

B-Engrossed
House Bill 2332

Ordered by the Senate June 26
Including House Amendments dated May 21 and Senate Amendments
dated June 26

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Representative Bill Witt and Representative-elect Steve March)

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.

Provides \$1,000 credit against personal income taxes for taxpayer providing certain unreimbursed assistance to relative for tax years beginning on or after January 1, 2003, and before January 1, 2005. Increases credit to \$1,500 for tax years beginning on or after January 1, 2005. Defines types of assistance eligible for credit. Limits credit to taxpayers with taxable incomes that do not exceed \$40,000. Phases out credit for taxpayers with income above \$40,000. Adjusts qualifying income for inflation.

Provides that trust land of Indian tribe is reservation enterprise zone under specified circumstances. Provides tax credit for eligible business operating new business facility in reservation enterprise zone.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; amending ORS 314.752 and 318.031; and prescribing
3 an effective date.

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

5 **SECTION 1. Section 2 of this 2001 Act is added to and made a part of ORS chapter 315.**

6 **SECTION 2. (1) As used in this section:**

7 **(a) "Activities of daily living" means dressing, grooming, bathing, feeding, toileting or**
8 **walking.**

9 **(b) "Physical, mental or developmental disability" means a condition that:**

10 **(A) Causes the person with the condition to be considered a disabled person under ORS**
11 **174.107;**

12 **(B) Significantly interferes with the person's ability to engage in one or more activities**
13 **of daily living without assistance; and**

14 **(C) Consists of a long-term or chronic condition from which the person's recovery is not**
15 **expected.**

16 **(c) "Relative" means a spouse, child, father, mother, sibling or other ancestor or de-**
17 **scendant who is related by blood, marriage or adoption.**

18 **(2) An individual taxpayer shall be allowed a credit against the tax due under ORS chap-**
19 **ter 316 if:**

20 **(a) The taxpayer provides unreimbursed daily care to a relative that consists of providing**
21 **assistance to the relative with two or more activities of daily living for more than six months**
22 **of the tax year;**

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 **(b) The relative receiving the assistance does not reside in a nursing home, assisted living**
2 **facility or other residence where assistance with activities of daily living is provided by the**
3 **facility staff;**

4 **(c) The reason the taxpayer is providing care is due to the physical, mental or develop-**
5 **mental disability of the recipient of the care; and**

6 **(d) The taxpayer has federal adjusted gross income that does not exceed \$40,000 for the**
7 **tax year for which the credit is claimed.**

8 **(3)(a) For tax years beginning on or after January 1, 2004, the maximum amount of fed-**
9 **eral adjusted gross income a taxpayer may earn in order to qualify for a credit under this**
10 **section shall be adjusted by multiplying \$40,000 by the ratio of the U.S. City Average Con-**
11 **sumer Price Index for the average of the monthly indexes for the second quarter of the**
12 **calendar year over the average of the monthly indexes for the second quarter of the calendar**
13 **year 2003.**

14 **(b) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S.**
15 **City Average Consumer Price Index for All Urban Consumers (All Items) as published by the**
16 **Bureau of Labor Statistics of the United States Department of Labor.**

17 **(c) If any adjustment determined under paragraph (a) of this subsection is not a multiple**
18 **of \$50, the adjustment shall be rounded to the nearest multiple of \$50.**

19 **(4) The amount of the credit provided under this section shall equal:**

20 **(a) \$1,000 for tax years beginning on or after January 1, 2003, and before January 1, 2005.**

21 **(b) \$1,500 for tax years beginning on or after January 1, 2005.**

22 **(5) Notwithstanding subsections (2)(d) and (4) of this section, a taxpayer shall be allowed**
23 **a credit under this section that equals the amount provided in subsection (4) of this section**
24 **reduced by \$0.50 for every \$1 that the taxpayer's federal adjusted gross income exceeds the**
25 **greater of \$40,000 or the amount determined under subsection (3) of this section.**

26 **(6) The credit allowed in a tax year may not exceed the tax liability of the taxpayer and**
27 **may not be carried forward to a succeeding tax year.**

28 **(7) A nonresident shall be allowed the credit under this section in the proportion provided**
29 **in ORS 316.117.**

30 **(8) If a change in the status of a taxpayer from resident to nonresident or from nonres-**
31 **ident to resident occurs, the credit allowed by this section shall be determined in a manner**
32 **consistent with ORS 316.117.**

33 **(9) Only one taxpayer shall be eligible for the credit provided under this section for the**
34 **assistance provided to a relative during a tax year.**

35 **(10) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or**
36 **if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the**
37 **credit allowed under this section shall be prorated or computed in a manner consistent with**
38 **ORS 314.085.**

39 **(11) The Department of Revenue may prescribe form and substantiation requirements to**
40 **be met in order to claim the credit provided under this section.**

41 **SECTION 3. Section 2 of this 2001 Act applies to tax years beginning on or after January**
42 **1, 2003.**

43 **SECTION 4. Sections 5 to 9 of this 2001 Act are added to and made a part of ORS chapter**
44 **285B.**

45 **SECTION 5. As used in sections 5 to 9 of this 2001 Act:**

1 **(1) “Eligible business” means a business that:**

2 **(a) Is engaged within a reservation enterprise zone in the manufacture or provision of**
3 **goods, products or services to other businesses or to the general public, through activities**
4 **including, but not limited to, manufacturing, assembly, fabrication, processing, shipping,**
5 **storage, retail sales or services, child care, housing, retail food service, health care, tourism,**
6 **entertainment, financial services, professional services, energy development, construction**
7 **or similar activities; and**

8 **(b) Occupies or owns a new business facility within a reservation enterprise zone.**

9 **(2) “New business facility”:**

10 **(a) Means a physical asset within a reservation enterprise zone that satisfies the follow-**
11 **ing requirements:**

12 **(A) The facility is used by a business in the operation of a revenue-producing enterprise,**
13 **except that the revenue-producing enterprise must consist of activity other than leasing the**
14 **facility to another person; and**

15 **(B) The facility is acquired by or leased to a business on or after January 1, 2002, in-**
16 **cluding a facility, the title or possession of which is transferred to the business on or after**
17 **January 1, 2002, or a facility, the construction, erection or installation of which is completed**
18 **on or after January 1, 2002;**

19 **(b) Subject to paragraph (c) of this subsection, includes a facility acquired or leased from**
20 **a person that used the facility in a revenue-producing enterprise within the boundaries of the**
21 **same Indian reservation immediately prior to the transfer of title or possession of the facil-**
22 **ity to the business; and**

23 **(c) Does not include:**

24 **(A) A facility that is used in a revenue-producing enterprise that is the same or sub-**
25 **stantially identical to the revenue-producing enterprise in which the facility was previously**
26 **used within the boundaries of the same Indian reservation; or**

27 **(B) Any property that merely replaces existing property and that does not expand the**
28 **capacity of the revenue-producing enterprise in which the facility is to be used.**

29 **(3) “Reservation enterprise zone” means a zone designated by section 7 of this 2001 Act.**

30 **(4) “Tribal government” means the governing body of an Indian tribe, if the governing**
31 **body has the authority to levy, impose and collect taxes within the boundaries of the reser-**
32 **vation of the tribe.**

33 **(5) “Tribal tax” means any specific tax that is or may be levied or imposed by a tribal**
34 **government upon a business and that is measured with reference to a specific level or**
35 **quantity of that business’s income, operations, use or ownership of property. “Tribal tax”**
36 **includes, but is not limited to, an income or excise tax, an ad valorem property tax, a gross**
37 **receipts tax or a sales and use tax.**

38 **SECTION 6.** The Legislative Assembly finds that the welfare of the residents of the rural
39 Indian reservations of this state is acutely dependent upon the growth, development and
40 expansion of employment and business opportunities within reservation boundaries. Ge-
41 ographic and other obstacles have made it difficult for rural Indian reservations to attract
42 and retain private business investment. The tax systems of this state, by subjecting busi-
43 nesses located within reservation boundaries to state taxation in addition to any taxation
44 imposed by the reservations themselves, has heightened the economic isolation of this state’s
45 rural reservations and impeded the efforts of Indian tribes to develop sufficient tax bases to

1 fund essential governmental services on their reservations. The Legislative Assembly further
2 finds that it is in the best interests of this state to create equality that will enable rural
3 Indian reservations to attract and retain private business investment. The Legislative As-
4 sembly declares that it is the purpose of sections 5 to 9 of this 2001 Act to remove the tax
5 disincentives that currently inhibit private business and industry from locating and operating
6 enterprises within the boundaries of the rural Indian reservations of this state.

7 **SECTION 7.** (1) Trust land of an Indian tribe that meets all of the following requirements
8 is designated as a reservation enterprise zone for the purposes of sections 5 to 9 of this 2001
9 Act:

10 (a) The Indian tribe is a federally recognized Indian tribe;

11 (b) The reservation of the Indian tribe is entirely within the boundaries of this state;

12 (c) The land for which zone designation is sought is land held in trust by the United
13 States for the benefit of the Indian tribe and is located entirely within the boundaries of the
14 reservation;

15 (d) As of January 1, 2002, the population density of the reservation, as measured by the
16 most recent federal decennial census, does not exceed 15 persons per square mile;

17 (e) Fifty percent or more of the households within the boundaries of the reservation have
18 incomes below 80 percent of the median income of this state, as defined by the most recent
19 federal decennial census; and

20 (f) The unemployment rate within the reservation for all enrolled members of the tribe
21 is at least 2.0 percentage points greater than the comparable unemployment rate for this
22 state, as defined by the most recently available data published or officially provided and
23 verified by the United States Government, the Employment Department, the Portland State
24 University Center for Population Research and Census or a special study conducted under a
25 contract with a regional academic institution.

26 (2) At the request of a tribal government, the Economic and Community Development
27 Department shall determine if trust land is designated as a reservation enterprise zone under
28 this section.

29 **SECTION 8.** (1) A credit against the taxes that are otherwise due under ORS chapter 316
30 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to an eligible
31 business operating a new business facility in a reservation enterprise zone.

32 (2) The amount of the credit allowed to the eligible business shall equal:

33 (a) The amount of tribal property tax imposed on a new business facility of an eligible
34 business that is paid or incurred by the eligible business during the income or corporate ex-
35 cise tax year of the eligible business; or

36 (b) If the eligible business has not previously conducted business operations within the
37 reservation enterprise zone, the amount of tribal tax paid or incurred by the eligible business
38 during the income or corporate excise tax year of the eligible business.

39 (3) The credit allowed to the eligible business may not exceed the tax liability of the eli-
40 gible business for the tax year and may not be carried over to another tax year.

41 (4) A credit is allowable under this section only to the extent the tribal tax on which the
42 credit is based is imposed on businesses not owned by Indians on a uniform basis within the
43 territory over which the tribal government has the authority to levy, impose and collect
44 taxes.

45 (5) The credit shall be claimed on a form prescribed by the Department of Revenue con-

1 **taining the information required by the department, including information sufficient for the**
2 **department to determine that the taxpayer is an eligible business and that the facility oper-**
3 **ated by the business is a new business facility.**

4 **(6) An eligible nonresident individual shall be allowed the credit computed in the same**
5 **manner and subject to the same limitations as the credit allowed a resident by subsection**
6 **(1) of this section. However, the credit shall be prorated using the proportion provided in**
7 **ORS 316.117.**

8 **(7) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or**
9 **if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the**
10 **credit allowed by this section shall be prorated or computed in a manner consistent with ORS**
11 **314.085.**

12 **(8) If a change in the status of a taxpayer from resident to nonresident or from nonres-**
13 **ident to resident occurs, the credit allowed by this section shall be determined in a manner**
14 **consistent with ORS 316.117.**

15 **(9) An eligible business claiming a credit under this section shall maintain records suffi-**
16 **cient to authenticate the allowance of the credit claimed under this section and shall furnish**
17 **the department with these records upon the request of the department.**

18 **(10) A credit claimed by an eligible business may not be disallowed solely because the el-**
19 **igible business conducts business operations both within and outside of a reservation enter-**
20 **prise zone.**

21 **SECTION 9. (1) A reservation enterprise zone shall be considered to be a nonurban en-**
22 **terprise zone for purposes of ORS 285B.650 to 285B.728. The tribal government of the reser-**
23 **vation shall be considered to be the sponsor of the reservation enterprise zone.**

24 **(2) Reservation enterprise zones may not be taken into account in determining the**
25 **number of nonurban enterprise zones allowable in this state under ORS 285B.650 to 285B.728,**
26 **and are not subject to numerical limitation under ORS 285B.650 to 285B.728.**

27 **(3) In order for property within a reservation enterprise zone to be exempt under ORS**
28 **285B.698, the business firm and property must meet all of the requirements applicable to**
29 **business firms and property in any nonurban enterprise zone.**

30 **SECTION 10. ORS 314.752 is amended to read:**

31 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
32 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
33 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
34 allowable to the shareholders of the S corporation.

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

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

44 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
45 credit that in the case of a nonresident that the credit be allowed in the proportion provided in ORS

1 316.117, then that provision shall apply to the nonresident shareholder.

2 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
3 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
4 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
5 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
6 ment of Revenue by rule and includes but is not limited to the following credits: ORS 315.104
7 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening,
8 by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 (farmworker housing), ORS
9 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.234 (child de-
10 velopment program contributions), ORS 315.254 (youth apprenticeship sponsorship), ORS 315.304
11 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy
12 conservation facilities), ORS 315.504 (Oregon Capital Corporation), ORS 315.604 (bone marrow
13 transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative fuel ve-
14 hicle) **and section 8 of this 2001 Act (tribal taxes on reservation enterprise zones).**

15 **SECTION 11.** ORS 318.031 is amended to read:

16 318.031. It being the intention of the Legislative Assembly that this chapter and the Corporation
17 Excise Tax Law of 1929 shall be administered as uniformly as possible (allowance being made for
18 the difference in imposition of the taxes and the operative date of this chapter), the provisions of
19 ORS 305.140 and 305.150 and ORS chapter 314 and of the following sections of ORS chapter 315 or
20 317, as amended on or before August 3, 1955, and as they may thereafter be amended, are incorpo-
21 rated into this chapter by this reference and made a part hereof: ORS 315.104, 315.134, 315.156,
22 315.204, 315.208, 315.234, 315.254, 315.304, 315.504 and 315.604 (all only to the extent applicable for
23 a corporation) and ORS 317.010, 317.013, 317.018 to 317.022, 317.030, 317.035, 317.038, 317.080, 317.152
24 to 317.154, 317.259 to 317.303, 317.310 to 317.386, 317.476 to 317.485, 317.510 to 317.635 and 317.705
25 to 317.725 and section 40, chapter 835, Oregon Laws 1997, and section 4, chapter 358, Oregon Laws
26 1999, **and section 8 of this 2001 Act.**

27 **SECTION 12.** **Sections 5 to 9 of this 2001 Act and the amendments to ORS 314.752 and**
28 **318.031 by sections 10 and 11 of this 2001 Act apply to tax years beginning on or after January**
29 **1, 2002.**

30 **SECTION 13.** **This 2001 Act takes effect on the 91st day after the date on which the**
31 **regular session of the Seventy-first Legislative Assembly adjourns sine die.**

32