department
23 to determine that the taxpayer qualifies for the credit allowed under
24 section 3 of this 2019 Act;

25 “(c) Criteria for determining the amount of the tax credit allowed
26 under section 3 of this 2019 Act, including standards for what consti-
27 tutes completion of a short line railroad rehabilitation project;

28 “(d) The process by which an applicant will be notified of an in-
29 complete application and the time allowed for the applicant to provide
30 the missing information; and

1 “(e) The month and date by which the department must notify an
2 applicant of the preliminary certification decision and the potential
3 amount of the tax credit for which the applicant has received prelim-
4 inary certification.

5 “(2) If the total amount of potential tax credits allowed under sec-
6 tion 3 of this 2019 Act for all taxpayers that have applied for prelimi-
7 nary certification exceeds the limit in section 8 of this 2019 Act, the
8 department shall allocate the tax credits allowed under section 3 of
9 this 2019 Act as follows:

10 “(a) By giving first priority to all tier II short line railroads that
11 own or lease less than 50 miles of short line railroad track in this
12 state; and

13 “(b) By giving second priority to all tier II short line railroads not
14 described in paragraph (a) of this subsection.

15 “(3) If the department must allocate tax credits to a group of tax-
16 payers in an amount that is less than the amount the taxpayers would
17 otherwise receive under section 3 of this 2019 Act, the department shall
18 divide the available tax credits among the group proportionally, based
19 on the amount each taxpayer would have otherwise received under
20 section 3 of this 2019 Act.

21 “SECTION 5. (1) A taxpayer may apply to the Department of
22 Transportation for final certification of a short line railroad rehabili-
23 tation project if:

24 “(a) The taxpayer received preliminary certification for the project
25 under section 4 of this 2019 Act; and

26 “(b) The project is completed.

27 “(2) After approving the application, the department shall certify
28 the project, including the amount of the tax credit for which the tax-
29 payer has received final certification. The department may not certify
30 an amount that is more than the amount approved in the preliminary

1 certification for the project.

2 “(3) The department may establish by rule a process for accepting
3 applications and issuing final certifications under this section.

4 **“SECTION 6. (1) The Department of Transportation may charge and
5 collect a fee from taxpayers for preliminary or final certification of
6 short line rehabilitation projects under sections 4 and 5 of this 2019
7 Act. The fee may not exceed the cost to the department of issuing
8 certifications.**

9 “(2) All fees collected under this section shall be deposited in the
10 State Treasury to the credit of the Railroad Fund established under
11 ORS 824.014. Moneys deposited under this section are continuously
12 appropriated to the Department of Transportation for the purpose of
13 administering and enforcing the provisions of sections 2 to 9 of this
14 2019 Act.

15 **“SECTION 7. (1) A person that has obtained a tax credit under
16 section 3 of this 2019 Act may transfer the credit to a taxpayer under
17 ORS chapter 316, 317 or 318. A transfer that occurs on or after January
18 1, 2020, is conditioned upon compliance with this section and ORS
19 315.052 and 315.053.**

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

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

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

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

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

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

30 “(b) The taxpayer identification number of the transferor and of the

1 transferee;

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

4 “(d) The amount of the credit that is certified, the amount that is
5 being transferred and the amount that is being retained by the
6 transferor; and

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

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

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

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

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

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

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

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

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

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

30 “(8) The department by rule may establish policies and procedures

1 for the implementation of this section.

2 **“SECTION 8.** The total amount of potential tax credits allowed un-
3 der section 3 of this 2019 Act at the time of preliminary certification
4 under section 4 of this 2019 Act may not exceed \$4 million for any
5 biennium.

6 **“SECTION 9.** (1) Under the procedures for a contested case under
7 ORS chapter 183, the Director of Transportation may order the sus-
8 pension, revocation or forfeiture of a tax credit certification under
9 section 4 or 5 of this 2019 Act, or of a portion thereof, if the director
10 finds that:

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

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

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

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

21 **“(a)** If no portion of a credit has been transferred, those taxes not
22 paid by the holder of the certification as a result of the tax credits
23 provided to the holder under the revoked approval, from the holder
24 or a successor in interest to the business interests of the holder. All
25 tax credits provided to the holder and attributable to the fraudulently
26 or mistakenly obtained certification or portion of the certification
27 shall be forfeited.

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

1 “(c) If a portion of a tax credit has been transferred, those taxes
2 not paid by the transferor as a result of the tax credits provided to the
3 transferor pursuant to the revoked certification, from the transferor
4 or a successor in interest to the business interests of the transferor,
5 and an amount equal to the amount of the tax credits allowable to the
6 transferee pursuant to the revoked certification, from the transferor.

7 “(3)(a) The Department of Revenue shall have the benefit of all laws
8 of the state pertaining to the collection of income and excise taxes and
9 may proceed to collect the amounts described in subsection (2) of this
10 section from the person that obtained certification or a successor in
11 interest to the business interests of that person. An assessment of tax
12 is not necessary and the collection of taxes described in this subsection
13 is not precluded by any statute of limitations.

14 “(b) For purposes of this subsection, a lender, bankruptcy trustee
15 or other person that acquires an interest through bankruptcy or
16 through foreclosure of a security interest is not considered to be a
17 successor in interest to the business interests of the person that ob-
18 tained certification.

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

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

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

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

3 In line 20, delete “8” and insert “10”.

4 On page 4, line 12, delete “9” and insert “11”.

5 Delete lines 21 and 22 and insert:

6 **“SECTION 12. (1) Sections 2 to 9 of this 2019 Act apply to tax years**
7 **beginning on or after January 1, 2020, and before January 1, 2026.**

8 **“(2) Except as provided in section 3 (5) of this 2019 Act, a credit may**
9 **not be claimed under section 3 of this 2019 Act for tax years beginning**
10 **on or after January 1, 2026.”.**

11 In line 23, delete “11” and insert “13”.

12
