Agriculture Workforce Housing Construction

ORS 315.163 - 315.164	Year Enacted:	1989	Transferable:	Yes
	Length:	10-years	Means Tested:	No
	Refundable:	No	Carryforward:	9-years
TER 1.413	Kind of cap:	Program	Inflation Adjusted:	No

Policy Purpose

A specific policy purpose statement regarding the agriculture workforce housing construction credit is not in statute. Rather, a general policy purpose of the credit can be derived by referencing the relevant legislative committee discussions and deliberations that took place when the credit was enacted and/or substantively modified. Legislative documentation from the implementing legislation in 1989 indicates that the tax credit was part of a package of policies (SBs 732,734, and 735) designed to address problems with the scarcity and condition of housing for agricultural workers. The Legislature declared, in part,

> *that it is the* ***policy of this state to insure adequate agricultural labor accommodations commensurate with the housing needs of Oregon's workers that meet decent health, safety and welfare standards****. (ORS 197.677)*[20]

Roughly a decade later, in 2000, the Farmworker Housing Interim Task Force evaluated the housing situation for Oregon farmworkers. They concluded that there was a "...serious and growing shortage of safe, decent, and affordable housing..." for this portion of Oregon's labor force. Among the Task Force's findings was that

> [f]armers, community-based groups, faith organizations, government agencies, and the private sector need to work together to provide an adequate mix of safe, decent, and affordable housing for farmworkers.

The Task Force also noted that multiple approaches are required that should include both on-farm housing and community-based housing. In short, this tax credit appears to be a tool in the development of affordable housing for Oregon's agricultural workforce.

Description

A taxpayer who owns or operates agriculture workforce housing is allowed a credit for the construction, rehabilitation, or acquisition of agriculture workforce housing in Oregon. The credit is 50 percent of the eligible costs actually paid or incurred by the taxpayer to complete an agriculture workforce housing project.

Credit *= 50% × eligible costs for construction, rehabilitation, or installation*

The credit can be taken over ten years, though only 20% of the total credit amount can be taken in any one year, thereby requiring the credit to be taken over at least five years. Unused credit amounts may be carried forward for nine succeeding tax years. The policy also allows for the credit to be transferred to a contributor. The Oregon Housing and Community Services Department (OHCS) may certify a credit

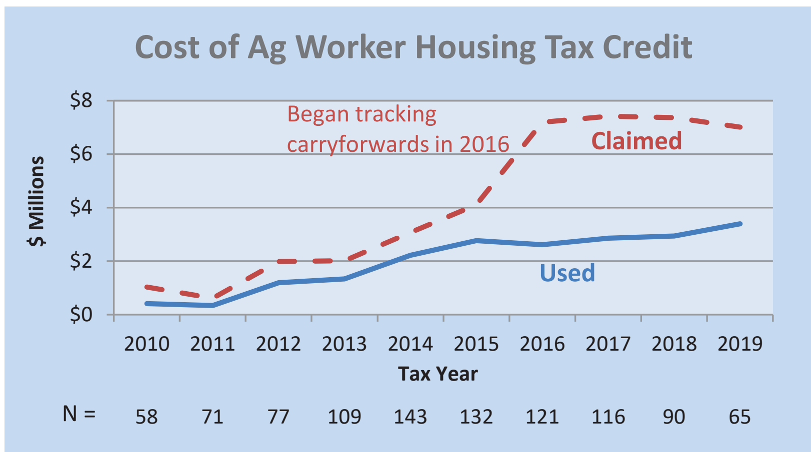
[20] In 2001, when the administrative responsibility for the tax credit was moved to Oregon Housing and Community Services Department (OHCS), this language was added to ORS 456.550(7) as part of the policy statement for OHCS.

application only if the potential credits of the project would not cause the total potential credits for all approved applications to exceed $16.75 million within the biennium. Certification is received through an application process submitted to and approved by OHCS. The following qualifications must be met for eligibility:

- The housing must be occupied by agriculture workers
- Comply with all occupational safety or health laws, rules, regulations, and standards
- Continue to be operated as agriculture workforce housing for at least 10 years (unless waiver has been granted by OHCS)
- Rehabilitation projects must restore housing to a condition that meets building code requirements
- Housing must be registered, if required, as an agriculture workforce camp with Oregon OSHA.

Policy Analysis

The chart to the right shows the use of this tax credit for years 2010 through 2019. During this time period, the annual amount of tax credits claimed has surged due in part to a change in tax credit reporting that first took place in 2016. Beginning in 2016, tax forms began instructing taxpayers to provide the amount of tax credit awarded in the current year along with the amount of unused tax credits previously awarded and being carried forward to the current tax year. This change is clearly visible in the chart beginning in 2016 with the level shift up in the credit amount claimed (red dashed line). Unused credits (making up much of the difference between claimed and used) may be carried forward for up to nine years. In the past ten years, the credit amount used to actually offset tax liability has ranged from $340,000 to $3.4 million. Use of the tax credit grew substantially from 2010 to 2015. While individual years can vary, use of this tax credit has generally been split about 60-40 between personal income taxpayers and C-corporation taxpayers.



Given the policy purpose for this tax credit, the key issue is whether the tax credit increases the supply of safe and affordable housing for agricultural workers. By design, the tax credit directly reduces the cost of providing such housing by 50 percent of eligible costs. The policy has been in effect for roughly 25 years, so an examination of historical data should help inform the analysis to determine if the tax credit has been effective and whether any changes are warranted.

In 1989, the Legislature found that Oregon had a large stock of agricultural worker housing that did not meet minimum health and safety standards (ORS 197.680(1)). Furthermore, they noted that it would not be feasible to rehabilitate much of that housing stock to meet appropriate standards. Statute outlined broad policies to improve the situation, including the creation of this tax credit. At the time, program responsibility was given to the Department of Consumer and Business Services. In 2001, responsibility was moved to OHCS in an effort to better align state policies with their corresponding administrative agencies.

Since the inception of the tax credit, the state and the nation have experienced significant shifts in the nature of the agricultural workforce and a commensurate impact on housing needs. There has been a general shift from migrant agricultural labor toward more year-round work. Nationally, about 85 percent of hired crop agricultural workers are not migrant workers but rather are considered settled, an increase from 41 percent in 1996-98 (USDA, 2022). Among the share of migrant workers, over half are considered “shuttlers” who work at a single farm location more than 75 miles from home and may cross an international border to reach their worksite (USDA, 2022). The share of agricultural workers that “follow the crop” has also decreased from about 14% of all agricultural workers in 1989-91 to about 4% in 2019-2020 (U.S. Department of Labor, 2019-2020).

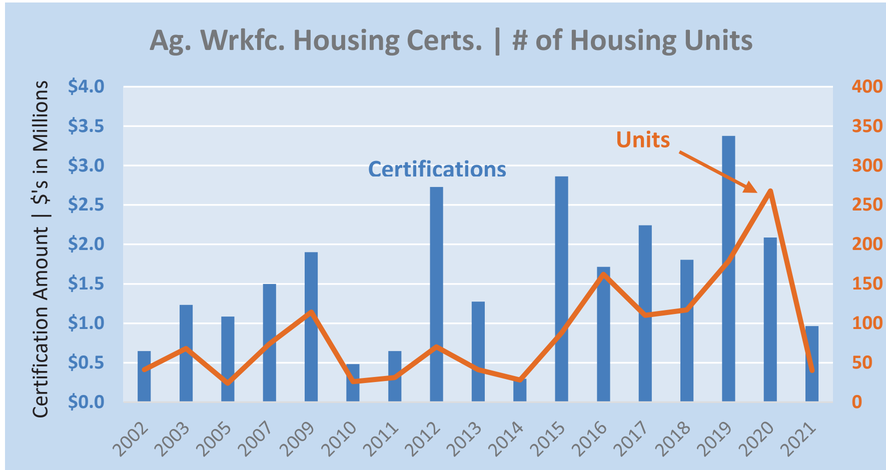
During this same time, there has been a shift in the location and type of housing in which agricultural workers reside. Fewer agricultural workers today reside in employer provided housing. According to the 1990 National Agricultural Workers Survey (NAWS) (U.S. Department of Labor, 1990), 28% of agricultural workers lived in employer provided housing as compared to 16% in 2019-2020 (U.S. Department of Labor, 2019-2020).[21] Nearly 70% of agricultural workers reside within counties defined as urban (USDA, 2022). In 2019-2020, 31% of agricultural workers lived in a home owned by the agricultural worker or owned by a family member whereas 53% rented from a non-employer/non-relative (U.S. Department of Labor, 2019-2020). About 56% of agricultural workers lived in a detached single-family house, 21% lived in a mobile home and 20% lived in an apartment (U.S. Department of Labor, 2019-2020). The share of the labor force working for a single employer increased from 65 percent in 1998 to 83 percent in 2019-2020 (U.S. Department of Labor, 2019-2020). This gradual change in mobility has had a direct impact on the agricultural worker housing market as need for off-farm housing has become more important and the need for affordable agricultural housing is in many ways less different from the overall need in Oregon for affordable housing.

Perhaps the most significant change is the role of community-based housing compared to on-farm housing. Over time there has been a gradual shift away from on-farm housing to community-based housing. For example, from 1995 to 2011, the share of agricultural worker housing units that were employer-owned fell from 30 percent to 13 percent. Also, employer-provided housing for workers had historically been free (an estimated 83 percent of the time).

Western Sustainable Agriculture Research & Education states that, generally speaking, the supply of adequate housing has been limited by a combination of lack of funds, high land costs, land use limitations, and lack of support services for residents (Western Sustainable Agriculture Research & Education, 2012). Stakeholders argue that community-based housing addresses many of these concerns. They argue that community-based housing provides the needed stability for families of agricultural workers, including access to services such as education, childcare, and workforce training.

[21] For the western region the 2019-2020 percentage was even lower at 10%.

To that end, many of the tax credit dollars are now allocated predominately towards community-based housing. Per the OHCS AWHTC[22] 2022 annual notice, 20% of credits are reserved for on-farm housing projects with the other 80% reserved for community-based projects.[23,24] An on-farm project is a housing project that is physically located on land that is zoned for farm use. According to data from OHCS, for years 2002 through 2021, certified tax credits totaled $26.9 million and a total of 1,481 units were constructed, rehabilitated, or installed.[25] The chart above displays the amount of the credit certified (blue columns, left axis) along with the number of units associated with credit-supported projects for each year (reddish line, right axis). A majority of the units are associated with off-farm housing though a greater number of projects are associated with on-farm housing. Off-farm projects are generally larger projects with more units and have a greater total cost. On-farm projects tend to be relatively smaller and can be a farm labor camp in which case the project is required to register with Oregon OSHA.



While the tax credit provides no requirement that the agricultural worker housing project be made available specifically to low-income households, due to household characteristics of such agricultural workers, the housing can generally be expected to support lower income households. In 2019-20, nationally, about 50% of agricultural worker households had family incomes below $30,000 with about 20% having income below the federal poverty level (U.S. Department of Labor, 2019-2020). Migrant agricultural workers are more likely to have income below the poverty level with about 44% of such workers having income less than federal poverty level in contrast to 16% of settled agricultural workers (U.S. Department of Labor, 2019-2020).

Similar to the federal low-income housing tax credit, one key feature of this tax credit is the ability to sell, or transfer, the tax credit. Many developers of this housing are non-profits, so they are unable to directly use the tax credit. However, the tax credit can be sold to project contributors, who then are able to use the tax credits. According to historical testimony provided by OHCS, credits have in the past been sold at a discount of between 15 and 30 percent. So, purchasers of the tax credits appear to have paid between 70 cents and 85 cents for every dollar in tax credit purchased.

A direct spending program could be implemented to replace the Agriculture Workforce Housing Construction tax credit program. A direct spending program would address the potential lack of benefit

[22] Agriculture Workforce Housing Tax Credit
[23] See https://www.oregon.gov/ohcs/development/Pages/Agriculture-workforce-housing-tax-credits-2022.aspx
[24] Credit awards for 2009 through 2017 followed the 80% off-farm and 20% on-farm split as well.
[25] Public file retrieved from https://www.oregon.gov/ohcs/development/Pages/applicants-developments.aspx

(prior to credit transfer) that that existing tax credit has on entities that lack sufficient tax liability to benefit from the tax credit. A potential drawback to a direct spending program is that the current structure of the credit spreads the “spending” to support housing construction over multiple years (minimum five years) which could be somewhat difficult to mimic as a direct spending program. A tax credit with a six-year sunset date also represents three biennial budget appropriation cycles, thereby providing potentially more funding stability than direct appropriations.

Similar Incentives Available in Oregon

The Housing and Community Services Department dedicates 20% of the tax credit to on-farm workforce housing, and 80% to “community based” agricultural workforce housing project development. For the on-farm portion of the credit, OHCS certifies eligibility and awards the credit. For the off-farm (i.e., community based) development, OHCS offers the credit as part of its competitive Notice of Funds Availability, where it’s combined with other financing resources for affordable housing development for this population; in this situation, the credit is usually transferred to an investor with tax liability in exchange for cash with which to develop the project. OHCS reports that the $16.75 million available from this funding source is fully subscribed every biennium.

OHCS combines several funding sources to fill gaps in financing for affordable housing developers, in exchange for covenants that keep rents affordable for a specified time period (typically 30 years) for people earning a percentage of area median income. Funding streams include the following: state funding (General Fund, lottery bond proceeds); Federal Funds (formula and competitive grants); OHCS’s own bond proceeds, and fees; and administration of federal low-income housing tax credits and private activity bonds.

For the 2021-23 biennium, related program amounts that were budgeted for programs related to low-income multi-family affordable housing development that broadly overlap with this tax credit are displayed in the table that follows.[26]

	2021-23 Legislatively Adopted Budget ($M)		
Direct Spending Program	***General Fund***	***Other Funds***	***Federal Funds***
Land and Property Acquisition	$40.0		
Smaller/Rural Affordable Housing Projects	$35.0		
Document Recording Fee[1]		$54.0	
Public Purpose Charge Funds		$19.7	
Program Fee Funds		$13.1	
Home Investment Partnership Program			$24.0
Affordable Rental Housing			$13.2
Affordable & Supportive Housing Units[2]		$410.0	
Federal Low Income Housing Tax Credits			$95.0

[1] Fee supports multi-family affordable housing construction, raises approximately $27M per year

[2] Article XI-Q general obligation bond proceeds for Local Innovation & Fast Track (LIFT) and Permanent Supportive Housing Programs

[26] Description and dollar amounts were provided by the Legislative Fiscal Office.

Other States

While no other state is known to provide a specifically comparable tax credit program as Oregon's credit, many other states do provide financial support for the constructions and or rehabilitation of agricultural worker housing. For example, Washington state provides a sales and use tax exemption for building farmworker housing. Farmworker housing providers may use the sales tax exemption for building, repairing, decorating, or improving housing. The exemption also applies to labor and services related to construction of the structure. To be eligible for the exemption, beneficiaries must construct housing that is occupied only by farmworkers and occupancy requirements must be met for the first five years after construction. Housing authorities may claim the exemption if at least 80% of the housing is occupied by farmworkers earning less than 50% of the county's median family income. (WA JLARC, 2020)

Administrative Costs

Administrative costs are largely incurred by the OHCS department. For example, the department tracks the awarded tax credits to ensure that the tax credit cap is not exceeded. The DOR incurs some incremental costs as this is one of several tax credits that affect tax liability. There could be costs incurred during audits if the relevant taxpayer has claimed the credit. Or there could be more explicit and direct costs if the DOR chooses to undertake an audit project that focuses on the tax credit.

Appendix A: Legislative History of Tax Credits being Reviewed

This appendix contains the legislative history for each tax credit included in this report. Statutory changes can be technical in nature or policy oriented. Text in bold identifies changes that are more policy oriented.

Statute	Tax Expenditure (TE) Name and TE Number (Number aligns with Governor's Tax Expenditure Report)				
315.643	**1.403 Opportunity Grant Contributions**				
	Year	Bill	Chapter	Section(s)	Policy
	2018	**SB 1528**	**108**	**2-6**	**Enaction legislation | Credits purchased at auction with minimum bid price equal to 95% of credit value | 3 year carryforward of credit | Limits credits certified to $14 million per fiscal year | Sunsets 1/1/2024**
	2019	**SB 459**	**370**	**2**	**Modifies when credit auction may be held | Lowers minimum bid price to 90% of credit**
	2021	HB 2456	528	14	Modifies timing in which taxpayer may claim the credit
315.163-172	**1.413 Agriculture Workforce Housing Construction**				
	Year	Bill	Chapter	Section(s)	Policy
	1989	**SB 734**	**963**	**2,4**	**Enacting legislation | Credit (non-refundable) equal to 50% of costs actually paid or incurred by taxpayer to complete farm-worker housing project | Credit taken over 5 years, equal installments | 5 year carry forward of credit | Property requirements include: comply with all occupational safety or health laws, regulations, rules and standards, registered by BOLI, operated by indorsed farm-worker camp operator**
	1991	**SB 857**	**766**	**3,4,5**	**Placed sunset of 1/1/1996 | Defined eligible costs | For builders, repealed requirement that housing be in compliance with safety and health standards, be registered and be operated by a licensed operator; instead required housing, upon completion, to comply with safety and health standards.**
	1991	HB 2162	877	10,34	Clarified eligibility of S corporations for their prorated share of business tax credits
	1993	HB 2413	730	19,20,20a	Measure combined and moved business tax credits from ORS chapters 316, 317, & 318 into chapter 315
	1995	SB 705	500	10	Property registration requirement moved from BOLI to DCBS
	1995	**HB 2255**	**746**	**52,52a,58**	**Extended sunset to 12/31/2001 | Reduced credit to 30% of costs | Prohibited credit for housing occupied by owner or operator of the housing | Limited credit in an EFU zone to rehabilitation or existing farmworker housing or installation of manufactured housing | Credit certification authority given to DCBS | Credit approval required by DCBS and eligible costs limited to no more than estimated cost originally approved by DCBS | Limited total statewide certified costs to $3.3 million per year**
	2001	HB 3171	613	13a,14	Eliminated distinction of seasonal or year-round farmworker and defined farmworker and farmworker housing
	2001	HB 3172	625	2,3	Definitional modifications | DCBS oversight replaced by Housing and Community Services
	2001	**HB 3173**	**868**	**1,3,4,5**	**Made credit permanent by eliminating 12/31/2001 sunset | Increased credit to 50% of eligible costs | Increased annual cap on certified project costs to $7.5 million (from previous $3.3) | Set period for claiming the credit to 10 years with no more than 20% of credit being claimed in any one year | Allowed owner or operator to transfer up to 80% of credit amount**
	2003	**HB 2166**	**588**	**1,3,5,6a,7, 9,11,15**	**Added acquisition costs to eligible costs | Modified application deadlines | Allowed lending institution not subject to taxation to sell or transfer credit to taxpayer subject to taxation | Allowed entire credit to be sold (previously limited to 80%) | Decreased total annual certified project costs to $7.25 million**
	2009	HB 2067	913	28	Placed sunset of 1/1/2014
	2011	HB 2154	471	1,2,3,4	Modified definition of "farmworker" to include handling/processing of agricultural or aquacultural crops or products | Expanded definition of "contributor" to include a person who has purchased or received the credit | Makes exception to the provision barring credits for dwellings occupied by relatives of owner in case of manufactured dwelling park nonprofit cooperatives | Modified the definition of taxpayer to include tax-exempt entities | Allows housing occupants to include farmworkers who are retired or disabled | Allows occupant to be relative of housing owner/operator if housing is a manufactured dwelling
	2013	HB 3367	750	18,19,20, 21,22,23	Extended sunset to 1/1/2020 | Terminology modifications
	2019	HB 2141	483	7,8,25	Establishes uniformity of tax credit transfers. Modifies administration and responsibilities related to tax credit certification.
	2019	HB 2164	579	30	Placed sunset of 1/1/2026
	2021	**HB 2433**	**525**	**18,20**	**Increased cap to no more than $16.75 million in total potential credits claimed in a biennium**