

## Oregon Cultural Trust

ORS 315.675	Year Enacted:	2001	Transferable:	No
	Length:	1-year	Means Tested:	No
	Refundable:	No	Carryforward:	None
	Kind of cap:	None	Inflation Adjusted:	No
TER 1.447				

### Description

The Oregon Cultural Trust credit provides a credit against personal and corporate income taxes for amounts contributed during the tax year to the Trust for Cultural Development Account established under ORS 359.405. The credit is only allowed to the extent that the taxpayer has contributed an equal amount to an Oregon cultural organization during the tax year. The amount of the credit is equal to the amount of the donation to the Trust for Cultural Development but may not exceed the lesser of the tax liability of the taxpayer or \$500 for personal income taxpayers or \$2,500 for corporate income taxpayers. While statute dictates that the \$500 limit exists regardless of taxpayer filing status, the original revenue impact statement issued at time of credit enactment and administration of the credit has viewed the limit for joint filers to be \$1,000. This interpretation and administration of the credit appears to violate statute by providing a higher overall limit for jointly filed tax returns. The credit is nonrefundable and cannot be carried forward to later tax years.

ORS 315.675(7) states:

(7) The credit allowed under this section is in addition to any charitable contribution deduction allowable to the taxpayer

ORS 315.675(7) allows a taxpayer to claim as an Oregon itemized deduction, donations made to the Cultural Trust regardless of reduction in tax liability received due the credit.<sup>8</sup> A brief explanation of the federal current/historical interpretation of “charitable contribution” elucidates the importance of this provision of Oregon statute. In *United States v. American Bar Endowment* (1986) the U.S. Supreme Court interpreted the phrase “charitable contribution” in IRC section 170. The court decision read in part:

The sine qua non of a charitable contribution is a transfer of money or property without adequate consideration. The taxpayer, therefore, must at a minimum demonstrate that he purposely contributed money or property in excess of the value of any benefit he received in return.

A taxpayer may therefore claim a deduction for the difference between a payment to a charitable organization and the market value of the benefit received in return, on the theory that the payment has the "dual character" of a purchase and a contribution. (*United States v. American Bar Endowment*, 1986)

Effectively, charitable contributions can only be claimed as an itemized deduction in amounts exceeding any value received for the charitable contribution. ORS 315.675(7) allows a taxpayer to claim the full amount of the donation to the Cultural Trust, without subtracting the value of the tax credit, for Oregon itemized deduction purposes. Federally, similar language does not exist, yet Oregon taxpayers were recommended to consult with their accredited tax preparer regarding the availability to take the

<sup>8</sup> IRC Section 170(a)(1) generally allows an itemized deduction for any “charitable contribution” paid within the taxable year. IRC Section 170(c)(1) includes for definitional purposes of “charitable contribution” a contribution or gift to or for the use of a State, a possession of the United States, or any political subdivision of the foregoing, but only if the contribution or gift is made exclusively for public purposes.

deduction on their federal return while also taking the credit on their Oregon return.<sup>9</sup> On August 23<sup>rd</sup>, 2018, the IRS released proposed regulations on charitable contributions and state and local tax credits. Under the proposed regulations

a taxpayer who makes payments or transfers property to an entity eligible to receive tax deductible contributions must reduce their charitable deduction by the amount of any state or local tax credit the taxpayer receives or expects to receive. (Internal Revenue Service, 2018)

Assuming the IRS proposed regulation takes effect, it appears the IRS will require taxpayers to account for the value of any local tax credit received when itemizing deductions on a federal return.

### *Policy*

A specific policy purpose statement regarding the Cultural Trust tax 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.

The Oregon Cultural Trust credit was enacted in 2001 as part of a broader legislative package relating to the Oregon Cultural Trust. The legislation was enacted at the behest of the Joint Interim Task Force on Cultural Development.<sup>10</sup> The Task Force recommended three primary funding sources for the Cultural Trust<sup>11</sup>:

- 1) Conversion of state assets
- 2) Personal and corporate income tax credits
- 3) Vanity license plates.

In identifying and analyzing the policy purpose of the credit, this report will focus on the credit as a means for funding the Cultural Trust. This report does not attempt to analyze the Cultural Trust itself as that lies outside the statutory defined framework of this report.

In referencing the output of the Task Force on Cultural Development and the legislative testimony provided by proponents of the tax credit, the policy purpose of the tax credit can be summarized as existing to ***protect and stabilize Oregon's cultural resources by creating a solid foundation for the future through the leveraging of private sector support from both individuals and businesses*** (Joint Interim Task Force on Cultural Development, 2001). In their testimony, the Task Force identified two goals for the credit:

- 1) Stimulate contributions to Oregon 501(c)(3) nonprofit cultural organizations and
- 2) Build the Oregon Trust through citizen contributions.

(Joint Interim Task Force on Cultural Development, 2001)

---

<sup>9</sup> This recommendation is provided by the Cultural Trust on the Trust's FAQ webpage <https://culturaltrust.org/resources/faq/>

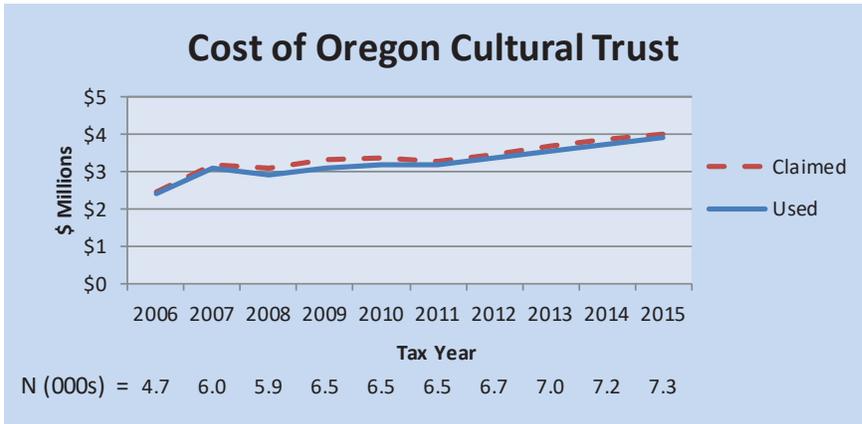
<sup>10</sup> The Joint Interim Task Force released the Culture of Oregon report detailing the Task Force's findings and recommendations and can be downloaded from the Cultural Trust's website [https://culturaltrust.org/wp-content/uploads/culture\\_development\\_full.pdf](https://culturaltrust.org/wp-content/uploads/culture_development_full.pdf)

<sup>11</sup> Statutorily the account is known as Trust for Cultural Development Account. Cultural Trust is the term used in this report as it is the widely referenced name for the account.

## Beneficiaries

The direct beneficiaries of the cultural trust credit are the taxpayers qualifying for the credit with the indirect beneficiary of the credit being the Trust for Cultural Development to which credit matched donations are made.

While the credit is available to both individuals and corporations, over 99% of the credit amount claimed is claimed by non-corporate taxpayers. The chart below displays the credit amount claimed and amount used to reduce tax liability for the ten most recent tax years for which data is available. A general trend of increasing annual credit claimants has existed over the 2006-2015 tax year (TY) period. However, preliminary TY 2016 return data shows a slight decline from TY 2015.



Direct credit beneficiaries are primarily higher income returns. For TY 2016, 83% of the revenue impact of the credit originated from returns in the highest income quintile for full-year filers (income above \$92,700). For comparison, returns from the top income quintile comprised about 69% of net tax for TY 2016. During the most recent five tax years for which data is available, the number of personal income taxpayers claiming the credit has ranged from 6,700 to 7,300. In addition to the credit, ORS 315.675 specifically allows taxpayers that itemized to also deduct from taxable income their donation amount made to the Trust for Cultural Development allowing for additional tax benefit to the taxpayer (discussed in greater detail in Effectiveness and Efficiency subsection).

AGI Level (\$000)	% of Total
<70	9%
70-100	12%
100-250	52%
250-500	19%
500+	8%

For tax years 2006-2015, average corporate use of the credit has been fewer than 10 taxpayers with average credit amount being \$1,700 per taxpayer per year.

Age	Claimed	Pct. of Total
0 - 14	0	0%
15 - 19	100	0%
20 - 24	500	0%
25 - 29	8,900	0%
30 - 34	29,000	1%
35 - 39	76,600	2%
40 - 44	123,400	3%
45 - 49	175,700	5%
50 - 54	207,600	5%
55 - 59	300,200	8%
60 - 64	519,200	14%
65 - 69	744,900	20%
70 - 74	708,100	19%
75 - 79	467,000	12%
80 - 84	267,600	7%
85+	182,800	5%
Unknown	1,400	0%
<b>Total</b>	<b>3,812,900</b>	<b>100%</b>

Oregon Cultural Trust   2016 Personal Income Tax Filers				
Income Group of Full-Year Filers	Number of Filers Using Credit	Avg. Revenue Impact of Credit	Revenue Impact (\$ millions)	Percent of Revenue Impact by Income Group
< \$14,400	80	\$60	<\$0.1	0%
\$14,400 - \$29,800	220	\$140	<\$0.1	1%
\$29,800 - \$52,400	460	\$230	\$0.1	3%
\$52,400 - \$92,700	1,420	\$360	\$0.5	14%
> \$92,700	5,030	\$610	\$3.1	83%
<b>Total Full-Year Filers</b>	<b>7,200</b>	<b>\$520</b>	<b>\$3.7</b>	<b>100%</b>

(State of Oregon Tax Expenditure Report: 2019-21 Biennium)

While the Cultural Trust is an indirect beneficiary of the credit, the Trust is the intended beneficiary as described in the policy section of this report. To qualify for the credit, individuals and corporations must first donate to an exempt 501(c)(3) cultural organization in Oregon. The taxpayer must then donate to the Trust for Cultural Development at which time the taxpayer may qualify to receive an income tax credit up to the lesser of the amount of the donation or \$500 (\$2,500 C-Corps). Credit is designed to encourage taxpayers to donate to the Cultural Trust.

#### *Similar Incentives Available in Oregon*

Oregon allows qualified taxpayers engaging in qualifying film production to subtract from taxable income payments received from the Greenlight Oregon Labor Rebate program. The Greenlight Oregon Labor Rebate program offers productions that spend more than \$1 million in Oregon a cash rebate of up to 6.2% of Oregon-based payroll. Transfers to the Greenlight Labor Rebate Fund were \$5.1 and \$4.0 million in fiscal years 2017 and 2018 respectively.

The Oregon Production Investment Fund offers qualifying film or television productions a 20% cash rebate on production related goods and services paid to Oregon vendors and a 10% cash rebate of wages paid for work done in Oregon including both Oregon and non-Oregon residents.

Oregon provides a credit against personal or corporate income taxes to taxpayers who purchase auctioned tax credits, the proceeds of which go to the Oregon Production Investment Fund (OPIF). OPIF moneys are used to make reimbursements to filmmakers or local media production services companies for a portion of the actual Oregon expenses incurred by the filmmaker or local media production services company.

The Legislative Fiscal Office identified several direct spending programs that shared some level of policy relationship to the credit in terms of providing funding to Arts/Culture programs in Oregon. The spending programs along with each program's 2017-19 legislatively adopted budget amount is detailed in the table below.

<i>Direct Spending Program</i>	<b>2017-19 Legislatively Approved Budget (\$M)</b>		
	<i>General Fund</i>	<i>Other Funds</i>	<i>Federal Funds</i>
OR Bus. Dev. Dept. (OBDD) - Arts Division	\$3.8	8.2*	\$2.0
OBDD - Direct Support of Arts/Cultural Projects	\$1.7	\$2.5	
<b>Special Government Payments</b>			
Cash Grants Supporting Cultural Projects	\$3.2		
Lottery Bond Supported Cultural Projects		\$1.8	
State Fair Operations	\$1.0		
County Fairs Operations		\$3.8	
Oregon Public Broadcasting	\$0.5	\$1.6	
Oregon Historical Society	\$0.9	\$0.4	

\*Much of this reflects cash transfers related to the tax credit.

The Oregon Arts Commission is a statewide arts funding entity supported by the General Fund, Federal Funds, and Other Funds. Direct grants support operating expenses of arts and cultural organizations and provide financial support to individual artists throughout the state.

Direct support includes funds in the Oregon Business Development Department (OBDD) budget specified for legislatively-designated arts and cultural projects. The projects are identified either in statute or by the Joint Committee on Ways and Means in a budget report. In the 2017-19 biennium budget, 10 identified projects are funded from a combination of General Fund and lottery bond proceeds.

The Special Government Payments program in the Department of Administrative Services (DAS) houses state payments to non-state agencies. Per the Oregon Constitution, General Fund appropriations may only be made to state agencies. Therefore, when the Legislature desires to provide state monies to non-state entities it often appropriates the money to DAS, who then passes the funding on to the intended recipient. State payments in support of cultural arts most often flow through DAS or the Oregon Business Development Department.

### *Credit Effectiveness and Efficiency*

As discussed in the Policy section of this report, the primary identified purpose of the Cultural Trust tax credit is to protect and stabilize Oregon’s cultural resources by creating a solid foundation for the future through the leveraging of private sector support from both individuals and businesses. Two goals were identified by the Task Force on Cultural Development: 1) Stimulate contributions to Oregon 501(c)(3) nonprofit cultural organizations, and 2) Build the Oregon Trust through citizen contributions.

As is the case with other credits discussed in this report, the mere existence of the tax credit fulfills the policy purpose of the credit. For purposes of analyzing credit effectiveness and efficiency, this report will examine contributions to the Trust for Cultural Development (amount, stability, etc.), functionality of the credit from taxpayer and government perspectives, potential implications of the federal Tax Cuts and Jobs Act of 2017 and the original funding goals of the Joint Interim Task Force on Cultural Development.

The table to the right displays sources of revenue for the Trust for Cultural Development. Contributions represent the largest source of revenue for the Trust, however, as the fund balance has grown over time, interest earnings have been contributing a larger proportion of overall revenue. During the 2005-2015 period, the amount of credit claimed by income taxpayers has averaged over 90% of contributions amount, indicating contributions are strongly linked to the availability of the income tax credit. It is safe to assume that absent the tax credit for donations, few if any contributions would be made to the Trust.

Fiscal Year	----- Revenues (\$'s Millions) -----				
	Total Revenue	Contributions	License Plates	Interest Earnings	Other
2003	1.84	1.74	0.06	0.04	0.00
2004	1.85	1.75	0.07	0.03	0.00
2005	3.21	2.99	0.14	0.08	0.00
2006	3.20	2.47	0.25	0.20	0.29
2007	3.82	2.85	0.29	0.33	0.34
2008	4.71	3.58	0.30	0.39	0.45
2009	4.30	3.52	0.36	0.22	0.19
2010	4.51	3.73	0.35	0.08	0.34
2011	4.65	3.90	0.34	0.07	0.34
2012	4.66	3.79	0.35	0.09	0.43
2013	4.62	3.95	0.33	0.21	0.12
2014	5.28	3.95	0.31	0.47	0.54
2015	5.41	4.14	0.34	0.51	0.41

Contributions have represented a fairly steadily growing revenue source for Trust contributions. For tax years 2011 to 2016 average amount claimed by personal income taxpayers grew on average by 3.6% annually. During and following the great recession, amounts claimed were about \$3.3 million for tax years 2009-2011 after which year over year growth resumed. The number of claimants and the amount claimed in TY 2016 is down slightly from TY 2015. It remains to be seen whether this represents a blip in year over year growth or a plateauing of contributions. For reasons explored later, recent tax law changes at the federal level could affect contributions to the Trust.

The original funding goals declared by the Joint Interim Task Force on Cultural Development were ambitious. The original goal was to raise \$218 million in funds for the Cultural Trust within the first ten years. The conversion of state properties was expected to yield \$102 million whereas the personal and corporate income tax credits were expected to yield nearly \$135 million over ten years (Joint Interim Task Force on Cultural Development, 2001). Through the initial ten years, about \$30 million in contributions relating to the credit were made to the Trust.

Operational parameters of the Trust for Cultural Development are contained in ORS 359.400 to 359.444. ORS 359.426 requires fiscal year disbursement of no less than 50 percent, but no more than 60 percent, of all moneys raised for and deposited in the Trust for Cultural Development Account during the previous fiscal year, and all interest earned on the moneys. If the tax credit is allowed to expire, a law change is recommended to ensure continued disbursements from the Trust in amounts similar to prior years.

For taxpayers with tax liability that itemize their deductions, the Cultural Trust credit can yield positive after-tax income. This is because ORS 315.675(7) specifically allows a taxpayer to receive the tax credit while also deducting from Oregon taxable income the amount of the donation made to the Cultural Trust. This is displayed in the example where the \$500 donation is matched by the \$500 credit. In addition, the taxpayer is allowed to deduct that \$500 from taxable income generally yielding \$45 in tax savings for the taxpayer (\$500 \* 9% tax rate). In this scenario, the state is essentially paying the taxpayer \$545 to donate \$500 to the Cultural Trust.<sup>12</sup>

<b>Example of Credit &amp; Deduction Interaction</b>	
Donation	\$500
Credit	\$500
Charitable Donation Deduction	\$45
Change in Tax Liability	-\$45

In December of 2017 the federal Tax Cuts and Jobs Act (TCJA) was enacted. The tax package made a number of changes to corporate and personal income taxation. While numerous changes could have an affect on charitable donations, of specific note to the Cultural Trust credit is the increase in the federal standard deduction.<sup>13</sup> The TCJA increased the standard deduction from \$6,350 (Single) and \$12,700 (Joint) in 2017 to \$12,000 (S) and \$24,000 (J) beginning with TY 2018. This increase in the standard deduction is expected to greatly increase the number of taxpayers choosing the standard deduction as opposed to itemizing. As charitable donations are an itemized deduction, for many taxpayers there will no longer be a tax benefit at the federal level for donating to charity.<sup>14</sup>

### *Analysis of Potential Direct Appropriation*

Direct appropriations to similar cultural-supportive or directly to cultural/arts programs have existed in previous biennial legislative budgets. See *Similar Incentives in Oregon* section of this report for a listing of such programs in the 2017-19 Legislative Adopted Budget.

Potential advantages and disadvantages exist for the Cultural Trust in utilizing a direct appropriation approach in replacement of the tax credit funding approach. Advantages of direct appropriation are known budgetary amounts. Usage of the tax credit has grown fairly steadily since inception and correspondingly so has Cultural Trust contribution revenue. However, tax credit associated donations have fallen short of the original funding expectations of the Joint Interim Task Force on Cultural Development. A potential disadvantage of direct appropriation is the biennial budget process as compared to standard six-year tax credit review.

### *Administrative & Compliance Costs*

Historical administrative costs for the Cultural Trust have grown in line with total revenue. From 2007-2015, administrative costs averaged 13% of total revenue and ranged from 9.2% to 16.6% over the same period (Cultural Trust, 2018).<sup>15</sup> Administrative costs for the Department of Revenue are minimal.

<sup>12</sup> For simplification purposes, this example excludes potential changes in federal tax liability of the taxpayer and ignores the time value of money.

<sup>13</sup> The share of federal itemizers is expected to decrease from 40% of all returns to 15% (Legislative Revenue Office, 2018)

<sup>14</sup> Oregon’s standard deduction was not changed by the TCJA and therefore no tax benefit change occurred in Oregon.

<sup>15</sup>Administrative costs as used in this context includes: salaries & benefits, marketing & outreach and office expenses & statewide services.

Statute	Tax Expenditure (TE) Name and TE Number (Number aligns with Governor's Tax Expenditure Report)			
---------	--	--	--	--

315.675	1.447 Oregon Cultural Trust				
	Year	Bill	Chapter	Section(s)	Policy
	2001	HB 2923	954	18,19	Enacting legislation   Tax credit equal to 100% of contributions to Cultural Development Account that are matched by an equal contribution to an Oregon cultural organization   Credit limited to: \$500 (S) \$1,000 (J) \$2,500 corporations   Sunset 1/1/2013
	2009	HB 2067	913	35	Placed sunset of 1/1/2014
	2013	HB 3367	750	8	Placed sunset of 1/1/2020
2015	HB 2478	629	39	Terminology modification, replaced "A husband and wife" with "Spouses in a marriage"	

316.157-158	1.450 Certain Retirement Income				
	Year	Bill	Chapter	Section(s)	Policy
	1991	HB 2352	823	5,9	Enacting legislation   Grants income tax credit for all types of pensions   Credit set to 9% of eligible pension income   Limited eligible pension income to \$7,500 (S) \$15,000 (J) less social security retirement benefits and household income in excess of \$15,000 (S) \$30,000 (J)   Applicable to taxpayers ≥ 58   Increased min age by 1 year each biennium stopping at 62 in
	1997	SB 1144	839	13	IRC connection date of 12/31/1996   Eliminated eligibility of nonresident individual
	1999	HB 2137	90	12	IRC connection date of 12/31/1998
	2001	HB 2272	660	39	Eliminated IRC connection
	2009	HB 2067	913	36	Placed sunset of 1/1/2014
	2013	HB 3367	750	9	Placed sunset of 1/1/2020
	2015	SB 296	348	19,22	Conforming language necessitated by repeal of ORS 310.630
	2015	SB 36	480	9,10	Correction and conforming
	2016	HB 4025	33	22	Update IRC "adjusted gross income" connection date to 12/31/2015
	2017	SB 148	315	24	LC reviser bill: improved syntax and deleted outdated provisions
	2017	SB 701	527	22	Update IRC "adjusted gross income" connection date to 12/31/2016
	2018	SB 1529	101	22	Update IRC "adjusted gross income" connection date to 12/31/2017