

DRAFT

SUMMARY

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

Applies to sales of housing completed in tax years beginning on or after January 1, 2024, and before January 1, 2030.

Takes effect on 91st day following adjournment sine die.

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 2023 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 2023 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 that 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**

1 the right of first refusal under ORS 456.262 (3)(d);

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

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

8 **SECTION 3.** (1) A taxpayer is allowed a credit against the taxes
9 otherwise due under ORS chapter 316 or, if the taxpayer is a corpo-
10 ration, under ORS chapter 317 or 318 for a qualifying sale in Oregon
11 of publicly supported housing during the tax year. The amount of the
12 credit allowed under this section may not exceed:

13 (a) For housing owned by the taxpayer for at least five years, 2.5
14 percent of the lesser of the housing's sale price or the appraisal under
15 section 4 (2)(e) of this 2023 Act; or

16 (b) For housing owned by the taxpayer for at least 10 years, five
17 percent of the lesser of the housing's sale price or the appraisal under
18 section 4 (2)(e) of this 2023 Act.

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

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

21 (b) Receive certification of a credit under section 4 (6) of this 2023
22 Act and submit the certification to the Department of Revenue upon
23 request of the department.

24 (3) The Department of Revenue may:

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

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

28 (4) Any tax credit otherwise allowable under this section that is not
29 used by the taxpayer in a particular tax year may be carried forward
30 and offset against the taxpayer's tax liability for the next succeeding
31 tax year. Any credit remaining unused in the next succeeding tax year

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

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

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

8 (b) If a change in the status of a taxpayer from resident to non-
9 resident or from nonresident to resident occurs, the credit allowed by
10 this section must be determined in a manner consistent with ORS
11 316.117.

12 (c) If a change in the tax year of a taxpayer occurs as described in
13 ORS 314.085, or if the Department of Revenue terminates the
14 taxpayer's tax year under ORS 314.440, the credit allowed under this
15 section must be prorated or computed in a manner consistent with
16 ORS 314.085.

17 SECTION 4. (1) Before purchasing a property that is publicly sup-
18 ported housing, a purchaser intending to reserve the credit allowed
19 under section 3 of this 2023 Act on behalf of the seller shall apply to
20 the Housing and Community Services Department for a reservation.

21 (2) The application for a reservation under this section must be on
22 a form prescribed by the Housing and Community Services Depart-
23 ment and must provide:

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

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

27 (c) A description of the use to which the housing will be put fol-
28 lowing the qualifying sale;

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

1 (e) An appraisal of the housing conducted by an appraiser as defined
2 in ORS 674.200;

3 (f) The anticipated amount of credit to be reserved by the seller;

4 (g) The calendar year in which the purchaser anticipates completing
5 the qualifying sale; and

6 (h) Any other information as the Housing and Community Services
7 Department may require.

8 (3) The Housing and Community Services Department may review
9 applications for a reservation using any reasonable system of prior-
10 itizing review established by the Housing and Community Services
11 Department by rule.

12 (4) Applications for reservations of a credit filed in compliance with
13 this section may be approved by the Housing and Community Services
14 Department only to the extent that the total amount of credits for all
15 approved qualifying sales for the calendar year is equal to or less than
16 the limitation in section 6 of this 2023 Act. The Housing and Commu-
17 nity Services Department may deny an application, or may approve a
18 reduced amount of credit, if the addition of the anticipated amount
19 of credit to previously approved amounts of credits for the calendar
20 year would exceed the limitation in section 6 of this 2023 Act.

21 (5) Upon approval of a reservation of a credit, and not later than
22 January 15 of the year following the filing of the application, the
23 Housing and Community Services Department shall issue a reservation
24 to the purchaser. The reservation must state the approved amount of
25 credit. The reservation may include conditions that must be met in
26 order for a credit to be claimed by the seller under section 3 of this
27 2023 Act.

28 (6) The Housing and Community Services Department, following
29 notification of the close of the qualifying sale, including the final
30 purchase price, shall send to the seller a certification of the seller's
31 claim to the credit in an amount not to exceed the lesser of the

1 amount reserved or the amount calculated under section 3 (1) of this
2 2023 Act based on the final purchase price.

3 (7) At the end of each calendar year, the Housing and Community
4 Services Department shall send a list of the names, addresses and
5 taxpayer identification numbers of sellers to whom a certification has
6 been issued under subsection (6) of this section during the calendar
7 year, along with approved amounts of credit for each qualifying sale,
8 to the Department of Revenue.

9 (8) A tax credit may not be issued under this section for the sale
10 of a property that, within the previous 30 years, was awarded a tax
11 credit under section 3 of this 2023 Act.

12 (9) The Housing and Community Services Department may establish
13 an application process for the registration and certification of credits
14 under this section.

15 (10) Notwithstanding that a certification has been issued to a seller
16 under this section, the Department of Revenue may disallow, in whole
17 or in part, a claim for credit upon the Department of Revenue's de-
18 termination that the seller is not entitled to the credit or is entitled
19 only to a portion of the amount claimed under section 3 of this 2023
20 Act.

21 (11) The Housing and Community Services Department may adopt
22 rules to implement this section.

23 **SECTION 5.** (1) For any tax credit certification that is issued under
24 section 4 of this 2023 Act, the Department of Revenue may by rule
25 require that the Housing and Community Services Department provide
26 information about the certification, including the name and taxpayer
27 identification number of the taxpayer or other person receiving certi-
28 fication, the date the certification was issued in its final form, the
29 approved amount of credit and the first tax year for which the credit
30 may be claimed.

31 (2) A taxpayer that is a pass-through entity that has received cer-

1 **tification for a credit allowed under section 3 of this 2023 Act shall**
2 **provide the information described in subsection (1) of this section to**
3 **the Department of Revenue within two months after the close of the**
4 **tax year in which the certification was issued.**

5 **(3) The Department of Revenue shall prescribe by rule the manner**
6 **and the timing of submission to the Department of Revenue of the**
7 **information described in subsection (1) of this section.**

8 **SECTION 6. The total amount certified by the Housing and Com-**
9 **munity Services Department for tax credits for affordable housing**
10 **under section 3 of this 2023 Act may not exceed \$3 million for all tax-**
11 **payers for any calendar year.**

12 **SECTION 7. ORS 314.772, as amended by section 11, chapter 34, Oregon**
13 **Laws 2022, and section 15, chapter 115, Oregon Laws 2022, is amended to**
14 **read:**

15 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits al-
16 lowed or allowable to a C corporation for purposes of ORS chapter 317 or
17 318 shall not be allowed to an S corporation. The business tax credits al-
18 lowed or allowable for purposes of ORS chapter 316 shall be allowed or are
19 allowable to the shareholders of the S corporation.

20 (2) In determining the tax imposed under ORS chapter 316, as provided
21 under ORS 314.763, on income of the shareholder of an S corporation, there
22 shall be taken into account the shareholder's pro rata share of business tax
23 credit (or item thereof) that would be allowed to the corporation (but for
24 subsection (1) of this section) or recapture or recovery thereof. The credit (or
25 item thereof), recapture or recovery shall be passed through to shareholders
26 in pro rata shares as determined in the manner prescribed under section
27 1377(a) of the Internal Revenue Code.

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

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

5 (5) As used in this section, “business tax credit” means the following
6 credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish
7 screening, by-pass devices, fishways), ORS 315.141 (biomass production for
8 biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
9 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent
10 care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-
11 tributions for child care), ORS 315.237 (employee and dependent scholar-
12 ships), ORS 315.271 (individual development accounts), ORS 315.304
13 (pollution control facility), ORS 315.326 (renewable energy development con-
14 tributions), ORS 315.331 (energy conservation projects), ORS 315.336 (trans-
15 portation projects), ORS 315.341 (renewable energy resource equipment
16 manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation fa-
17 cilities), ORS 315.506 (tribal taxes on reservation enterprise zones and res-
18 ervation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514
19 (film production development contributions), ORS 315.523 (employee training
20 programs), ORS 315.533 (low income community jobs initiative), ORS 315.593
21 (short line railroads), ORS 315.640 (university venture development funds),
22 ORS 315.643 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for
23 Cultural Development Account contributions), ORS 317.097 (loans for af-
24 fordable housing), ORS 317.124 (long term enterprise zone facilities), ORS
25 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-
26 search expenses) and ORS 317.154 (alternative qualified research expenses)
27 and section 9, chapter 774, Oregon Laws 2013 (alternative fuel vehicle con-
28 tributions), section 2, chapter 34, Oregon Laws 2022 (small forest option), and
29 section 8, chapter 115, Oregon Laws 2022 (agricultural overtime pay), **and**
30 **section 3 of this 2023 Act (affordable housing sales).**

31 **SECTION 8.** ORS 318.031, as amended by section 12, chapter 34, Oregon

1 Laws 2022, and section 16, chapter 115, Oregon Laws 2022, is amended to
2 read:

3 318.031. It being the intention of the Legislative Assembly that this
4 chapter and ORS chapter 317 shall be administered as uniformly as possible
5 (allowance being made for the difference in imposition of the taxes), ORS
6 305.140 and 305.150, ORS chapter 314 and the following sections are incor-
7 porated into and made a part of this chapter: ORS 315.104, 315.141, 315.156,
8 315.176, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506,
9 315.507, 315.523, 315.533, 315.593 and 315.643 and section 2, chapter 34, Oregon
10 Laws 2022, and section 8, chapter 115, Oregon Laws 2022, **and section 3 of**
11 **this 2023 Act** (all only to the extent applicable to a corporation) and ORS
12 chapter 317.

13 **SECTION 9. Sections 2 to 6 of this 2023 Act apply to sales of publicly**
14 **supported housing completed in tax years beginning on or after Janu-**
15 **ary 1, 2024, and before January 1, 2030.**

16 **SECTION 10. This 2023 Act takes effect on the 91st day after the**
17 **date on which the 2023 regular session of the Eighty-second Legislative**
18 **Assembly adjourns sine die.**

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