Agriculture Workforce Housing Construction

ORS 315.163 - 315.164	Year Enacted:	1989	Transferable:	Yes
	Length:	10-years	Means Tested:	No
	Refundable:	No	Carryforward:	9-years
TER 1.411	Kind of cap:	Program	Inflation Adjusted:	No

Description

Taxpayers are allowed a credit for the construction, rehabilitation, or acquisition of agriculture workforce housing in Oregon. The credit is 50 percent of the eligible costs of housing projects. The credit can be taken over ten years, with a maximum credit amount taken any in of the ten years equal to 20% of the total credit amount ($50\% * eligible\ costs$). The credit also has a nine-year carryforward. The policy also allows for the credit to be transferred to a contributor. The defined term "contributor" leads to some level of ambiguity in to whom a credit may be transferred. The Housing and Community Services Department (HCSD) may certify up to $3,625,000 in credits per year. Certification is received through an application process submitted to and approved by HCSD. The following qualifications must be met for eligibility:

- Rehabilitation projects must restore housing to a condition that meets building code requirements
- Housing must be registered, if required, as an agriculture workforce camp with the Department of Consumer and Business Services
- The housing must be occupied by agriculture workers.

At this time, ambiguity exists regarding the sunset, carryforward and transferability of the credit. Absent statutory changes, the Department of Revenue intends to interpret the sunset as not allowing any claiming of the credit absent credits that have been carried forward from previous tax years. This interpretation is likely inconsistent with legislative intent.

Policy

A specific policy purpose statement regarding the agriculture workforce housing construction credit is not contained in statute. Rather, a general policy purpose of the credit can be derived by referencing the relevant legislative committee discussions and deliberations that took place when the credit was enacted and/or substantively modified. Legislative documentation from the implementing legislation in 1989 indicates that the tax credit was part of a package of policies (SBs 732,734, and 735) designed to address problems with the scarcity and condition of housing for agricultural workers. The Legislature declared, in part,

> that it is the policy of this state to insure adequate agricultural labor accommodations commensurate with the housing needs of Oregon's workers that meet decent health, safety and welfare standards. (ORS 197.677)[39]

Roughly a decade later, in 2000, the Farmworker Housing Interim Task Force evaluated the housing situation for Oregon farmworkers. They concluded that there was a "...serious and growing shortage of

[39] In 2001, when the administrative responsibility for the tax credit was moved to OHCS, this language was added to ORS 456.550(7) as part of the policy statement for the Housing and Community Services Department.

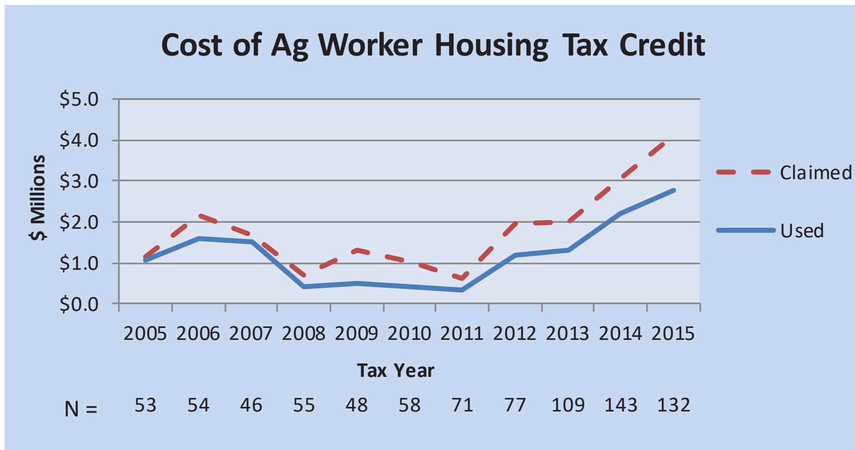
safe, decent, and affordable housing...” for this portion of Oregon’s labor force. Among the Task Force’s findings was that

> [f]armers, community-based groups, faith organizations, government agencies, and the private sector need to work together to provide an adequate mix of safe, decent, and affordable housing for farmworkers.

The Task Force also noted that multiple approaches are required that should include both on-farm housing and community-based housing. In short, this tax credit appears to be a key tool in the development of affordable housing for Oregon’s agricultural workforce.

Beneficiaries

The chart to the right shows the use of this tax credit between 2005 and 2015. During this time period, which includes the most recent recession, the annual amount of tax credits claimed have ranged between $700,000 and $4.1 million. The amount used to actually offset tax liability ranged from $400,000 to $2.8 million. Use of the tax credit has grown substantially since 2011. In tax year 2015, use of the credit was about equal between personal and corporate income tax filers at roughly $1.4 million respectively.



Similar Incentives Available in Oregon

HCSD issues tax exempt “conduit” bonds on behalf of certain organizations who assume debt service and payment responsibilities. Administrative costs of the conduit program in 2017-19 were budgeted at $1.3 million (for all programs, not agricultural workforce projects exclusively). In addition, HCSD receives roughly $20,000 per biennium in penalties and fines transferred from OSHA and BOLI to the Farmworker Housing Development Account, which can also be used as a means of financing agricultural workforce housing. However, awards are made only periodically, and the account balance currently sits at $421.

Credit Effectiveness and Efficiency

Given the policy purpose for this tax credit, the key issue is whether or not the tax credit increases the supply of safe and affordable housing for agricultural workers. By design, the tax credit directly reduces the cost of providing such housing by 50 percent of eligible costs. The policy has been in effect for roughly 25 years, so a review and analysis of historical data should help inform the analysis to determine if the tax credit has been effective and whether or not any changes are warranted.

In 1989, the Legislature found that Oregon had a large stock of farmworker housing that did not meet minimum health and safety standards (ORS 197.680(1)). Furthermore, they noted that it would not be feasible to rehabilitate much of that housing stock to meet appropriate standards. Statute outlined broad policies to improve the situation, including the creation of this tax credit. At the time, program responsibility was given to the Department of Consumer and Business Services. In 2001, responsibility was moved to OHCS in an effort to better align state policies with their corresponding administrative agencies.

Since the inception of the tax credit, the state has experienced some significant shifts in the nature of the agricultural workforce and a commensurate impact on housing needs. There has been a general shift from migrant labor toward more year-round work. During this same time, there has been a decrease in the amount of employer-owned housing units. An estimated 70 percent of farmworkers stay in the same location throughout the year. The share of the labor force working for a single employer increased from 65 percent in 1998 to 81 percent in 2009. This gradual change in mobility has had a direct impact on the housing market. According to Western SARE, one example of the housing shortage exists in Washington County, where, in 2009, the supply of housing was between 10,500 and 11,500 units below demand.

Perhaps the most significant change is the role of community-based housing compared to on-farm housing. Over time there has been a gradual shift away from on-farm housing to community-based housing. For example, from 1995 to 2011, the share of farmworker housing units that were employer-owned fell from 30 percent to 13 percent. Also, employer-provided housing for workers had historically been free (an estimated 83 percent of the time). Western SARE cites that, generally speaking, the supply of adequate housing has been limited by a combination of lack of funds, high land costs, land use limitations, and lack of support services for residents.

Stakeholders argue that community-based housing addresses many of these concerns. They argue that community-based housing provides the needed stability for families of agricultural workers, including access to services such as education, child care, and workforce training. In addition, there are a number of CDCs that help provide such infrastructure, such as the Community and Shelter Assistance Corporation of Oregon (CASA of Oregon), Hacienda Community Development Corporation, and the Farmworker Housing Development Corporation (FHDC).

To that end, much of the tax credit dollars are similarly allocated. According to data from OHCS, between 2001 and 2012, tax credits were integral parts of funding packages that resulted in the construction of 1,257 units - 830 community-based and 437 on-farm. An example of such a funding package is provided in the table to the right.

Example Project, $M	
Credit, Grants, & Equity	
Tax Credit	$1,670,302
Home / HDGP	$750,000
Energy Trust	$24,000
FHLB	$239,976
USDA Rural Development 514 Grant	$1,500,000
Other Grants	$250,000
Loans	
Oregon Rural Rehabilitation	$75,000
USDA Rural Development 516 Loan	$1,500,000

According to historical testimony, the program has been fully or near fully allocated every year. When tax returns are examined, however, the amount of tax credit claimed is substantially less.

Despite the estimated nature of the data, the differences between OHCS certification data and DOR tax return data are significant. It is not until 2014 that return data reaches the expected levels. Possible explanations include: (1) taxpayers indicating the wrong tax credit on tax returns, (2) developers being certified for tax credits and then being unable to claim them, maybe because the projects were never completed, (3) an unknown data error, (4) some credits may simply remain unused because they remain held by non-profit developers who are unable to sell them, or (5) there are significant lags in development that suggest a more delayed reporting on tax returns.

Similar to the federal low income housing tax credit, one key feature of this tax credit is the ability to sell, or transfer, the tax credit. Many developers of this kind of housing are non-profits, so they are unable to directly use the tax credit. However, the tax credit can be sold to project contributors, who then are able to use the tax credits. According to the OHCS (historical testimony), credits have been sold at a discount of between 15 and 30 percent. So, purchasers of the tax credits appear to have paid between 70 cents and 85 cents for every tax credit dollar purchased.

Analysis of Potential Direct Appropriation

A direct spending program could be implemented to replace the Agriculture Workforce Housing Construction tax credit program. A direct spending program would address the potential lack of benefit (prior to credit transfer) that that existing tax credit has on entities that lack sufficient tax liability to benefit from the tax credit. A potential drawback to a direct spending program is that the current structure of the credit spreads the “spending” to support housing construction through the tax system over multiple years (minimum five years) which could be somewhat difficult to mimic as a direct spending program.

Administrative & Compliance Costs

Administrative costs are largely incurred by the OHCS department. For example, the department tracks the awarded tax credits to ensure that the tax credit cap is not exceeded. The DOR incurs some incremental costs as this is one of several tax credits that affects tax liability. There could be costs incurred during audits if the relevant taxpayer has claimed the credit. Or there could be more explicit and direct costs if the DOR chooses to undertake an audit project that focuses on the tax credit.

Similar Credits Allowed in Other States

It is unclear if other states offer a similar tax credit.

Statute	Tax Expenditure (TE) Name and TE Number (Number aligns with Governor's Tax Expenditure Report)
315.163-172	1.411 Agriculture Workforce Housing Construction

Year	Bill	Chapter	Section(s)	Policy
1989	**SB 734**	**963**	**2,4**	**Enacting legislation | Credit (non-refundable) equal to 50% of costs actually paid or incurred by taxpayer to complete farm-worker housing project | Credit taken over 5 years, equal instalments | 5 year carry forward of credit | Property requirements include: comply with all occupational safety or health laws, regulations, rules and standards, registered by BOLI, operated by indorsed farm-worker camp operator**
1991	**SB 857**	**766**	**3,4,5**	**Placed sunset of 1/1/1996 | Defined eligible costs | For builders, repealed requirement that housing be in compliance with safety and health standards, be registered and be operated by a licensed operator; instead required housing, upon completion, to comply with safety**
1991	HB 2162	877	10,34	Clarified eligibility of S corporations for their prorated share of business tax credits
1993	HB 2413	730	19,20,20a	Measure combined and moved business tax credits from ORS chapters 316, 317, & 318 into chapter 315
1995	SB 705	500	10	Property registration requirement moved from BOLI to DCBS
1995	**HB 2255**	**746**	**52,52a,58**	**Extended sunset to 12/31/2001 | Reduced credit to 30% of costs | Prohibited credit for housing occupied by owner or operator of the housing | Limited credit in an EFU zone to rehabilitation or existing farmworker housing or installation of manufactured housing | Credit certification authority given to DCBS | Credit approval required by DCBS and eligible costs limited to no more than estimated cost originally approved by DCBS | Limited total statewide certified costs to $3.3 million per year**
2001	HB 3171	613	13a,14	Eliminated distinction of seasonal or year-round farmworker and defined farmworker and farmworker housing
2001	HB 3172	625	2,3	Definitional modifications | DCBS oversight replaced by Housing and Community Services
2001	**HB 3173**	**868**	**1,3,4,5**	**Made credit permanent by eliminating 12/31/2001 sunset | Increased credit to 50% of eligible costs | Increased annual cap on certified project costs to $7.5 million (from previous $3.3) | Set period for claiming the credit to 10 years with no more than 20% of credit being claimed in any one year | Allowed owner or operator to transfer up to 80% of credit amount**
2003	**HB 2166**	**588**	**1,3,5,6a,7, 9,11,15**	**Added acquisition costs to eligible costs | Modified application deadlines | Allowed lending institution not subject to taxation to sell or transfer credit to taxpayer subject to taxation | Allowed entire credit to be sold (previously limited to 80%) | Decreased total annual**
2009	HB 2067	913	28	Placed sunset of 1/1/2014
2011	HB 2154	471	1,2,3,4	Modified definition of "farmworker" to include handling/processing of agricultural or aquacultural crops or products | Expanded definition of "contributor" to include a person who has purchased or received the credit | Makes exception to the provision barring credits for dwellings occupied by relatives of owner in case of manufactured dwelling park nonprofit cooperatives | Modified the definition of taxpayer to include tax-exempt entities | Allows housing occupants to include farmworkers who are retired or disabled | Allows occupant to be relative of housing owner/operator if housing is a manufactured dwelling
2013	HB 3367	750	18,19,20,2 1,22,23	Extended sunset to 1/1/2020 | Terminology modifications

Statute	Tax Expenditure (TE) Name and TE Number
Note after 316.116	1.428 Manufactured Dwelling Park Closure

Year	Bill	Chapter	Section(s)	Policy
2007	**HB 2735**	**906**	**17,18**	**Enacting legislation | Credit available to individuals whose principal residence is a manufactured dwelling for which the rental agreement is being terminated due to exercise of eminent domain | Credit equal to $5,000 minus amounts paid to individual for exercise of eminent domain | Credit made refundable | Sunset 1/1/2013**
2009	HB 2067	913	33	Placed sunset of 1/1/2014
2013	HB 3367	750	33	Placed sunset of 1/1/2020
2015	SB 296	348	17	Non-substantive required statutory revision