

Enrolled
House Bill 2332

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CHAPTER

AN ACT

Relating to taxation; creating new provisions; amending ORS 314.752 and 318.031 and section 6, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 764); and prescribing an effective date.

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

NOTE: Sections 1 through 3 were deleted by amendment. Subsequent sections were not re-numbered.

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

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

(1) "Eligible business" means a business that:

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

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

(2) "New business facility":

(a) Means a physical asset within a reservation enterprise zone that satisfies the following requirements:

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

(B) The facility is acquired by or leased to a business on or after January 1, 2002, including a facility, the title or possession of which is transferred to the business on or after January 1, 2002, or a facility, the construction, erection or installation of which is completed on or after January 1, 2002;

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

(c) Does not include:

(A) A facility that is used in a revenue-producing enterprise that is the same or substantially identical to the revenue-producing enterprise in which the facility was previously used within the boundaries of the same Indian reservation; or

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

(3) "Reservation enterprise zone" means a zone designated by section 7 of this 2001 Act.

(4) "Tribal government" means the governing body of an Indian tribe, if the governing body has the authority to levy, impose and collect taxes within the boundaries of the reservation of the tribe.

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

SECTION 6. The Legislative Assembly finds that the welfare of the residents of the rural Indian reservations of this state is acutely dependent upon the growth, development and expansion of employment and business opportunities within reservation boundaries. Geographic and other obstacles have made it difficult for rural Indian reservations to attract and retain private business investment. The tax systems of this state, by subjecting businesses located within reservation boundaries to state taxation in addition to any taxation imposed by the reservations themselves, has heightened the economic isolation of this state's rural reservations and impeded the efforts of Indian tribes to develop sufficient tax bases to fund essential governmental services on their reservations. The Legislative Assembly further finds that it is in the best interests of this state to create equality that will enable rural Indian reservations to attract and retain private business investment. The Legislative Assembly declares that it is the purpose of sections 5 to 9 of this 2001 Act to remove the tax disincentives that currently inhibit private business and industry from locating and operating enterprises within the boundaries of the rural Indian reservations of this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The credit shall be claimed on a form prescribed by the Department of Revenue containing the information required by the department, including information sufficient for the department to determine that the taxpayer is an eligible business and that the facility operated by the business is a new business facility.

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

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

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

(9) An eligible business claiming a credit under this section shall maintain records sufficient to authenticate the allowance of the credit claimed under this section and shall furnish the department with these records upon the request of the department.

(10) A credit claimed by an eligible business may not be disallowed solely because the eligible business conducts business operations both within and outside of a reservation enterprise zone.

SECTION 9. (1) A reservation enterprise zone shall be considered to be a nonurban enterprise zone for purposes of ORS 285B.650 to 285B.728. The tribal government of the reservation shall be considered to be the sponsor of the reservation enterprise zone.

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

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

(4) As used in this section, "business firm" has the meaning given that term in ORS 285B.650.

SECTION 10. ORS 314.752 is amended to read:

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

business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are allowable to the shareholders of the S corporation.

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

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

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

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

SECTION 11. ORS 318.031 is amended to read:

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

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

SECTION 13. If Senate Bill 764 becomes law, section 6, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 764), is amended to read:

Sec. 6. For purposes of ORS 315.304, the applicable percentage of the certified cost of a facility shall be one of the following:

(1) If the facility is certified under ORS 468.155 to 468.190 (1999 Edition) or if construction or installation of the facility is commenced prior to January 1, 2001, and completed prior to January 1, 2004, 50 percent.

(2) Except as provided in subsection (1) or (3) of this section, if the facility is certified pursuant to application for certification filed on or after January 1, 2002, and:

(a) Construction or installation of the facility is commenced on or after January 1, 2001, and on or before December 31, 2003, 25 percent; or

(b) Construction or installation of the facility is commenced after December 31, 2003, and on or before December 31, 2005, 15 percent.

(3) If certified pursuant to application for certification filed on or after January 1, 2002, 35 percent if:

(a) The applicant is certified under International Organization for Standardization standard ISO 14001;

(b) A Green Permit that applies to the facility has been issued under ORS 468.501 to 468.521;

(c) The facility is a nonpoint source or is regulated as a confined animal feeding operation under ORS 468B.200 to 468B.230;

(d) The facility is used for material recovery or recycling, as those terms are defined in ORS 459.005;

(e) The facility is used in an agricultural or forest products operation and is used for energy recovery, as defined in ORS 459.005;

(f) The certified cost of the facility does not exceed \$200,000;

(g) Construction or installation of the facility is entirely voluntary and no portion of it is required in order to comply with a federal law administered by the United States Environmental Protection Agency, a state law administered by the Department of Environmental Quality or a law administered by a regional air pollution authority; [or]

(h) The facility is, at the time of certification, located within an enterprise zone established under ORS 285B.650 to 285B.728 or within an area that has been designated a distressed area, as defined in ORS 285A.010, by the Economic and Community Development Department; or

[/h)] (i) The applicant demonstrates to the Department of Environmental Quality that the applicant uses an environmental management system at the facility. In order for the department to determine that the applicant uses an environmental management system at the facility:

(A) The applicant must have the environmental management system used at the facility reviewed by an independent third party familiar with environmental management systems and submit a report to the department stating that the provisions of this paragraph have been met. The report shall be accompanied by supporting materials that document compliance with the provisions of this paragraph. The report shall include certification from a registered or certified environmental management auditor employed by, or under contract with, the independent third party that reviewed the environmental management system; or

(B) The department shall contract with an independent third party familiar with environmental management systems to review the environmental management system employed at the facility. The third party shall review the environmental management system, and, if the third party determines that the environmental management system meets the provisions of this paragraph, a registered or certified environmental management system auditor employed by, or contracted with, the third party shall certify that determination to the department. The department shall recover from the applicant the costs incurred by the department as prescribed in ORS 468.073. An applicant shall be liable for the costs of the department under this subparagraph without regard to whether the department certifies the facility as a pollution control facility. The department may not certify a facility to which this subparagraph applies until the department has received full payment from the applicant.

SECTION 14. This 2001 Act takes effect on the 91st day after the date on which the regular session of the Seventy-first Legislative Assembly adjourns sine die.

Passed by House May 24, 2001

Repassed by House July 7, 2001

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Chief Clerk of House

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Speaker of House

Passed by Senate July 6, 2001

Repassed by Senate July 7, 2001

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President of Senate

Received by Governor:

.....M,....., 2001

Approved:

.....M,....., 2001

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Governor

Filed in Office of Secretary of State:

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Secretary of State