

House Bill 2653

Sponsored by Representatives NATHANSON, NERON, MARSH; Representatives DEXTER, FAHEY, GRAYBER, LEVY B, LIVELY, PHAM K, VALDERRAMA, Senators CAMPOS, JAMA, PATTERSON (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 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

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 2023 Act are added to and made a part of ORS chapter 315.

SECTION 2. As used in sections 2 to 6 of this 2023 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 that 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 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 may not exceed:

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

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

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

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

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

5 (3) The Department of Revenue may:

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

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

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

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

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

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

21 (c) If a change in the tax year of a taxpayer occurs as described in ORS 314.085, or if the
22 Department of Revenue terminates the taxpayer's tax year under ORS 314.440, the credit
23 allowed under this section must be prorated or computed in a manner consistent with ORS
24 314.085.

25 **SECTION 4.** (1) Before purchasing a property that is publicly supported housing, a pur-
26 chaser intending to reserve the credit allowed under section 3 of this 2023 Act on behalf of
27 the seller shall apply to the Housing and Community Services Department for a reservation.

28 (2) The application for a reservation under this section must be on a form prescribed by
29 the Housing and Community Services Department and must provide:

30 (a) The name, address and taxpayer identification number of the seller and of the pur-
31 chaser;

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

33 (c) A description of the use to which the housing will be put following the qualifying sale;

34 (d) The number of affordable housing units that will be maintained within the housing
35 following the qualifying sale and the projected duration, in years, of the availability of the
36 units as affordable housing;

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

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

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

41 (h) Any other information as the Housing and Community Services Department may re-
42 quire.

43 (3) The Housing and Community Services Department may review applications for a
44 reservation using any reasonable system of prioritizing review established by the Housing
45 and Community Services Department by rule.

1 (4) Applications for reservations of a credit filed in compliance with this section may be
 2 approved by the Housing and Community Services Department only to the extent that the
 3 total amount of credits for all approved qualifying sales for the calendar year is equal to or
 4 less than the limitation in section 6 of this 2023 Act. The Housing and Community Services
 5 Department may deny an application, or may approve a reduced amount of credit, if the ad-
 6 dition of the anticipated amount of credit to previously approved amounts of credits for the
 7 calendar year would exceed the limitation in section 6 of this 2023 Act.

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

13 (6) The Housing and Community Services Department, following notification of the close
 14 of the qualifying sale, including the final purchase price, shall send to the seller a certifica-
 15 tion of the seller's claim to the credit in an amount not to exceed the lesser of the amount
 16 reserved or the amount calculated under section 3 (1) of this 2023 Act based on the final
 17 purchase price.

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

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

25 (9) The Housing and Community Services Department may establish an application pro-
 26 cess for the registration and certification of credits under this section.

27 (10) Notwithstanding that a certification has been issued to a seller under this section,
 28 the Department of Revenue may disallow, in whole or in part, a claim for credit upon the
 29 Department of Revenue's determination that the seller is not entitled to the credit or is en-
 30 titled only to a portion of the amount claimed under section 3 of this 2023 Act.

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

33 **SECTION 5.** (1) For any tax credit certification that is issued under section 4 of this 2023
 34 Act, the Department of Revenue may by rule require that the Housing and Community Ser-
 35 vices Department provide information about the certification, including the name and tax-
 36 payer identification number of the taxpayer or other person receiving certification, the date
 37 the certification was issued in its final form, the approved amount of credit and the first tax
 38 year for which the credit may be claimed.

39 (2) A taxpayer that is a pass-through entity that has received certification for a credit
 40 allowed under section 3 of this 2023 Act shall provide the information described in subsection
 41 (1) of this section to the Department of Revenue within two months after the close of the
 42 tax year in which the certification was issued.

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

1 **SECTION 6. The total amount certified by the Housing and Community Services De-**
 2 **partment for tax credits for affordable housing under section 3 of this 2023 Act may not ex-**
 3 **ceed \$3 million for all taxpayers for any calendar year.**

4 **SECTION 7.** ORS 314.772, as amended by section 11, chapter 34, Oregon Laws 2022, and section
 5 15, chapter 115, Oregon Laws 2022, is amended to read:

6 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a
 7 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 8 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 9 allowable to the shareholders of the S corporation.

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

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

19 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 20 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 21 316.117, then that provision shall apply to the nonresident shareholder.

22 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
 23 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
 24 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture
 25 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS
 26 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
 27 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
 28 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
 29 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
 30 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
 31 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
 32 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
 33 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS
 34 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643
 35 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account
 36 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone
 37 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research
 38 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,
 39 Oregon Laws 2013 (alternative fuel vehicle contributions), section 2, chapter 34, Oregon Laws 2022
 40 (small forest option), and section 8, chapter 115, Oregon Laws 2022 (agricultural overtime pay), **and**
 41 **section 3 of this 2023 Act (affordable housing sales).**

42 **SECTION 8.** ORS 318.031, as amended by section 12, chapter 34, Oregon Laws 2022, and section
 43 16, chapter 115, Oregon Laws 2022, is amended to read:

44 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 45 317 shall be administered as uniformly as possible (allowance being made for the difference in im-

1 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
2 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
3 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and
4 315.643 and section 2, chapter 34, Oregon Laws 2022, and section 8, chapter 115, Oregon Laws 2022,
5 **and section 3 of this 2023 Act** (all only to the extent applicable to a corporation) and ORS chapter
6 317.

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

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

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