

House Bill 4043

Sponsored by Representative LIVELY, Senator PATTERSON, Representative NERON; Representatives FAHEY, GRAYBER, HOY, LEVY, MARSH, REARDON, SMITH G (Pre-session filed.)

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 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

Relating to tax credits for the preservation of publicly supported housing; creating new provisions; amending ORS 314.772 and 318.031; and prescribing an effective date.

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

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

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

(1) "Affordability restriction" has the meaning given that term in ORS 456.250.

(2) "Identity of interest" means a relationship in which a purchaser and seller are related by blood or marriage or are affiliated through a business relationship.

(3) "Publicly supported housing" has the meaning given that term in ORS 456.250.

(4) "Qualifying sale" means any sale of publicly supported housing to a purchaser who enters into a recorded affordability restriction agreement governing the use of the housing that:

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

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

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

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

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

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

(b) Receive certification for a credit under section 4 of this 2022 Act and submit the certification to the Department of Revenue upon request of the department.

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 **(3) The Department of Revenue may:**

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

3 **(b) Prescribe the form used to claim a credit under this section and the information re-**
4 **quired on the form.**

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

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

12 **(a) A nonresident is allowed the credit under this section in the proportion provided in**
13 **ORS 316.117.**

14 **(b) If a change in the status of a taxpayer from resident to nonresident or from nonres-**
15 **ident to resident occurs, the credit allowed by this section must be determined in a manner**
16 **consistent with ORS 316.117.**

17 **(c) If a change in the tax year of a taxpayer occurs as described in ORS 314.085, or if the**
18 **Department of Revenue terminates the taxpayer's tax year under ORS 314.440, the credit**
19 **allowed under this section must be prorated or computed in a manner consistent with ORS**
20 **314.085.**

21 **SECTION 4.** **(1) Upon completion of a sale of publicly supported housing, a seller intend-**
22 **ing to claim the credit allowed under section 3 of this 2022 Act shall apply to the Housing**
23 **and Community Services Department for certification.**

24 **(2) The application for certification under this section must be on a form prescribed by**
25 **the Housing and Community Services Department and must provide:**

26 **(a) The name, address and taxpayer identification number of the seller and of the pur-**
27 **chaser;**

28 **(b) The location of the publicly supported housing;**

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

31 **(d) The number of affordable housing units that will be maintained within the housing**
32 **following the qualifying sale and the projected duration, in years, of the availability of the**
33 **units as affordable housing;**

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

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

36 **(3) The Housing and Community Services Department may review applications for certi-**
37 **fication using any reasonable system of prioritizing review established by the Housing and**
38 **Community Services Department by rule.**

39 **(4) Applications for certification filed in compliance with this section may be approved**
40 **by the Housing and Community Services Department only to the extent that the total**
41 **amount of credits for all approved qualifying sales for the calendar year is equal to or less**
42 **than the limitation in section 6 of this 2022 Act. An application may not be approved, or a**
43 **lesser amount of credit may be approved, if the addition of the anticipated amount of credit**
44 **to previously approved amounts for the calendar year would exceed the limitation in section**
45 **6 of this 2022 Act.**

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

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

10 (7) The Housing and Community Services Department may establish an application and
 11 precertification process for credits issued under this section.

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

16 (9) The Housing and Community Services Department may adopt rules to implement this
 17 section.

18 **SECTION 5.** (1) For any tax credit certification that is issued under section 4 of this 2022
 19 Act, the Department of Revenue may by rule require that the Housing and Community Ser-
 20 vices Department provide information about the certification, including the name and tax-
 21 payer identification number of the taxpayer or other person receiving certification, the date
 22 the certification was issued in its final form, the approved amount of credit and the first tax
 23 year for which the credit may be claimed.

24 (2) A taxpayer that is a pass-through entity that has received certification for a credit
 25 allowed under section 3 of this 2022 Act shall provide the information described in subsection
 26 (1) of this section to the Department of Revenue within two months after the close of the
 27 tax year in which the certification was issued.

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

30 **SECTION 6.** The total amount certified by the Housing and Community Services De-
 31 partment for tax credits for affordable housing under section 3 of this 2022 Act may not ex-
 32 ceed \$3 million for all taxpayers for any calendar year.

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

34 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a
 35 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 36 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 37 allowable to the shareholders of the S corporation.

38 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.763, on
 39 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
 40 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
 41 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
 42 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
 43 manner prescribed under section 1377(a) of the Internal Revenue Code.

44 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
 45 of this section shall be determined as if such item were realized directly from the source from which

1 realized by the corporation, or incurred in the same manner as incurred by the corporation.

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

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

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

25 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 26 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 27 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 28 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
 29 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and
 30 315.643 **and section 3 of this 2022 Act** (all only to the extent applicable to a corporation) and ORS
 31 chapter 317.

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

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

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