

CHAPTER 108

AN ACT

SB 1528

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

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

SECTION 1. Sections 2 and 3 of this 2018 Act are added to and made a part of ORS chapter 315.

SECTION 2. (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 a taxpayer for certified Opportunity Grant contributions made by the taxpayer during the tax year to the Opportunity Grant Fund established under section 4 of this 2018 Act.

(2)(a) The Department of Revenue shall, in cooperation with the Higher Education Coordinating Commission, conduct an auction of tax credits under this section. The department may conduct the auction in the manner that it determines is best suited to maximize the return to the state on the sale of tax credit certifications and shall announce a reserve bid prior to conducting the auction. The reserve amount shall be at least 95 percent of the total amount of the tax credit. Moneys necessary to reimburse the department for the actual costs incurred by the department in administering an auction, not to exceed 0.25 percent of auction proceeds, are continuously appropriated to the department. Moneys necessary to reimburse the commission for the actual costs incurred by the commission in administering an auction, not to exceed 0.25 percent of auction proceeds, are continuously appropriated to the commission. The department shall deposit net receipts from the auction required under this section in the Opportunity Grant Fund.

(b) The commission may adopt rules necessary for the administration of the auction.

(3) Contributions made under this section shall be deposited in the Opportunity Grant Fund.

(4)(a) Upon receipt of a contribution, the commission shall, except as provided in section 3 of this 2018 Act, issue to the taxpayer written certification of the amount certified for tax credit under this section to the extent the amount certified for tax credit, when added to all amounts previously certified for tax credit under this section, does not exceed \$14 million for the fiscal year in which certification is made.

(b) The commission and the department are not liable, and a refund of a contributed amount need not be made, if a taxpayer that has re-

ceived tax credit certification is unable to use all or a portion of the tax credit to offset the tax liability of the taxpayer.

(5) To the extent the commission does not certify contributed amounts as eligible for a tax credit under this section, the taxpayer may request a refund of the amount the taxpayer contributed, and the commission shall refund that amount.

(6)(a) Except as provided in paragraph (b) of this subsection, a tax credit claimed under this section may not exceed the tax liability of the taxpayer and may not be carried over to another tax year.

(b) Any tax credit otherwise allowable under this section 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 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.

(c) A taxpayer is not eligible for a tax credit under this section if the first tax year for which the credit would otherwise be allowed begins on or after January 1, 2024.

(7) If a tax credit is claimed under this section by a nonresident or part-year resident taxpayer, the amount shall be allowed without proration under ORS 316.117.

(8) If the amount of contribution for which a tax credit certification is made is allowed as a deduction for federal tax purposes, the amount of the contribution shall be added to federal taxable income for Oregon tax purposes.

SECTION 3. (1) In lieu of the issuance of certifications for tax credit under section 2 of this 2018 Act by the Higher Education Coordinating Commission, the Legislative Assembly may, no later than 30 days prior to the end of each fiscal year, appropriate to the commission for deposit into the Opportunity Grant Fund established under section 4 of this 2018 Act an amount equal to the total amount that would otherwise be certified for tax credits during the upcoming fiscal year, based on the amount of contributions and accompanying applications for credit received by the commission during the fiscal year.

(2) If the Legislative Assembly makes the election allowed in subsection (1) of this section:

(a) Any contributions to the Opportunity Grant Fund made for the upcoming fiscal year and for which an application for a credit under section 2 of this 2018 Act is pending shall, at the request of the taxpayer, be refunded by the commission; and

(b) A credit under section 2 of this 2018 Act may not be claimed for any contribution made during the current fiscal year.

SECTION 4. (1) The Opportunity Grant Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Opportunity Grant Fund shall be credited to the fund.

(2) Moneys in the Opportunity Grant Fund shall consist of:

(a) Amounts donated to the fund;

(b) Amounts appropriated or otherwise transferred to the fund by the Legislative Assembly;

(c) Other amounts deposited in the fund from any source; and

(d) Interest earned by the fund.

(3) Moneys in the fund are continuously appropriated to the Higher Education Coordinating Commission. After the payment of refunds to taxpayers as described in sections 2 and 3 of this 2018 Act and payments to a tax credit marketer for marketing services provided by the marketer as described in section 5 of this 2018 Act, the balance remaining in the fund shall be used for the Oregon Opportunity Grant program under ORS 348.260.

(4) Expenditures from the fund are not subject to ORS 291.232 to 291.260.

SECTION 5. The Higher Education Coordinating Commission may hire or contract with a marketer to market the tax credits described in section 2 of this 2018 Act to taxpayers.

SECTION 6. Sections 2, 3 and 5 of this 2018 Act apply to tax years beginning on or after January 1, 2018, and before January 1, 2024.

SECTION 7. 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 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 the following credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish screening, bypass devices, fishways), ORS 315.141 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS 315.521 (university venture development funds), ORS 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS 315.675 (Trust for Cultural Development Account contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774, Oregon Laws 2013 (alternative fuel vehicle contributions) and section 2 of this 2018 Act (Opportunity Grant Fund contributions).

SECTION 8. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523 and 315.533 and section 2 of this 2018 Act (all only to the extent applicable to a corporation) and ORS chapter 317.

SECTION 9. Section 10 of this 2018 Act is added to and made a part of ORS chapter 316.

SECTION 10. There shall be added to federal taxable income for Oregon tax purposes the

amount allowable as a deduction under section 199A(a) of the Internal Revenue Code for the tax year.

SECTION 11. Section 10 of this 2018 Act applies to tax years beginning on or after January 1, 2018.

SECTION 12. This 2018 Act takes effect on the 91st day after the date on which the 2018 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Approved by the Governor April 13, 2018
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