

Requested by JOINT COMMITTEE ON TAX EXPENDITURES

**PROPOSED AMENDMENTS TO
HOUSE BILL 3406**

1 In line 2 of the printed bill, after “transportation” insert “; amending ORS
2 315.591, 315.593 and 315.595 and section 17, chapter 579, Oregon Laws 2019;
3 and prescribing an effective date”.

4 Delete lines 4 through 11 and insert:

5 **“SECTION 1.** ORS 315.591 is amended to read:

6 “315.591. As used in ORS 315.591 to 315.603:

7 “(1) ‘Infrastructure’ includes tracks, switches, sidings, roadbeds, railroad
8 bridges and industrial leads owned or leased by a short line railroad.

9 “(2) ‘Short line railroad’ means a class II or class III railroad as defined
10 in 49 C.F.R. 1201.

11 “(3) ‘Short line railroad rehabilitation project’ means a project that in-
12 volves the maintenance, reconstruction or replacement of infrastructure.

13 “(4) ‘Short line railroad rehabilitation project costs’ means costs that are
14 directly related to the work necessary to maintain, reconstruct or replace
15 infrastructure. [*‘Short line railroad rehabilitation project costs’ does not in-
16 clude costs that are funded by or used to qualify for any state or federal
17 grants, or costs that are used to claim a federal tax credit.*]

18 “[*(5) ‘Tier I short line railroad’ means a short line railroad owned or
19 leased by a person for whom the total length of short line railroad track owned
20 or leased in Oregon is equal to or greater than 200 miles. The total amount
21 of short line railroad track in Oregon calculated under this subsection includes*”

1 any short line railroad track owned or leased by the person, or if the person
2 is a corporation, by the person's parent corporation or subsidiaries, regardless
3 of whether the track is owned or leased by one or more railroads.]

4 “[6] ‘Tier II short line railroad’ means a short line railroad that is not a
5 tier I short line railroad or is a short line railroad owned or leased by the
6 state, a city, a county, a port or any other public or municipal corporation.]

7 **“SECTION 2.** ORS 315.593 is amended to read:

8 “315.593. (1) A credit against taxes imposed by ORS chapter 316 (or, if the
9 taxpayer is a corporation, under ORS chapter 317 or 318) is allowed to a
10 taxpayer, based upon short line railroad rehabilitation project costs actually
11 paid or incurred by the taxpayer during the tax year for which the credit is
12 claimed.

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

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

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

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

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

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

26 “(b) The taxpayer must:

27 “(A) Own or lease the infrastructure;

28 “(B) Be a short line railroad; and

29 “(C) Receive a final written certification from the Department of Trans-
30 portation before claiming the credit.

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

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

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

5 **“(A) Costs that are used to claim a federal tax credit under section**
6 **45G of the Internal Revenue Code; or**

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

10 ~~“(4)~~ **(5)** The amount of the credit claimed under this section for any one
11 tax year may not exceed the tax liability of the taxpayer.

12 ~~“(5)~~ **(6)** Any tax credit otherwise allowable under this section that is
13 not used by the taxpayer in a particular tax year may be carried forward and
14 offset against the taxpayer’s tax liability for the next succeeding tax year.
15 Any credit remaining unused in that next succeeding tax year may be carried
16 forward and used in the second succeeding tax year, and likewise, any credit
17 not used in that second succeeding tax year may be carried forward and used
18 in the third succeeding tax year, and likewise, any credit not used in that
19 third succeeding tax year may be carried forward and used in the fourth
20 succeeding tax year, and likewise, any credit not used in that fourth suc-
21 ceeding tax year may be carried forward and used in the fifth succeeding tax
22 year but may not be carried forward for any tax year thereafter.

23 ~~“(6)~~ **(7)** The credit allowed under this section is not in lieu of any de-
24 preciation or amortization deduction for the short line railroad rehabili-
25 tation project to which the taxpayer otherwise may be entitled for purposes
26 of ORS chapter 316, 317 or 318 for the tax year.

27 ~~“(7)~~ **(8)** The taxpayer’s adjusted basis for determining gain or loss may
28 not be decreased by any tax credit allowed under this section.

29 ~~“(8)~~ **(9)** The credit shall be claimed on a form prescribed by the De-
30 partment of Revenue that contains the information required by the depart-

1 ment.

2 “[9] (10) In the case of a credit allowed under this section:

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

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

8 “(c) If a change in the taxable year of a taxpayer occurs as described in
9 ORS 314.085, or if the Department of Revenue terminates a taxpayer’s taxable
10 year under ORS 314.440, the credit allowed under this section shall be pro-
11 rated or computed in a manner consistent with ORS 314.085.

12 “[10] (11) A person that has earned a tax credit under this section may
13 transfer the credit to a taxpayer subject to tax under ORS chapter 316, 317
14 or 318. The transfer must comply with ORS 315.056.

15 “[11] (12) The Director of Transportation may order the suspension or
16 revocation of a certification issued under this section, as provided in ORS
17 315.061.

18 **“SECTION 3.** ORS 315.595 is amended to read:

19 “315.595. (1) Prior to construction of a short line railroad rehabilitation
20 project, a taxpayer may apply to the Department of Transportation for pre-
21 liminary certification of the project in the manner prescribed by rules
22 adopted under this section, which must include:

23 “(a) Timelines and deadlines for submission of application materials;

24 “(b) A description of the information required by the department to de-
25 termine that the taxpayer qualifies for the credit allowed under ORS 315.593;

26 “(c) Criteria for determining the amount of the tax credit allowed under
27 ORS 315.593, including standards for what constitutes completion of a short
28 line railroad rehabilitation project;

29 “(d) The process by which an applicant will be notified of an incomplete
30 application and the time allowed for the applicant to provide the missing

1 information; and

2 “(e) The month and date by which the department must notify an appli-
3 cant of the preliminary certification decision and the potential amount of the
4 tax credit for which the applicant has received preliminary certification.

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

10 **“(b) After applying the limitation in paragraph (a) of this sub-**
11 **section, if the total amount of potential tax credits allowed under ORS**
12 **315.593 for all taxpayers that have applied for preliminary certification**
13 **exceeds the limit in ORS 315.603, the department shall allocate the**
14 **available amount among taxpayers proportionally, based on the**
15 **amount each taxpayer would have otherwise received under ORS**
16 **315.593.**

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

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

23 *“(b) By giving second priority to all tier II short line railroads not de-*
24 *scribed in paragraph (a) of this subsection.]*

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

30 **“SECTION 4.** Section 17, chapter 579, Oregon Laws 2019, is amended to

1 read:

2 “**Sec. 17.** (1) [*Sections 7 to 14 of this 2019 Act*] **ORS 315.591 to 315.603**
3 apply to tax years beginning on or after January 1, 2020, and before January
4 1, 2026.

5 “(2) Except as provided in [*section 8 (5) of this 2019 Act*] **ORS 315.593**
6 **(6)**, a credit may not be claimed under [*section 8 of this 2019 Act*] **ORS**
7 **315.593** for tax years beginning on or after January 1, 2026.

8 “(3) **The amendments to ORS 315.591, 315.593 and 315.595 by sections**
9 **1 to 3 of this 2023 Act apply to tax years beginning on or after January**
10 **1, 2024, and before January 1, 2026.**

11 “**SECTION 5. This 2023 Act takes effect on the 91st day after the**
12 **date on which the 2023 regular session of the Eighty-second Legislative**
13 **Assembly adjourns sine die.”.**

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