

DRAFT

SUMMARY

Creates credit against income taxes for purchasing publicly supported housing to retain as affordable housing.

Applies to sales of housing completed in tax years beginning on or after January 1, 2023, and before January 1, 2029.

A BILL FOR AN ACT

1
2 Relating to tax credits for the preservation of publicly supported housing;
3 creating new provisions; amending ORS 314.772 and 318.031; and pre-
4 scribing an effective date.

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

6 **SECTION 1. Sections 2 to 6 of this 2022 Act are added to and made**
7 **a part of ORS chapter 315.**

8 **SECTION 2. As used in sections 2 to 6 of this 2022 Act:**

9 (1) **“Affordability restriction” has the meaning given that term in**
10 **ORS 456.250.**

11 (2) **“Identity of interest” means a relationship in which a purchaser**
12 **and seller are related by blood or marriage or are affiliated through a**
13 **business relationship.**

14 (3) **“Publicly supported housing” has the meaning given that term**
15 **in ORS 456.250.**

16 (4) **“Qualifying sale” means any sale of publicly supported housing**
17 **to a purchaser who enters into a recorded affordability restriction**
18 **agreement governing the use of the housing that:**

19 (a) **Applies to publicly supported housing before the expiration of**
20 **the right of first refusal under ORS 456.262 (3)(d);**

1 (b) Extends or adopts new affordability restrictions that extend the
2 period of the restrictions by at least 30 years; and

3 (c) Has new or continuing affordability restrictions that require
4 rental rates for the housing to be affordable under federal rental
5 affordability standards to households earning 80 percent of the area
6 median income.

7 **SECTION 3.** (1) A taxpayer that is a seller of publicly supported
8 housing is allowed a credit against the taxes otherwise due under ORS
9 chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317
10 or 318 for a qualifying sale in Oregon of publicly supported housing
11 during the tax year. The amount of the credit allowed under this sec-
12 tion shall equal the gain realized on the taxpayer's federal income tax
13 return for the qualifying sale.

14 (2) In order to claim a credit under this section, a taxpayer must:

15 (a) Lack identity of interest with the purchaser; and

16 (b) Receive certification for a credit under section 4 of this 2022 Act
17 and submit the certification to the Department of Revenue upon re-
18 quest of the department.

19 (3) The Department of Revenue may:

20 (a) Adopt rules for carrying out the provisions of this section; and

21 (b) Prescribe the form used to claim a credit under this section and
22 the information required on the form.

23 (4) Any tax credit otherwise allowable under this section that is not
24 used by the taxpayer in a particular tax year may be carried forward
25 and offset against the taxpayer's tax liability for the next succeeding
26 tax year. Any credit remaining unused in the next succeeding tax year
27 may be carried forward and used in the second succeeding tax year,
28 and likewise any credit not used in that second succeeding tax year
29 may be carried forward and used in the third succeeding tax year but
30 may not be carried forward for any tax year thereafter.

31 (5) In the case of a credit allowed under this section:

1 (a) A nonresident is allowed the credit under this section in the
2 proportion provided in ORS 316.117.

3 (b) If a change in the status of a taxpayer from resident to non-
4 resident or from nonresident to resident occurs, the credit allowed by
5 this section must be determined in a manner consistent with ORS
6 316.117.

7 (c) If a change in the tax year of a taxpayer occurs as described in
8 ORS 314.085, or if the Department of Revenue terminates the
9 taxpayer's tax year under ORS 314.440, the credit allowed under this
10 section must be prorated or computed in a manner consistent with
11 ORS 314.085.

12 **SECTION 4.** (1) Upon completion of a sale of publicly supported
13 housing, a seller intending to claim the credit allowed under section
14 3 of this 2022 Act shall apply to the Housing and Community Services
15 Department for certification.

16 (2) The application for certification under this section must be on
17 a form prescribed by the Housing and Community Services Depart-
18 ment and must provide:

19 (a) The name, address and taxpayer identification number of the
20 seller and of the purchaser;

21 (b) The location of the publicly supported housing;

22 (c) A description of the use to which the publicly supported housing
23 will be put following the qualifying sale;

24 (d) The number of affordable housing units that will be maintained
25 within the housing following the qualifying sale and the projected du-
26 ration, in years, of the availability of the units as affordable housing;

27 (e) The anticipated amount of credit to be claimed by the seller; and

28 (f) Any other information as the department may require.

29 (3) The Housing and Community Services Department may review
30 applications for certification using any reasonable system of prioritiz-
31 ing review established by the Housing and Community Services De-

1 **partment by rule.**

2 **(4) Applications for certification filed in compliance with this sec-**
3 **tion may be approved by the Housing and Community Services De-**
4 **partment only to the extent that the total amount of credits for all**
5 **approved qualifying sales for the calendar year is equal to or less than**
6 **the limitation in section 6 of this 2022 Act. An application may not be**
7 **approved, or a lesser amount of credit may be approved, if the addition**
8 **of the anticipated amount of credit to previously approved amounts**
9 **for the calendar year would exceed the limitation in section 6 of this**
10 **2022 Act.**

11 **(5) Upon approval of an application for certification, and not later**
12 **than January 15 of the year following the filing of the application, the**
13 **Housing and Community Services Department shall issue a certifica-**
14 **tion to the applicant. The certification must state the approved**
15 **amount of credit. The certification may include conditions that must**
16 **be met in order for a credit to be allowed to the seller under section**
17 **3 of this 2022 Act.**

18 **(6) At the end of each calendar year, the Housing and Community**
19 **Services Department shall send a list of the names, addresses and**
20 **taxpayer identification numbers of sellers to whom a certification has**
21 **been issued under this section during the calendar year, along with**
22 **approved amounts of credit for each qualifying sale, to the Department**
23 **of Revenue.**

24 **(7) The Housing and Community Services Department may establish**
25 **an application and precertification process for credits issued under this**
26 **section.**

27 **(8) Notwithstanding that a certification has been issued to a seller**
28 **under this section, the Department of Revenue may disallow, in whole**
29 **or in part, a claim for credit upon the department's determination that**
30 **the seller is not entitled to the credit or is entitled only to a portion**
31 **of the amount claimed under section 3 of this 2022 Act.**

1 **(9) The Housing and Community Services Department may adopt**
2 **rules to implement this section.**

3 **SECTION 5. (1) For any tax credit certification that is issued under**
4 **section 4 of this 2022 Act, the Department of Revenue may by rule**
5 **require that the Housing and Community Services Department provide**
6 **information about the certification, including the name and taxpayer**
7 **identification number of the taxpayer or other person receiving certi-**
8 **fication, the date the certification was issued in its final form, the**
9 **approved amount of credit and the first tax year for which the credit**
10 **may be claimed.**

11 **(2) A taxpayer that is a pass-through entity that has received cer-**
12 **tification for a credit allowed under section 3 of this 2022 Act shall**
13 **provide the information described in subsection (1) of this section to**
14 **the Department of Revenue within two months after the close of the**
15 **tax year in which the certification was issued.**

16 **(3) The Department of Revenue shall prescribe by rule the manner**
17 **and the timing of submission to the department of the information**
18 **described in subsection (1) of this section.**

19 **SECTION 6. The total amount certified by the Housing and Com-**
20 **munity Services Department for tax credits for affordable housing**
21 **under section 3 of this 2022 Act may not exceed \$3 million for all tax-**
22 **payers for any calendar year.**

23 **SECTION 7. ORS 314.772 is amended to read:**

24 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits al-
25 lowed or allowable to a C corporation for purposes of ORS chapter 317 or
26 318 shall not be allowed to an S corporation. The business tax credits al-
27 lowed or allowable for purposes of ORS chapter 316 shall be allowed or are
28 allowable to the shareholders of the S corporation.

29 (2) In determining the tax imposed under ORS chapter 316, as provided
30 under ORS 314.763, on income of the shareholder of an S corporation, there
31 shall be taken into account the shareholder's pro rata share of business tax

1 credit (or item thereof) that would be allowed to the corporation (but for
2 subsection (1) of this section) or recapture or recovery thereof. The credit (or
3 item thereof), recapture or recovery shall be passed through to shareholders
4 in pro rata shares as determined in the manner prescribed under section
5 1377(a) of the Internal Revenue Code.

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

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

14 (5) As used in this section, "business tax credit" means the following
15 credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish
16 screening, by-pass devices, fishways), ORS 315.141 (biomass production for
17 biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
18 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent
19 care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-
20 tributions for child care), ORS 315.237 (employee and dependent scholar-
21 ships), ORS 315.271 (individual development accounts), ORS 315.304
22 (pollution control facility), ORS 315.326 (renewable energy development con-
23 tributions), ORS 315.331 (energy conservation projects), ORS 315.336 (trans-
24 portation projects), ORS 315.341 (renewable energy resource equipment
25 manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation fa-
26 cilities), ORS 315.506 (tribal taxes on reservation enterprise zones and res-
27 ervation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514
28 (film production development contributions), ORS 315.523 (employee training
29 programs), ORS 315.533 (low income community jobs initiative), ORS 315.593
30 (short line railroads), ORS 315.640 (university venture development funds),
31 ORS 315.643 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for

1 Cultural Development Account contributions), ORS 317.097 (loans for af-
2 fordable housing), ORS 317.124 (long term enterprise zone facilities), ORS
3 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-
4 search expenses) and ORS 317.154 (alternative qualified research expenses)
5 and section 9, chapter 774, Oregon Laws 2013 (alternative fuel vehicle con-
6 tributions), **and section 3 of this 2022 Act (affordable housing sales).**

7 **SECTION 8.** ORS 318.031 is amended to read:

8 318.031. It being the intention of the Legislative Assembly that this
9 chapter and ORS chapter 317 shall be administered as uniformly as possible
10 (allowance being made for the difference in imposition of the taxes), ORS
11 305.140 and 305.150, ORS chapter 314 and the following sections are incor-
12 porated into and made a part of this chapter: ORS 315.104, 315.141, 315.156,
13 315.176, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506,
14 315.507, 315.523, 315.533, 315.593 and 315.643 **and section 3 of this 2022 Act**
15 (all only to the extent applicable to a corporation) and ORS chapter 317.

16 **SECTION 9.** **Sections 2 to 6 of this 2022 Act apply to sales of publicly**
17 **supported housing completed in tax years beginning on or after Janu-**
18 **ary 1, 2023, and before January 1, 2029.**

19 **SECTION 10.** **This 2022 Act takes effect on the 91st day after the**
20 **date on which the 2022 regular session of the Eighty-first Legislative**
21 **Assembly adjourns sine die.**

22
