

Enrolled House Bill 3406

Sponsored by Representative RAYFIELD

CHAPTER

AN ACT

Relating to transportation; creating new provisions; amending ORS 315.591, 315.593, 315.595 and 366.506 and section 17, chapter 579, Oregon Laws 2019; and prescribing an effective date.

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

SECTION 1. ORS 315.591 is amended to read:

315.591. As used in ORS 315.591 to 315.603:

(1) "Infrastructure" includes tracks, switches, sidings, roadbeds, railroad bridges and industrial leads owned or leased by a short line railroad.

(2) "Short line railroad" means a class II or class III railroad as defined in 49 C.F.R. 1201.

(3) "Short line railroad rehabilitation project" means a project that involves the maintenance, reconstruction or replacement of infrastructure.

(4) "Short line railroad rehabilitation project costs" means costs that are directly related to the work necessary to maintain, reconstruct or replace infrastructure. [*Short line railroad rehabilitation project costs does not include costs that are funded by or used to qualify for any state or federal grants, or costs that are used to claim a federal tax credit.*]

[(5) "Tier I short line railroad" means a short line railroad owned or leased by a person for whom the total length of short line railroad track owned or leased in Oregon is equal to or greater than 200 miles. The total amount of short line railroad track in Oregon calculated under this subsection includes any short line railroad track owned or leased by the person, or if the person is a corporation, by the person's parent corporation or subsidiaries, regardless of whether the track is owned or leased by one or more railroads.]

[(6) "Tier II short line railroad" means a short line railroad that is not a tier I short line railroad or is a short line railroad owned or leased by the state, a city, a county, a port or any other public or municipal corporation.]

SECTION 2. ORS 315.593 is amended to read:

315.593. (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318) is allowed to a taxpayer, based upon short line railroad rehabilitation project costs actually paid or incurred by the taxpayer during the tax year for which the credit is claimed.

(2) The credit allowed under this section shall be the [least] lesser of:

[(a) In the case of a tier I short line railroad, \$1,000 multiplied by the number of miles of short line railroad track the taxpayer owns or leases in this state on the day the short line railroad rehabilitation project is completed;]

[(b)] (a) [In the case of a tier II short line railroad,] \$3,500 multiplied by the number of miles of short line railroad track the taxpayer owns or leases in this state on the day the short line railroad rehabilitation project is completed; or

[(c)] (b) Fifty percent of the short line railroad rehabilitation project costs paid or incurred by the taxpayer during the tax year in which the credit is claimed.

(3) For the credit to be allowed under this section:

(a) The infrastructure must be located in Oregon; and

(b) The taxpayer must:

(A) Own or lease the infrastructure;

(B) Be a short line railroad; and

(C) Receive a final written certification from the Department of Transportation before claiming the credit.

(4) **A credit under this section is not allowed for:**

(a) **Costs that are funded by or used to qualify for any state or federal grants.**

(b) **The amount that is equal to the greater of:**

(A) **Costs that are used to claim a federal tax credit under section 45G of the Internal Revenue Code; or**

(B) **The credit limitation set out in section 45G(b)(1) of the Internal Revenue Code, as applied to the taxpayer's miles of short line railroad track in this state.**

[(4)] (5) The amount of the credit claimed under this section for any one tax year may not exceed the tax liability of the taxpayer.

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

[(6)] (7) The credit allowed under this section is not in lieu of any depreciation or amortization deduction for the short line railroad rehabilitation project to which the taxpayer otherwise may be entitled for purposes of ORS chapter 316, 317 or 318 for the tax year.

[(7)] (8) The taxpayer's adjusted basis for determining gain or loss may not be decreased by any tax credit allowed under this section.

[(8)] (9) The credit shall be claimed on a form prescribed by the Department of Revenue that contains the information required by the department.

[(9)] (10) In the case of a credit allowed under this section:

(a) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(b) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

[(10)] (11) A person that has earned a tax credit under this section may transfer the credit to a taxpayer subject to tax under ORS chapter 316, 317 or 318. The transfer must comply with ORS 315.056.

[(11)] (12) The Director of Transportation may order the suspension or revocation of a certification issued under this section, as provided in ORS 315.061.

SECTION 3. ORS 315.595 is amended to read:

315.595. (1) Prior to construction of a short line railroad rehabilitation project, a taxpayer may apply to the Department of Transportation for preliminary certification of the project in the manner prescribed by rules adopted under this section, which must include:

- (a) Timelines and deadlines for submission of application materials;
- (b) A description of the information required by the department to determine that the taxpayer qualifies for the credit allowed under ORS 315.593;
- (c) Criteria for determining the amount of the tax credit allowed under ORS 315.593, including standards for what constitutes completion of a short line railroad rehabilitation project;
- (d) The process by which an applicant will be notified of an incomplete application and the time allowed for the applicant to provide the missing information; and
- (e) The month and date by which the department must notify an applicant of the preliminary certification decision and the potential amount of the tax credit for which the applicant has received preliminary certification.

(2)(a) If the total amount of potential tax credits allowed under ORS 315.593 for all taxpayers that have applied for preliminary certification would exceed the limit in ORS 315.603, the department shall allocate the tax credits allowed under ORS 315.593 so that no railroad is allowed more than \$400,000 for any tax year.

(b) After applying the limitation in paragraph (a) of this subsection, if the total amount of potential tax credits allowed under ORS 315.593 for all taxpayers that have applied for preliminary certification exceeds the limit in ORS 315.603, the department shall allocate the available amount among taxpayers proportionally, based on the amount each taxpayer would have otherwise received under ORS 315.593.

[(2) If the total amount of potential tax credits allowed under ORS 315.593 for all taxpayers that have applied for preliminary certification exceeds the limit in ORS 315.603, the department shall allocate the tax credits allowed under ORS 315.593 as follows:]

[(a) By giving first priority to all tier II short line railroads that own or lease less than 75 miles of short line railroad track in this state; and]

[(b) By giving second priority to all tier II short line railroads not described in paragraph (a) of this subsection.]

[(3) If the department must allocate tax credits to a group of taxpayers in an amount that is less than the amount the taxpayers would otherwise receive under ORS 315.593, the department shall divide the available tax credits among the group proportionally, based on the amount each taxpayer would have otherwise received under ORS 315.593.]

SECTION 4. Section 17, chapter 579, Oregon Laws 2019, is amended to read:

Sec. 17. (1) *[Sections 7 to 14 of this 2019 Act]* **ORS 315.591 to 315.603** apply to tax years beginning on or after January 1, 2020, and before January 1, 2026.

(2) Except as provided in *[section 8 (5) of this 2019 Act]* **ORS 315.593 (6)**, a credit may not be claimed under *[section 8 of this 2019 Act]* **ORS 315.593** for tax years beginning on or after January 1, 2026.

(3) The amendments to ORS 315.591, 315.593 and 315.595 by sections 1 to 3 of this 2023 Act apply to tax years beginning on or after January 1, 2024, and before January 1, 2026.

SECTION 5. Section 6 of this 2023 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 6. A road authority, on its own highways, may allow a person to use a vehicle that is otherwise prohibited from operating on the highways of this state if:

- (1) The person is operating the vehicle in a parade;**
- (2) The vehicle is operated with the approval of and under the conditions imposed by the road authority; and**
- (3) The vehicle complies with vehicle weight and size limits established by federal or state statute or rule.**

SECTION 7. ORS 366.506 is amended to read:

366.506. (1) Once every two years, the Oregon Department of Administrative Services shall conduct *[either a full]* a highway cost allocation study *[or an examination of data collected since the previous study]*. The *[purposes]* **purpose** of the study *[or examination of data are]* is to determine:

(a) The proportionate share that the users of each class of vehicle should pay for the costs of maintenance, operation and improvement of the highways, roads and streets in the state; and

(b) Whether the users of each class are paying that share.

(2) Each study must include:

(a) **An examination of the most recent study period for which actual data are available for the purpose of determining the accuracy of the most recently published study results; and**

(b) **An examination of the prospective study period based on projected data for the purpose described in subsection (1) of this section.**

[(2)] **(3)** The department may use any study design *[it]* **the department** determines will best accomplish the purposes stated in subsection (1) of this section. In designing the study, the department may make decisions that include, but are not limited to, the methodology to be used for the study, what constitutes a class of vehicle for purposes of collection of data under subsections (1) to *[(4)]* **(5)** of this section and the nature and scope of costs that will be included in the study.

[(3)] **(4)** The department may appoint a study review team to participate in the study *[or examination of data]* required by subsection (1) of this section. The team may perform any functions assigned by the department, including, but not limited to, consulting on the design of the study.

[(4)] **(5)** A report on the results of the study *[or examination of data]* shall be submitted to the legislative revenue committees and the *[legislative committees with primary responsibility for transportation]* **Joint Committee on Transportation** by January 31 of each odd-numbered year.

[(5)] **(6)** The Legislative Assembly shall use the report described in *[subsections (1) to (4)]* **subsection (5)** of this section to determine whether adjustments to revenue sources described in **Article IX**, section 3a (3), *[Article IX]* of the Oregon Constitution, are needed in order to carry out the purposes of **Article IX**, section 3a (3), *[Article IX]* of the Oregon Constitution. If such adjustments are needed, the Legislative Assembly shall enact whatever measures are necessary to make the adjustments.

SECTION 8. (1) The Oregon Department of Administrative Services shall prepare and submit a report that includes an analysis of, at least, the three most recent reported highway cost allocation studies conducted under ORS 366.506.

(2) For each of the three previous study periods, the analysis must:

(a) **Evaluate the amount that users of each class of vehicle actually paid for the cost of maintenance, operation and improvement of highways, roads and streets in the state; and**

(b) **Evaluate whether the amount paid was a proportionate share of those costs.**

(3) The department shall submit the report, in the manner provided by ORS 192.245, to the Joint Committee on Transportation no later than September 15, 2024.

SECTION 9. Section 8 of this 2023 Act is repealed on January 2, 2025.

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

Passed by House June 21, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 24, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State