

Enrolled House Bill 2718

Sponsored by Representative SHETTERLY; Representatives KING, KROPF, KRUSE, LEE, NELSON, ROSENBAUM, C WALKER, V WALKER, WINTERS, Senators CASTILLO, FERRIOLI, MESSERLE, SHIELDS, TROW (at the request of Oregon Hunger Relief Task Force and Oregon Food Bank)

CHAPTER

AN ACT

Relating to taxation; creating new provisions; and amending ORS 315.154 and 315.156.

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

SECTION 1. ORS 315.154 is amended to read:

315.154. As used in **this section and** ORS 315.156:

(1) "Apparently wholesome food" means:

(a) Food fit for human consumption; and

(b) Food that meets all quality and labeling standards imposed by federal, state or local laws, even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus or other condition.

(2) "Crop" means an agricultural crop producing food for human consumption and includes, but is not limited to, bedding plants that produce food, orchard stock intended for the production of food and livestock that may be processed into food for human consumption.

(3) "Food bank or other charitable organization" means any organization located in this state, including but not limited to a gleaning cooperative, that is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code and that has as a principal or ongoing purpose the distribution of food to children or homeless, unemployed, elderly or low-income individuals.

[(1) "Gleaning" means the harvesting in Oregon of an agricultural crop or a portion of a crop grown primarily to be sold for cash that is donated by the grower of the crop to a gleaning cooperative at such a time that the crop is still usable as food for human beings and would otherwise go to waste because:]

[(a) The grower of the crop has supplied any crop contract quota with the wholesale or retail buyer:]

[(b) If the grower of the crop is a party to a contingent supply contract, the wholesale or retail buyer reduces the crop quota that was reasonably anticipated to be supplied by the grower; or]

[(c) Harvesting the crop for sale in the normal course of business is no longer economically feasible.]

[(2) "Gleaning cooperative" means a nonprofit federally tax exempt organization that is organized to provide and distribute produce to individuals who meet the low-income eligibility guidelines of the federal State Community Services Program established pursuant to the federal Community Services Act of 1974 (Public Law 93-744).]

(4) "Grower" includes a person who raises livestock.

(5) "Qualified donation" means the harvest or post-harvest contribution in Oregon of a crop or a portion of a crop grown primarily to be sold for cash that is donated by the grower of the crop to a gleaning cooperative, food bank or other charitable organization engaged in the distribution of food without charge, at such a time that the crop is still usable as food for human consumption and:

(a) The grower of the crop has supplied any crop contract quota with the wholesale or retail buyer;

(b) If the grower of the crop is a party to a contingent supply contract, the wholesale or retail buyer reduces the crop quota that was reasonably anticipated to be supplied by the grower; or

(c) The grower of the crop otherwise determines to make a donation of apparently wholesome food.

[(3)] (6) "Wholesale market price" means the market price for the produce determined either by:

(a) The amount paid to the grower by the last previous cash buyer of the particular crop; or

(b) In the event there is no previous cash buyer, a market price [determined by the gleaning cooperative] based upon the market price of the nearest regional wholesale buyer or the regional u-pick market price.

SECTION 2. ORS 315.156 is amended to read:

315.156. (1) A taxpaying individual or corporation [who] **that** is a grower of a crop and [who permits the gleaning] **that makes a qualified donation** of the crop shall be allowed a credit against the taxes otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, as follows:

(a) In the case of a **qualified** donation made under circumstances described in ORS 315.154 [(1)(a) and] **(5)(a) or** (b), the amount of the credit shall be 10 percent of the value of the quantity of the crop donated computed at the wholesale market price.

(b) In the case of a **qualified** donation made under circumstances described in ORS 315.154 [(1)(c)] **(5)(c)**, the amount of the credit shall be 10 percent of the value of the quantity of the crop donated computed at the wholesale market price that the grower would have received had the quantity of the crop donated been **sold or salable**.

(2) At the time of donation, the director, supervisor or other appropriate official of the [gleaning cooperative] **entity** to which a **qualified** donation is made shall supply to the grower of the crop donated two copies of a form prescribed by the Department of Revenue. The forms shall contain:

(a) The name and address of the grower;

(b) The description and quantity of the donated crop;

(c) The signature of the director, supervisor or other appropriate official of the [gleaning cooperative] **entity receiving the donated crop** verifying that the produce was or will be distributed to **children or homeless, unemployed, elderly or** low-income individuals [meeting the guidelines described in ORS 315.154 (2)];

(d) The wholesale market price [determined by the gleaning cooperative, in the event there is no previous cash buyer of the crop]; and

(e) Other information required by the Department of Revenue by rule.

(3) Tax claim for tax credit shall be substantiated by submission with the tax return, of the form described in subsection (2) of this section, a statement verified by the taxpayer that the **qualified** donation was made under circumstances described in ORS 315.154 [(1)] **(5)** and a copy of an invoice or other statement identifying the price received by the grower for the crops of comparable grade or quality if there is a previous cash buyer. The requirement for substantiation may be waived partially, conditionally or absolutely, as provided under ORS 315.063.

(4) Any tax credit otherwise allowable under this section [which] **that** is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in [such] **the** next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit

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

(5)(a) A nonresident individual shall be allowed the credit computed under this section in the same manner and subject to the same limitations as the credit allowed a resident by this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department 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.

(c) 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.

SECTION 3. The amendments to ORS 315.154 and 315.156 by sections 1 and 2 of this 2001 Act apply to tax years beginning on or after January 1, 2002.

Passed by House March 12, 2001

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Chief Clerk of House

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Speaker of House

Passed by Senate May 4, 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:

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

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Secretary of State