

Senate Bill 5

Sponsored by Senator WAGNER

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**.

Restores corporate excise tax credit allowed for qualified research activities and sets increased maximum credit amount. Limits use of credit to semiconductor or other advanced manufacturing industries. Uses tiered credit percentages based on amount of increase in qualified research expenses. Provides for refundability of credit for taxpayer with fewer than 150 employees. Increases maximum amount of alternative qualified research credit allowed to taxpayer with insufficient increase in research expenses to claim standard credit.

Exempts from commercial activity subject to corporate activity tax amount of qualified research credit allowed against corporate excise tax.

Applies to 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

1
2 Relating to tax credits allowed for research and development in the semiconductor industry; creat-
3 ing new provisions; amending ORS 317.152, 317.154 and 317.850 and section 6, chapter 911,
4 Oregon Laws 1989; and prescribing an effective date.

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

6 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 317.**

7 **SECTION 2. (1) If 75 percent of the amount allowable as a credit under ORS 317.152 or**
8 **317.154, when added to the sum of the amount of estimated tax paid under ORS 314.515 and**
9 **any other tax prepayment amounts, exceeds the taxes imposed by ORS chapters 314 and 317**
10 **for the tax year (reduced by any nonrefundable credits allowable for purposes of ORS chapter**
11 **317 for the tax year), the amount of the excess determined under this subsection shall be**
12 **refunded to the taxpayer as provided in ORS 314.415.**

13 **(2) This section applies only to taxpayers with fewer than 150 employees, wherever lo-**
14 **cated, at the close of the tax year.**

15 **SECTION 3. ORS 317.152 is amended to read:**

16 317.152. (1) A credit against taxes otherwise due under this chapter shall be allowed to eligible
17 taxpayers for increases in qualified research expenses and basic research payments. The credit shall
18 be determined in accordance with section 41 of the Internal Revenue Code, except as follows:

19 (a) **If the excess amount as described in section 41(a)(1) of the Internal Revenue Code is**
20 **\$2.5 million or less, the applicable percentage specified in section 41(a) of the Internal Revenue**
21 **Code shall be *[five]* 24 percent.**

22 (b) **If the excess amount as described in section 41(a)(1) of the Internal Revenue Code is**
23 **more than \$2.5 million, the applicable percentage specified in section 41(a) of the Internal**
24 **Revenue Code shall be 15 percent.**

25 ***[(b)]* (c) "Qualified research" and "basic research" shall consist only of research conducted in**
26 **Oregon and essential to the semiconductor industry or other advanced manufacturing in-**
27 **dustries.**

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 [(c)] (d) The following do not apply to the credit allowable under this section:

2 (A) Section 41(c)(4) of the Internal Revenue Code (relating to the alternative incremental credit).

3 (B) Section 41(h) of the Internal Revenue Code (relating to termination of the federal credit).

4 (2) For purposes of this section, “eligible taxpayer” means a corporation, other than a corpo-
5 ration excluded under Internal Revenue Code section 41(e)(7)(E).

6 (3) The Income Tax Regulations as prescribed by the Secretary of the Treasury under authority
7 of section 41 of the Internal Revenue Code apply for purposes of this section, except as modified by
8 this section or as provided in rules adopted by the Department of Revenue.

9 (4) The maximum credit under this section may not exceed [*\$1 million*] **\$9 million**.

10 (5) A deduction may not be taken for the portion of expenses or payments, otherwise allowable
11 as a deduction, that is equal to the amount of the credit claimed under this section.

12 (6) Any tax credit that is otherwise allowable under this section and that is not used by the
13 taxpayer in that year may be carried forward and offset against the taxpayer’s tax liability for the
14 next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be
15 carried forward and used in the second succeeding tax year, and likewise any credit not used in that
16 second succeeding tax year may be carried forward and used in the third succeeding tax year, and
17 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
18 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
19 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year
20 thereafter.

21 **SECTION 4.** ORS 317.154 is amended to read:

22 317.154. (1) A credit against taxes otherwise due under this chapter shall be allowed for quali-
23 fied research expenses that exceed 10 percent of Oregon sales.

24 (2) For purposes of this section:

25 (a) “Oregon sales” shall be computed using the laws and administrative rules for calculating the
26 numerator of the Oregon sales factor under ORS 314.665.

27 (b) “Qualified research” has the meaning given the term under section 41(d) of the Internal Re-
28 venue Code and shall consist only of research conducted in Oregon **and essential to the semi-**
29 **conductor industry or other advanced manufacturing industries.**

30 (3) The credit under this section is equal to five percent of the amount by which the qualified
31 research expenses exceed 10 percent of Oregon sales.

32 (4) The credit under this section [*shall*] **may** not exceed \$10,000 times the number of percentage
33 points by which the qualifying research expenses exceed 10 percent of Oregon sales.

34 (5) The maximum credit under this section may not exceed [*\$1 million*] **\$9 million**.

35 (6) A deduction may not be taken for the portion of expenses or payments, otherwise allowable
36 as a deduction, that is equal to the amount of the credit claimed under this section.

37 (7) Any tax credit that is otherwise allowable under this section and that is not used by the
38 taxpayer in that year may be carried forward and offset against the taxpayer’s tax liability for the
39 next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be
40 carried forward and used in the second succeeding tax year, and likewise any credit not used in that
41 second succeeding tax year may be carried forward and used in the third succeeding tax year, and
42 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
43 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
44 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year
45 thereafter.

1 **SECTION 5.** ORS 317.850, as amended by section 14, chapter 115, Oregon Laws 2022, is
2 amended to read:

3 317.850. (1) The net revenue from the tax imposed by this chapter, after deduction of refunds,
4 shall be paid over to the State Treasurer and held in the General Fund as miscellaneous receipts
5 available generally to meet any expense or obligation of the State of Oregon lawfully incurred.

6 (2) A working balance of unreceipted revenue from the tax imposed by this chapter may be re-
7 tained for the payment of refunds, but such working balance *[shall]* **may** not at the close of any
8 fiscal year exceed the sum of \$500,000.

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

10 (a) The refunds authorized under subsection (2) of this section; *[and]*

11 (b) The refund payments in excess of tax liability authorized under section 8, chapter 115,
12 Oregon Laws 2022[.]; **and**

13 **(c) The refund payments in excess of tax liability authorized under section 2 of this 2023**
14 **Act.**

15 **SECTION 6.** Section 7 of this 2023 Act is added to and made a part of ORS 317A.100 to
16 317A.158.

17 **SECTION 7.** Notwithstanding ORS 317A.100, any amounts of credit against taxes imposed
18 under ORS chapter 317 that are allowed a taxpayer under ORS 317.152 or 317.154 for qualified
19 research expenses are excluded from the definition of “commercial activity” and are exempt
20 from the tax imposed under ORS 317A.116.

21 **SECTION 8.** Section 6, chapter 911, Oregon Laws 1989, as amended by section 14, chapter 746,
22 Oregon Laws 1995, section 1, chapter 548, Oregon Laws 2001, section 15, chapter 739, Oregon Laws
23 2003, section 86, chapter 94, Oregon Laws 2005, and section 7, chapter 730, Oregon Laws 2011, is
24 amended to read:

25 **Sec. 6.** ORS 317.152 *[to]*, **317.153 and 317.154** apply to amounts paid or incurred in tax years
26 beginning on or after January 1, 1989, and before January 1, 2018, **or in tax years beginning on**
27 **or after January 1, 2024, and before January 1, 2030.**

28 **SECTION 9.** (1) Section 2 of this 2023 Act and the amendments to ORS 317.152, 317.154
29 and 317.850 by sections 3 to 5 of this 2023 Act apply to tax years beginning on or after Jan-
30 uary 1, 2024, and before January 1, 2030.

31 (2) Section 7 of this 2023 Act applies to tax years beginning on or after January 1, 2024,
32 and before January 1, 2030.

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

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