

SB 5-4
(LC 4408)
5/3/23 (CMT/ps)

Requested by JOINT COMMITTEE ON TAX EXPENDITURES

**PROPOSED AMENDMENTS TO
SENATE BILL 5**

1 On page 1 of the printed bill, line 3, after “ORS” insert “316.502,”.

2 Delete lines 6 through 27 and delete pages 2 and 3 and insert:

3 **“SECTION 1. Sections 2 and 5 of this 2023 Act and ORS 317.152,**
4 **317.153 and 317.154 are added to and made a part of ORS chapter 315.**

5 **“SECTION 2. (1)(a) If the amount allowable as a credit under ORS**
6 **317.152 or 317.154, after any reduction applicable under subsection (2)**
7 **of this section, when added to the sum of the amount of estimated tax**
8 **paid under ORS 314.515 and any other tax prepayment amounts, ex-**
9 **ceeds the taxes imposed by ORS chapters 314 and 317 for the tax year**
10 **after application of any nonrefundable credits allowable for purposes**
11 **of ORS chapter 317 for the tax year, the amount of the excess deter-**
12 **mined under this subsection shall be refunded to the taxpayer as pro-**
13 **vided in ORS 314.415.**

14 **“(b) If the amount allowable as a credit under ORS 317.152 or**
15 **317.154, after any reduction applicable under subsection (2) of this**
16 **section, when added to the sum of the amounts allowable as payment**
17 **of tax under ORS 316.187 or 316.583, other tax prepayment amounts and**
18 **other refundable credit amounts, exceeds the taxes imposed by ORS**
19 **chapters 314 and 316 for the tax year after application of any**
20 **nonrefundable credits allowable for purposes of ORS chapter 316 for**
21 **the tax year, the amount of the excess shall be refunded to the tax-**

1 payer as provided in ORS 316.502.

2 “(2) If the taxpayer employs, in Oregon, at least 500 employees, but
3 fewer than 2,000 employees at the close of the tax year, the amount
4 of credit used in the calculation in subsection (1) of this section shall
5 be reduced by 50 percent.

6 “(3) This section applies only to taxpayers with fewer than 2,000
7 employees, wherever located, at the close of the tax year.

8 “**SECTION 3.** ORS 317.152 is amended to read:

9 “317.152. (1) As used in this section and ORS 317.154, ‘qualified
10 semiconductor company’ means an entity whose primary business is
11 the research, design, development, fabrication, assembly, testing,
12 packaging or validation of semiconductors, or an entity whose primary
13 business is the creation of semiconductor manufacturing equipment,
14 semiconductor core intellectual property or electronic design auto-
15 mation software that is primarily intended for use in the semicon-
16 ductor industry.

17 “[~~(1)~~](2) A credit against taxes otherwise due under [*this chapter*] **ORS**
18 **chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317**
19 **or 318** shall be allowed to eligible taxpayers for increases in qualified re-
20 search expenses and basic research payments. The credit shall be determined
21 in accordance with section 41 of the Internal Revenue Code, except as fol-
22 lows:

23 “(a) The applicable percentage specified in section 41(a) of the Internal
24 Revenue Code shall be [*five*] **25** percent.

25 “(b) ‘Qualified research’ and ‘basic research’ shall consist only of research
26 conducted in Oregon **by a qualified semiconductor company.**

27 “(c) The following do not apply to the credit allowable under this section:

28 “(A) Section 41(c)(4) of the Internal Revenue Code (relating to the alter-
29 native incremental credit).

30 “(B) Section 41(h) of the Internal Revenue Code (relating to termination

1 of the federal credit).

2 “[~~(2)~~ For purposes of this section, ‘eligible taxpayer’ means a corporation,
3 other than a corporation excluded under Internal Revenue Code section
4 41(e)(7)(E).]”

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

9 “(4) The maximum credit under this section may not exceed [~~\$1 million.~~]
10 **\$5 million, if the taxpayer employs fewer than 150 employees, or \$10**
11 **million for all other taxpayers.**

12 “(5) **Prior to claiming a credit under this section, a taxpayer must**
13 **obtain from the Oregon Business Development Department certifica-**
14 **tion, as provided in section 5 of this 2023 Act, that the taxpayer is a**
15 **qualified semiconductor company.**

16 “(6) **The Oregon Business Development Department shall provide**
17 **information to the Department of Revenue about all certifications is-**
18 **sued under this section and section 5 of this 2023 Act, if required by**
19 **ORS 315.058.**

20 “(7) **The Director of the Department of Revenue may order the**
21 **suspension or revocation of a credit allowed under this section, as**
22 **provided in ORS 315.061.**

23 “[~~(5)~~ (8) A deduction may not be taken for the portion of expenses or
24 payments, otherwise allowable as a deduction, that is equal to the amount
25 of the credit claimed under this section.

26 “[~~(6)~~ (9) Any tax credit that is otherwise allowable under this section and
27 that is not used by the taxpayer in that year may be carried forward and
28 offset against the taxpayer’s tax liability for the next succeeding tax year.
29 Any credit remaining unused in such next succeeding tax year may be car-
30 ried forward and used in the second succeeding tax year, and likewise any

1 credit not used in that second succeeding tax year may be carried forward
2 and used in the third succeeding tax year, and any credit not used in that
3 third succeeding tax year may be carried forward and used in the fourth
4 succeeding tax year, and any credit not used in that fourth succeeding tax
5 year may be carried forward and used in the fifth succeeding tax year, but
6 may not be carried forward for any tax year thereafter.

7 **“SECTION 4.** ORS 317.154 is amended to read:

8 “317.154. (1) A credit against taxes otherwise due under [*this chapter*]
9 **ORS chapter 316 or, if the taxpayer is a corporation, under ORS**
10 **chapter 317 or 318** shall be allowed for qualified research expenses that ex-
11 ceed 10 percent of Oregon sales.

12 “(2) For purposes of this section:

13 “(a) ‘Oregon sales’ shall be computed using the laws and administrative
14 rules for calculating the numerator of the Oregon sales factor under ORS
15 314.665.

16 “(b) ‘Qualified research’ has the meaning given the term under section
17 41(d) of the Internal Revenue Code and shall consist only of research con-
18 ducted in Oregon **by a qualified semiconductor company.**

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

21 “(4) The credit under this section [*shall*] **may** not exceed \$10,000 times the
22 number of percentage points by which the qualifying research expenses ex-
23 ceed 10 percent of Oregon sales.

24 “(5) The maximum credit under this section may not exceed [*\$1 million*]
25 **\$5 million, if the taxpayer employs fewer than 150 employees, or \$10**
26 **million for all other taxpayers.**

27 “(6) A deduction may not be taken for the portion of expenses or pay-
28 ments, otherwise allowable as a deduction, that is equal to the amount of the
29 credit claimed under this section.

30 **“(7) Prior to claiming a credit under this section, a taxpayer must**

1 obtain from the Oregon Business Development Department certifica-
2 tion, as provided in section 5 of this 2023 Act, that the taxpayer is a
3 qualified semiconductor company.

4 “(8) The Oregon Business Development Department shall provide
5 information to the Department of Revenue about all certifications is-
6 sued under this section and section 5 of this 2023 Act, if required by
7 ORS 315.058.

8 “(9) The Director of the Department of Revenue may order the
9 suspension or revocation of a credit allowed under this section, as
10 provided in ORS 315.061.

11 “[7] (10) Any tax credit that is otherwise allowable under this section
12 and that is not used by the taxpayer in that year may be carried forward and
13 offset against the taxpayer’s tax liability for the next succeeding tax year.
14 Any credit remaining unused in such next succeeding tax year may be car-
15 ried forward and used in the second succeeding tax year, and likewise any
16 credit not used in that second succeeding tax year may be carried forward
17 and used in the third succeeding tax year, and any credit not used in that
18 third succeeding tax year may be carried forward and used in the fourth
19 succeeding tax year, and any credit not used in that fourth succeeding tax
20 year may be carried forward and used in the fifth succeeding tax year, but
21 may not be carried forward for any tax year thereafter.

22 **“SECTION 5. (1) A taxpayer seeking to claim the credit provided**
23 **under ORS 317.152 or 317.154 shall file a written application for certi-**
24 **fication with the Oregon Business Development Department. The ap-**
25 **plication must include:**

26 “(a) A description of how the taxpayer meets the definition of a
27 qualified semiconductor company under ORS 317.152;

28 “(b) A description of how proposed research and development ac-
29 tivities for which the taxpayer seeks a tax credit under ORS 317.152
30 or 317.154 will support the taxpayer in conducting a business or trade

1 **directly related to semiconductors; and**

2 **“(c) Any other information that is required by the department by**
3 **rule.**

4 **“(2) An application for certification under this section must be ac-**
5 **companied by a payment of any fee established by the department by**
6 **rule under subsection (4) of this section.**

7 **“(3) The department shall consider applications for certification**
8 **under this section in the chronological order in which the applications**
9 **are filed with the department. If the department determines that an**
10 **applicant taxpayer is a qualified semiconductor company as that term**
11 **is defined under ORS 317.152, and that the proposed research and de-**
12 **velopment activities of the taxpayer for which the taxpayer seeks the**
13 **credit under ORS 317.152 or 317.154 will support the taxpayer in con-**
14 **ducting a trade or business directly related to semiconductors, the**
15 **department shall issue a certification to the taxpayer.**

16 **“(4) The department shall establish by rule a fee for filing a written**
17 **application for certification under this section. The fee shall be ade-**
18 **quate to recover the costs incurred by the department in reviewing the**
19 **applications under this section.**

20 **“SECTION 6. ORS 316.502, as amended by section 13, chapter 115, Oregon**
21 **Laws 2022, is amended to read:**

22 **“316.502. (1) The net revenue from the tax imposed by this chapter, after**
23 **deducting refunds and amounts described in ORS 285B.630 and 285C.635, shall**
24 **be paid over to the State Treasurer and held in the General Fund as mis-**
25 **cellaneous receipts available generally to meet any expense or obligation of**
26 **the State of Oregon lawfully incurred.**

27 **“(2) A working balance of unreceipted revenue from the tax imposed by**
28 **this chapter may be retained for the payment of refunds, but such working**
29 **balance shall not at the close of any fiscal year exceed the sum of \$1 million.**

30 **“(3) Moneys are continuously appropriated to the Department of Revenue**

1 to make:

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

3 “(b) The refund payments in excess of tax liability authorized under ORS
4 315.174, 315.262, 315.264, 315.266 and 316.090 and section 3, chapter 589,
5 Oregon Laws 2021, and section 8, chapter 115, Oregon Laws 2022, **and sec-
6 tion 2 of this 2023 Act.**

7 **“SECTION 7.** ORS 317.850, as amended by section 14, chapter 115, Oregon
8 Laws 2022, 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*] **may** not at the close of any fiscal year exceed the sum of
16 \$500,000.

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

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

20 “(b) The refund payments in excess of tax liability authorized under sec-
21 tion 8, chapter 115, Oregon Laws 2022[.]; **and**

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

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

29 **“Sec. 6.** ORS 317.152 [*to*], **317.153 and** 317.154 apply to amounts paid or
30 incurred in tax years beginning on or after January 1, 1989, and before Jan-

1 uary 1, 2018, or in tax years beginning on or after January 1, 2024, and
2 before January 1, 2030.

3 **“SECTION 9. Sections 2 and 5 of this 2023 Act and the amendments
4 to ORS 317.152 and 317.154 by sections 3 and 4 of this 2023 Act apply to
5 tax years beginning on or after January 1, 2024, and before January
6 1, 2030.**

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

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