

HB 4002-5
(LC 66)
2/14/22 (JAS/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR (at the request of Representative Paul Holvey)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4002**

1 On page 1 of the printed bill, line 2, after “314.772,” insert “316.502,
2 317.850.”.

3 In line 5, delete “section 2” and insert “sections 2 and 4a”.

4 After line 16, insert:

5 “(3) ‘Salary’ has the meaning given that term in ORS 653.010.”.

6 In line 17, delete “(3)” and insert “(4)”.

7 On page 2, after line 24, insert:

8 **“SECTION 4a. The provisions of section 2 of this 2022 Act relating**
9 **to overtime compensation requirements for agricultural workers do**
10 **not apply to:**

11 **“(1) An individual described in ORS 653.020 (1).**

12 **“(2) An individual employed in agriculture whose principal duties**
13 **are administrative, executive or professional work and who:**

14 **“(a) Performs predominantly intellectual, managerial or creative**
15 **tasks;**

16 **“(b) Exercises discretion and independent judgment; and**

17 **“(c) Earns a salary and is paid on a salary basis.”.**

18 On page 3, delete lines 25 through 45.

19 Delete pages 4 through 6 and insert:

20 **“SECTION 8. (1) As used in this section and sections 9 and 10 of this**
21 **2022 Act:**

1 “(a) ‘Agricultural worker’ has the meaning given that term in sec-
2 tion 1 of this 2022 Act.

3 “(b) ‘Eligible employer’ means an employer doing business in 2017
4 North American Industry Classification System code 111, crop pro-
5 duction, or code 112, animal production and aquaculture.

6 “(c) ‘Full-time equivalent employee’ means an employee or a com-
7 bination of employees that perform at least 2,080 hours of work for an
8 employer in a calendar year.

9 “(2)(a) A credit against taxes that are otherwise due under ORS
10 chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317
11 or 318 is allowed for overtime compensation paid by an eligible em-
12 ployer to agricultural workers on an hourly basis. The amount of the
13 credit shall equal a percentage of the actual excess paid to agricultural
14 workers during the calendar year in which the tax year begins, as de-
15 termined under section 9 of this 2022 Act.

16 “(b) A labor contractor licensed under ORS 658.410 may not claim
17 a credit under this section. An eligible employer may claim a credit
18 under this section for wages paid to workers recruited, solicited, sup-
19 plied or employed by a labor contractor on behalf of the eligible em-
20 ployer.

21 “(3) Prior to claiming the credit allowed under this section, a tax-
22 payer is required to receive written certification from the Department
23 of Revenue stating that the taxpayer is an eligible employer and indi-
24 cating the maximum amount of credit for which the taxpayer is eligi-
25 ble for the calendar year, as provided in section 10 of this 2022 Act.

26 “(4) If the amount allowable:

27 “(a) As a credit under this section against taxes imposed under ORS
28 chapter 316, when added to the sum of the amounts allowable as pay-
29 ment of tax under ORS 316.187 or 316.583, other tax prepayment
30 amounts and other refundable credit amounts, exceeds the taxes im-

1 posed by ORS chapters 314 and 316 for the tax year after application
2 of any nonrefundable credits allowable for purposes of ORS chapter
3 316 for the tax year, the amount of the excess shall be refunded to the
4 taxpayer as provided in ORS 316.502.

5 “(b) As a credit under this section against taxes imposed under ORS
6 chapter 317 or 318, when added to the sum of the amount of estimated
7 tax paid under ORS 314.515 and any other tax prepayment amounts,
8 exceeds the taxes imposed by ORS chapters 314 and 317 for the tax year
9 (reduced by any nonrefundable credits allowable for purposes of ORS
10 chapter 317 for the tax year), the amount of the excess shall be re-
11 funded to the taxpayer as provided in ORS 314.415.

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

17 “(6) The Department of Revenue shall adopt rules for the purposes
18 of sections 8 to 11 of this 2022 Act, including policies and procedures
19 for certifying taxpayers as eligible for the credit allowed under this
20 section as required in section 10 of this 2022 Act.

21 **“SECTION 9. (1) The amount of credit allowed under section 8 of**
22 **this 2022 Act shall be equal to a percentage of the additional wages**
23 **paid as overtime pay to agricultural workers by an eligible employer,**
24 **in excess of regular pay, as set forth in subsections (2) and (3) of this**
25 **section.**

26 “(2) If during the calendar year the taxpayer employs more than 25
27 full-time equivalent employees, the following percentages shall apply:

28 “(a) 60 percent of excess wages paid in calendar year 2023 or 2024.

29 “(b) 45 percent of excess wages paid in calendar year 2025.

30 “(c) 30 percent of excess wages paid in calendar year 2026.

1 “(d) 15 percent of excess wages paid in calendar year 2027 or 2028.

2 “(3) If during the calendar year the taxpayer employs 25 or fewer
3 fulltime equivalent employees, the following percentages shall apply:

4 “(a) 75 percent of excess wages paid in calendar year 2023 or 2024.

5 “(b) 60 percent of excess wages paid in calendar year 2025.

6 “(c) 45 percent of excess wages paid in calendar year 2026.

7 “(d) 30 percent of excess wages paid in calendar year 2027.

8 “(e) 15 percent of excess wages paid in calendar year 2028.

9 “SECTION 10. (1) In order to obtain certification from the Depart-
10 ment of Revenue for a tax credit allowed under section 8 of this 2022
11 Act, a taxpayer shall submit to the department an application for
12 certification under this section. The application shall be made in the
13 form and manner prescribed by the department and must be submitted
14 by the taxpayer no later than January 31 following the calendar year
15 for which the taxpayer seeks credit.

16 “(2) The taxpayer must include with the application required under
17 this section the following:

18 “(a) The address and tax identification number of the taxpayer.

19 “(b) A statement by the taxpayer of the overtime hours worked and
20 overtime wages paid, on an hourly basis, to each agricultural worker
21 employed by the taxpayer and the amount of overtime wages paid on
22 or behalf of the taxpayer as compensation to agricultural workers
23 during the calendar year.

24 “(c) The number of the license issued under ORS 658.410 to any la-
25 bor contractor used to recruit, solicit, supply or employ workers on
26 behalf of the taxpayer, or other permit or registration numbers issued
27 to the labor contractor.

28 “(d) Any other information required by the department to verify the
29 identity of the taxpayer, the eligibility of the taxpayer for the credit
30 allowed under section 8 of this 2022 Act or the amount of credit al-

1 lowable to the taxpayer.

2 “(3) Upon receipt of an application under this section, the depart-
3 ment shall immediately allow an extension, from the next applicable
4 due date, for filing of the taxpayer’s income or corporate excise tax
5 return.

6 “(4) Not later than August 1 of the year in which the application
7 under subsection (1) of this section is filed, the department shall issue
8 written certification to taxpayers that are eligible to claim the credit
9 under section 8 of this 2022 Act. The certification shall state the
10 maximum amount of credit for which the taxpayer is eligible for the
11 tax year. The credit claimed may not exceed the actual amount of
12 excess paid as overtime wages to agricultural workers during the cal-
13 endar year by the taxpayer.

14 **“SECTION 11.** The total amount certified by the Department of
15 Revenue for tax credits for overtime wages under section 8 of this 2022
16 Act may not exceed \$27 million for all taxpayers for any calendar year.
17 If the department receives applications for the credit sufficient to ex-
18 ceed this amount, the department shall by rule proportionately reduce
19 the amount of certified credits among all taxpayers applying for the
20 credit.

21 **“SECTION 12.** Section 8 of this 2022 Act applies to tax years begin-
22 ning on or after January 1, 2023, and before January 1, 2029.

23 **“SECTION 13.** ORS 316.502 is amended to read:

24 “316.502. (1) The net revenue from the tax imposed by this chapter, after
25 deducting refunds and amounts described in ORS 285B.630 and 285C.635, shall
26 be paid over to the State Treasurer and held in the General Fund as mis-
27 cellaneous receipts available generally to meet any expense or obligation of
28 the State of Oregon lawfully incurred.

29 “(2) A working balance of unreceipted revenue from the tax imposed by
30 this chapter may be retained for the payment of refunds, but such working

1 balance shall not at the close of any fiscal year exceed the sum of \$1 million.

2 “(3) Moneys are continuously appropriated to the Department of Revenue
3 to make:

4 “(a) The refunds authorized under subsection (2) of this section; and

5 “(b) The refund payments in excess of tax liability authorized under ORS
6 315.174, 315.262, 315.264, 315.266 and 316.090 and section 3, chapter 589,
7 Oregon Laws 2021 **and section 8 of this 2022 Act.**

8 **“SECTION 14.** ORS 317.850 is amended to read:

9 “317.850. (1) The net revenue from the tax imposed by this chapter, after
10 deduction of refunds, shall be paid over to the State Treasurer and held in
11 the General Fund as miscellaneous receipts available generally to meet any
12 expense or obligation of the State of Oregon lawfully incurred.

13 “(2) A working balance of unreceipted revenue from the tax imposed by
14 this chapter may be retained for the payment of refunds, but such working
15 balance shall not at the close of any fiscal year exceed the sum of \$500,000.

16 **“(3) Moneys are continuously appropriated to the Department of
17 Revenue to make:**

18 **“(a) The refunds authorized under subsection (2) of this section; and**

19 **“(b) The refund payments in excess of tax liability authorized under
20 section 8 of this 2022 Act.**

21 **“SECTION 15.** ORS 314.772 is amended to read:

22 “314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits al-
23 lowed or allowable to a C corporation for purposes of ORS chapter 317 or
24 318 shall not be allowed to an S corporation. The business tax credits al-
25 lowed or allowable for purposes of ORS chapter 316 shall be allowed or are
26 allowable to the shareholders of the S corporation.

27 “(2) In determining the tax imposed under ORS chapter 316, as provided
28 under ORS 314.763, on income of the shareholder of an S corporation, there
29 shall be taken into account the shareholder’s pro rata share of business tax
30 credit (or item thereof) that would be allowed to the corporation (but for

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

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

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

13 “(5) As used in this section, ‘business tax credit’ means the following
14 credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish
15 screening, by-pass devices, fishways), ORS 315.141 (biomass production for
16 biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
17 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent
18 care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-
19 tributions for child care), ORS 315.237 (employee and dependent scholar-
20 ships), ORS 315.271 (individual development accounts), ORS 315.304
21 (pollution control facility), ORS 315.326 (renewable energy development con-
22 tributions), ORS 315.331 (energy conservation projects), ORS 315.336 (trans-
23 portation projects), ORS 315.341 (renewable energy resource equipment
24 manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation fa-
25 cilities), ORS 315.506 (tribal taxes on reservation enterprise zones and res-
26 ervation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514
27 (film production development contributions), ORS 315.523 (employee training
28 programs), ORS 315.533 (low income community jobs initiative), ORS 315.593
29 (short line railroads), ORS 315.640 (university venture development funds),
30 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 8 of this 2022 Act (agricultural overtime pay).**

7 **“SECTION 16.** 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 8 of this 2022 Act**
15 (all only to the extent applicable to a corporation) and ORS chapter 317.

16 **“SECTION 17. This 2022 Act takes effect on the 91st day after the**
17 **date on which the 2022 regular session of the Eighty-first Legislative**
18 **Assembly adjourns sine die.”**

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