

House Bill 4028

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

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**.

Limits expenses for which dependent care income tax credit may be claimed to lesser of each spouse's income on joint return and to earned income taxable by Oregon.

Modifies annual limitation on total amount of tax credits for production or collection of bovine manure allowed for all taxpayers by tying limitation to calendar year instead of tax year. Modifies terms.

Removes restrictions on types of sponsoring entities of manufactured dwelling parks for which lending institution may be allowed tax credit for qualified loan.

Applies to tax years beginning on or after January 1, 2019.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax expenditures; creating new provisions; amending ORS 314.752, 315.176, 315.184,
3 315.264 and 317.097; and prescribing an effective date.

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

5 **SECTION 1.** ORS 315.264 is amended to read:

6 315.264. (1)(a) A credit against the tax otherwise due under ORS chapter 316 shall be allowed
7 a taxpayer in an amount equal to a percentage of employment-related expenses of a type allowable
8 as a credit pursuant to section 21 of the Internal Revenue Code, notwithstanding the limitation im-
9 posed by section 21(c) of the Internal Revenue Code, and limited as provided in paragraph (c) of this
10 subsection.

11 (b) The credit allowed under this section may be claimed for expenses for care of a qualifying
12 individual that allow a nonmarried taxpayer to seek employment or to attend school on a full-time
13 or part-time basis.

14 (c) The employment-related expenses for which a credit is claimed under this section may not
15 exceed the [*lesser*] **least** of:

16 (A) **Earned** income [*earned in*] **taxable by** Oregon and reported on the taxpayer's return; [*or*]

17 (B) **The lesser amount of earned income taxable by Oregon earned by each spouse, if**
18 **reported on a joint return; or**

19 [*(B)*] (C) \$12,000 for a taxpayer for which there is one qualifying individual, or \$24,000 for a
20 taxpayer for which there are two or more qualifying individuals.

21 (d) The limitations in paragraph [*(c)*] **(C)** of this subsection shall be reduced by the aggregate
22 amount excludable under section 129 of the Internal Revenue Code for the tax year.

23 (2) The applicable percentage described in subsection (1) of this section shall be determined in
24 accordance with the following table:

25 _____
26
27 Greater of Federal

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 or Oregon Adjusted		2 Applicable percentage based on age of youngest				
3 Gross Income, as		4 qualifying individual on January 1 of tax year				
5 Percentage of Federal		6 Poverty Level				
		7				
		8 At least 6 years				
		9 but less than				
		10 At least		11 13, or at least		
		12 3 years		13 13 but less		
		14 but less		15 18 years or		
16 Greater		17 Less than		18 Under 3		
19 than		20 or equal to		21 years		
22 0%		23 10%		24 8%		
25 10%		26 20%		27 18%		
28 20%		29 30%		30 28%		
31 30%		32 40%		33 38%		
34 40%		35 50%		36 48%		
37 50%		38 60%		39 53%		
40 60%		41 70%		42 58%		
43 70%		44 80%		45 63%		
46 80%		47 90%		48 68%		
49 90%		50 110%		51 73%		
52 110%		53 120%		54 69%		
55 120%		56 130%		57 64%		
58 130%		59 140%		60 59%		
61 140%		62 150%		63 53%		
64 150%		65 160%		66 48%		
67 160%		68 200%		69 45%		
70 200%		71 210%		72 43%		
73 210%		74 220%		75 40%		
76 220%		77 230%		78 38%		
79 230%		80 240%		81 35%		
82 240%		83 250%		84 33%		
85 250%		86 260%		87 30%		
88 260%		89 280%		90 28%		
91 280%		92 300%		93 18%		
94 300%		-		15%		
				10%		
				5%		
				5%		
				4%		
				4%		
				4%		
				4%		
				0%		
				0%		

39
40 (3) The applicable percentage for a household in excess of eight members shall be calculated as
41 if for a household size of eight members.

42 (4) The credit under this section is not allowed:

43 (a) To a taxpayer with federal adjusted gross income or Oregon adjusted gross income, which-
44 ever is greater, in excess of 300 percent of the federal poverty level; or

45 (b) To any taxpayer who does not report earned income that is taxable by Oregon on the

1 taxpayer's return.

2 (5) In order to ensure compliance with the eligibility requirements of the credit allowed under
3 this section, the Department of Revenue shall be afforded access to utilization data maintained by
4 the Department of Human Services in its administration of the Employment Related Day Care pro-
5 gram.

6 (6) The Department of Revenue may assess a penalty in an amount not to exceed 25 percent of
7 the amount of credit claimed by the taxpayer against any taxpayer who knowingly claims or at-
8 tempts to claim any amount of credit under this section for which the taxpayer is ineligible, or
9 against any individual who knowingly assists another individual in claiming any amount of credit
10 for which the individual is ineligible.

11 (7) The Department of Revenue may adopt rules for carrying out the provisions of this section
12 and prescribe the form used to claim a credit and the information required on the form.

13 (8) A nonresident individual shall be allowed the credit computed in the same manner and sub-
14 ject to the same limitations as the credit allowed a resident by subsection (1) of this section.
15 However, the credit shall be prorated using the proportion provided in ORS 316.117.

16 (9) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
17 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-
18 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

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

22 (11) If the amount allowable as a credit under this section, when added to the sum of the
23 amounts allowable as payment of tax under ORS 316.187 or 316.583, other tax prepayment amounts
24 and other refundable credit amounts, exceeds the taxes imposed by ORS chapters 314 and 316 for
25 the tax year after application of any nonrefundable credits allowable for purposes of ORS chapter
26 316 for the tax year, the amount of the excess shall be refunded to the taxpayer as provided in ORS
27 316.502.

28 (12) Any amount that is refunded to the taxpayer under this section and that is in excess of the
29 tax liability of the taxpayer does not bear interest.

30 **SECTION 2.** ORS 315.176 is amended to read:

31 315.176. (1) As used in this section:

32 (a) "Biofuel" means liquid, gaseous or solid fuels, derived from biomass, that have been con-
33 verted into a processed fuel ready for use as energy by a biofuel producer's customers or for direct
34 biomass energy use at the biofuel producer's site.

35 (b) "Biofuel producer" means a person that, through activities in Oregon:

36 (A) Alters the physical makeup of biomass to convert it into biofuel;

37 (B) Changes one biofuel into another type of biofuel; or

38 (C) Uses biomass in Oregon to produce energy.

39 (c) "[*Bovine*] **Cow** manure" means, subject to subsection (2) of this section, [*cow*] manure that
40 is produced by cows on Oregon farms.

41 (d) "[*Bovine*] **Cow** manure producer or collector" means a person that produces or collects
42 [*bovine*] **cow** manure in Oregon that is used, in Oregon, as biofuel or to produce biofuel.

43 (2) The Director of Agriculture may adopt rules to define criteria, only as the criteria apply to
44 [*bovine*] **cow** manure, to determine additional characteristics of [*bovine*] **cow** manure for purposes
45 of this section.

1 (3)(a) A [*bovine*] **cow** manure producer or collector shall be allowed a credit against the taxes
 2 that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS
 3 chapter 317 or 318 for the collection of [*bovine*] **cow** manure in Oregon that is used, in Oregon, as
 4 biofuel or to produce biofuel.

5 (b) A credit under this section may be claimed in the tax year in which the credit is certified
 6 under this section.

7 (c) A credit under this section may be claimed only once for each wet ton of [*bovine*] **cow**
 8 manure.

9 (4) The amount of the credit shall be calculated at a rate of \$3.50 per wet ton, as certified under
 10 this section.

11 (5)(a) The State Department of Agriculture may establish by rule procedures and criteria for
 12 determining the amount of the tax credit to be certified under this section. The department shall
 13 provide written certification to taxpayers that are eligible to claim the credit under this section.

14 (b) The State Department of Agriculture may charge and collect a fee from taxpayers for certi-
 15 fication of credits under this section. The fee may not exceed the cost to the department of issuing
 16 certifications.

17 (6) All fees collected under this section shall be deposited in the State Treasury to the credit
 18 of the Department of Agriculture Service Fund. Moneys deposited under this section are contin-
 19 uously appropriated to the department for the purpose of administering and enforcing the provisions
 20 of this section.

21 (7)(a) The Department of Revenue may [*by rule*] require that the State Department of Agricul-
 22 ture provide information about the certification issued under this section, including the name and
 23 taxpayer identification number of the taxpayer or other person receiving certification, the date the
 24 certification was issued in its final form, the approved amount of credit and the first tax year for
 25 which the credit may be claimed.

26 (b) A taxpayer that is a pass-through entity that has received certification under this section
 27 shall provide [*the information described in paragraph (a) of this subsection*] to the Department of
 28 Revenue within two months after the close of the tax year in which the certification was issued **the**
 29 **name, taxpayer identification number and any other information required by the department**
 30 **of each owner receiving a distributive share of the credit, in a manner prescribed by the**
 31 **department.**

32 [*(c) The Department of Revenue shall prescribe by rule the manner and the timing of submission*
 33 *of the information to the department.*]

34 (8) The amount of the credit claimed under this section for any tax year may not exceed the tax
 35 liability of the taxpayer.

36 (9) Each [*bovine*] **cow** manure producer or collector shall maintain a record of the written cer-
 37 tification of the amount of the tax credit under this section for a period of at least five years after
 38 the tax year in which the credit is claimed and provide the written certification to the Department
 39 of Revenue upon request.

40 (10) The credit shall be claimed on a form prescribed by the Department of Revenue that con-
 41 tains the information required by the department.

42 (11) Any tax credit otherwise allowable under this section that is not used by the taxpayer in
 43 a particular tax year may be carried forward and offset against the taxpayer's tax liability for the
 44 next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be
 45 carried forward and used in the second succeeding tax year, and likewise any credit not used in that

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

4 (12) In the case of a credit allowed under this section:

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

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

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

13 **SECTION 3.** ORS 315.184 is amended to read:

14 315.184. The total amount [*claimed*] **certified by the State Department of Agriculture** for tax
15 credits for the production or collection of [*bovine*] **cow** manure under ORS 315.176 may not exceed
16 \$5 million for all taxpayers for any [*tax*] **calendar** year. If the [*State*] department [*of Agriculture*]
17 receives applications for the credit sufficient to exceed this amount, the department shall by rule
18 proportionately reduce the amount of certified credits among all taxpayers applying for the credit.

19 **SECTION 4.** ORS 317.097 is amended to read:

20 317.097. (1) As used in this section:

21 (a) "Annual rate" means the yearly interest rate specified on the note, and not the annual per-
22 centage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

23 (b) "Finance charge" means the total of all interest, loan fees, interest on any loan fees financed
24 by the lending institution, and other charges related to the cost of obtaining credit.

25 (c) "Lending institution" means any insured institution, as that term is defined in ORS 706.008,
26 any mortgage banking company that maintains an office in this state or any community development
27 corporation that is organized under the Oregon Nonprofit Corporation Law.

28 (d) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

29 (e) "Nonprofit corporation" means a corporation that is exempt from income taxes under section
30 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2016.

31 (f) "Preservation project" means housing that was previously developed as affordable housing
32 with a contract for rent assistance from the United States Department of Housing and Urban De-
33 velopment or the United States Department of Agriculture and that is being acquired by a spon-
34 soring entity.

35 (g) "Qualified assignee" means any investor participating in the secondary market for real estate
36 loans.

37 (h) "Qualified borrower" means any borrower that is a sponsoring entity that has a controlling
38 interest in the real property that is financed by a qualified loan. A controlling interest includes, but
39 is not limited to, a controlling interest in the general partner of a limited partnership that owns the
40 real property.

41 (i) "Qualified loan" means:

42 (A) A loan that meets the criteria stated in subsection (5) of this section or that is made to re-
43 finance a loan that meets the criteria described in subsection (5) of this section; or

44 (B) The purchase by a lending institution of bonds, as defined in ORS 286A.001, issued on behalf
45 of the Housing and Community Services Department, the proceeds of which are used to finance or

1 refinance a loan that meets the criteria described in subsection (5) of this section.

2 (j) "Sponsoring entity" means a nonprofit corporation, nonprofit cooperative, state governmental
 3 entity, local unit of government as defined in ORS 466.706, housing authority or any other person,
 4 provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation,
 5 nonprofit cooperative, state governmental entity, local unit of government or housing authority.

6 (2) The Department of Revenue shall allow a credit against taxes otherwise due under this
 7 chapter for the taxable year to a lending institution that makes a qualified loan certified by the
 8 Housing and Community Services Department as provided in subsection (7) of this section. The
 9 amount of the credit is equal to the difference between:

10 (a) The amount of finance charge charged by the lending institution during the taxable year at
 11 an annual rate less than the market rate for a qualified loan that is made before January 1, 2026,
 12 that complies with the requirements of this section; and

13 (b) The amount of finance charge that would have been charged during the taxable year by the
 14 lending institution for the qualified loan for housing construction, development, acquisition or re-
 15 habilitation measured at the annual rate charged by the lending institution for nonsubsidized loans
 16 made under like terms and conditions at the time the qualified loan for housing construction, de-
 17 velopment, acquisition or rehabilitation is made.

18 (3) The maximum amount of credit for the difference between the amounts described in sub-
 19 section (2)(a) and (b) of this section may not exceed four percent of the average unpaid balance of
 20 the qualified loan during the tax year for which the credit is claimed.

21 (4) Any tax credit allowed under this section that is not used by the taxpayer in a particular
 22 year may be carried forward and offset against the taxpayer's tax liability for the next succeeding
 23 tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and
 24 used in the second succeeding tax year, and likewise, any credit not used in that second succeeding
 25 tax year may be carried forward and used in the third succeeding tax year, and any credit not used
 26 in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year,
 27 and any credit not used in that fourth succeeding tax year may be carried forward and used in the
 28 fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

29 (5) To be eligible for the tax credit allowable under this section, a lending institution must make
 30 a qualified loan by either purchasing bonds, as defined in ORS 286A.001, issued on behalf of the
 31 Housing and Community Services Department, the proceeds of which are used to finance or refi-
 32 nance a loan that meets the criteria stated in this subsection, or by making a loan directly to:

33 (a) An individual or individuals who own a dwelling, participate in an owner-occupied commu-
 34 nity rehabilitation program and are certified by the local government or its designated agent as
 35 having an income level when the loan is made of less than 80 percent of the area median income;

36 (b) A qualified borrower who:

37 (A) Uses the loan proceeds to finance construction, development, acquisition or rehabilitation
 38 of housing; and

39 (B) Provides a written certification executed by the Housing and Community Services Depart-
 40 ment that the:

41 (i) Housing created by the loan is or will be occupied by households earning less than 80 percent
 42 of the area median income; and

43 (ii) Full amount of savings from the reduced interest rate provided by the lending institution is
 44 or will be passed on to the tenants in the form of reduced housing payments;

45 (c) [*Subject to subsection (14) of this section,*] A qualified borrower who:

1 (A) Uses the loan proceeds to finance construction, development, acquisition or rehabilitation
 2 of housing consisting of a manufactured dwelling park; and

3 (B) Provides a written certification executed by the Housing and Community Services Depart-
 4 ment that the housing will continue to be operated as a manufactured dwelling park during the pe-
 5 riod for which the tax credit is allowed; or

6 (d) A qualified borrower who:

7 (A) Uses the loan proceeds to finance acquisition or rehabilitation of housing consisting of a
 8 preservation project; and

9 (B) Provides a written certification executed by the Housing and Community Services Depart-
 10 ment that the housing preserved by the loan:

11 (i) Is or will be occupied by households earning less than 80 percent of the area median income;
 12 and

13 (ii) Is the subject of a rent assistance contract with the United States Department of Housing
 14 and Urban Development or the United States Department of Agriculture that will be maintained by
 15 the qualified borrower.

16 (6) A loan made to refinance a loan that meets the criteria stated in subsection (5) of this sec-
 17 tion must be treated the same as a loan that meets the criteria stated in subsection (5) of this sec-
 18 tion.

19 (7) For a qualified loan to be eligible for the tax credit allowable under this section, the Housing
 20 and Community Services Department must execute a written certification for the qualified loan that:

21 (a) Specifies the period, not to exceed 20 years, as determined by the Housing and Community
 22 Services Department, during which the tax credit is allowed for the qualified loan; and

23 (b) States that the qualified loan is within the limitation imposed by subsection (8) of this sec-
 24 tion.

25 (8) The Housing and Community Services Department may certify qualified loans that are eligi-
 26 ble under subsection (5) of this section if the total credits attributable to all qualified loans eligible
 27 for credits under this section and then outstanding do not exceed \$25 million for any fiscal year. In
 28 making loan certifications under subsection (7) of this section, the Housing and Community Services
 29 Department shall attempt to distribute the tax credits statewide, but shall concentrate the tax
 30 credits in those areas of the state that are determined by the Oregon Housing Stability Council to
 31 have the greatest need for affordable housing.

32 (9) The tax credit provided for in this section may be taken whether or not:

33 (a) The financial institution is eligible to take a federal income tax credit under section 42 of
 34 the Internal Revenue Code with respect to the project financed by the qualified loan; or

35 (b) The project receives financing from bonds, the interest on which is exempt from federal
 36 taxation under section 103 of the Internal Revenue Code.

37 (10) For a qualified loan defined in subsection (1)(i)(B) of this section financed through the pur-
 38 chase of bonds, the interest of which is exempt from federal taxation under section 103 of the
 39 Internal Revenue Code, the amount of finance charge that would have been charged under sub-
 40 section (2)(b) of this section is determined by reference to the finance charge that would have been
 41 charged if the federally tax exempt bonds had been issued and the tax credit under this section did
 42 not apply.

43 (11) A lending institution may sell a qualified loan for which a certification has been executed
 44 to a qualified assignee whether or not the lending institution retains servicing of the qualified loan
 45 so long as a designated lending institution maintains records, annually verified by a loan servicer,

1 that establish the amount of tax credit earned by the taxpayer throughout each year of eligibility.

2 (12) Notwithstanding any other provision of law, a lending institution that is a community de-
3 velopment corporation organized under the Oregon Nonprofit Corporation Law may transfer all or
4 part of a tax credit allowed under this section to one or more other lending institutions that are
5 stockholders or members of the community development corporation or that otherwise participate
6 through the community development corporation in the making of one or more qualified loans for
7 which the tax credit under this section is allowed.

8 (13) The lending institution shall file an annual statement with the Housing and Community
9 Services Department, specifying that it has conformed with all requirements imposed by law to
10 qualify for a tax credit under this section.

11 *[(14) Notwithstanding subsection (1)(h) and (j) of this section, a qualified borrower on a loan to
12 finance the construction, development, acquisition or rehabilitation of a manufactured dwelling park
13 under subsection (5)(c) of this section must be a nonprofit corporation, manufactured dwelling park
14 nonprofit cooperative, state governmental entity, local unit of government as defined in ORS 466.706
15 or housing authority.]*

16 *[(15)]* (14) The Housing and Community Services Department and the Department of Revenue
17 may adopt rules to carry out the provisions of this section.

18 **SECTION 5. The amendments to ORS 315.176, 315.184, 315.264 and 317.097 by sections 1
19 to 4 of this 2018 Act apply to tax years beginning on or after January 1, 2019.**

20 **SECTION 6.** ORS 314.752 is amended to read:

21 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
22 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
23 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
24 allowable to the shareholders of the S corporation.

25 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
26 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
27 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
28 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
29 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
30 manner prescribed under section 1377(a) of the Internal Revenue Code.

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

34 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
35 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
36 316.117, then that provision shall apply to the nonresident shareholder.

37 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
38 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
39 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
40 workforce housing), ORS 315.176 (*[bovine]* cow manure), ORS 315.204 (dependent care assistance),
41 ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237
42 (employee and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304
43 (pollution control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331
44 (energy conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable en-
45 ergy resource equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation

1 facilities), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership
2 zones), ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions),
3 ORS 315.521 (university venture development funds), ORS 315.523 (employee training programs), ORS
4 315.533 (low income community jobs initiative), ORS 315.675 (Trust for Cultural Development Ac-
5 count contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise
6 zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-
7 search expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter
8 774, Oregon Laws 2013 (alternative fuel vehicle contributions).

9 **SECTION 7. This 2018 Act takes effect on the 91st day after the date on which the 2018**
10 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

11