

Senate Bill 1593

Sponsored by Senator COURTNEY (Presession filed.)

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 **as introduced**.

Expands costs eligible for agriculture workforce housing tax credit to include operation costs incurred by owner in year in which taxpayer does not claim other eligible costs.

Applies to tax years beginning on or after January 1, 2017.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits for agriculture workforce housing; creating new provisions; amending ORS
3 315.163, 315.164 and 315.167; and prescribing an effective date.

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

5 **SECTION 1.** ORS 315.163 is amended to read:

6 315.163. As used in ORS 315.163 to 315.172:

7 (1)(a) "Acquisition costs" means the cost of acquiring buildings, structures and improvements
8 that constitute or will constitute agriculture workforce housing.

9 (b) "Acquisition costs" does not include the cost of acquiring land on which agriculture
10 workforce housing is or will be located.

11 (2) "Agricultural worker" means any person who, for an agreed remuneration or rate of pay,
12 performs temporary or permanent labor for another in the:

13 (a) Production of agricultural or aquacultural crops or products;

14 (b) Handling of agricultural or aquacultural crops or products in an unprocessed stage;

15 (c) Processing of agricultural or aquacultural crops or products;

16 (d) Planting, cultivating or harvesting of seasonal agricultural crops; or

17 (e) Forestation or reforestation of lands, including but not limited to the planting, transplanting,
18 tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal
19 of brush and slash and other related activities.

20 (3) "Agriculture workforce housing" means housing:

21 (a) Limited to occupancy by agricultural workers, including agricultural workers who are re-
22 tired or disabled, and their immediate families; and

23 (b) No dwelling unit of which is occupied by a relative of the owner or operator of the agricul-
24 ture workforce housing, except in the case of a manufactured dwelling in a manufactured dwelling
25 park nonprofit cooperative as defined in ORS 62.803.

26 (4) "Agriculture workforce housing project" means the acquisition, construction, installation or
27 rehabilitation of agriculture workforce housing.

28 (5) "Condition of habitability" means a condition that is in compliance with:

29 (a) The applicable provisions of the state building code under ORS chapter 455 and the rules
30 adopted thereunder; or

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) If determined on or before December 31, 1995, sections 12 and 13, chapter 964, Oregon Laws
2 1989.

3 (6) "Contributor" means a person:

4 (a) That acquired, constructed, manufactured or installed agriculture workforce housing or
5 contributed money to finance an agriculture workforce housing project; or

6 (b) That has purchased or otherwise received via transfer a credit as provided in ORS 315.169
7 (2).

8 (7) "Eligible costs" includes acquisition costs, finance costs, construction costs, excavation costs,
9 installation costs, **operation costs** and permit costs and excludes land costs.

10 **(8) "Operation costs" includes costs of electricity, gas, oil, water, sewer service, repair
11 and maintenance necessary to operate agriculture workforce housing.**

12 [(8)(a)] **(9)(a)** "Owner" means a person that owns agriculture workforce housing.

13 (b) "Owner" does not include a person that only has an interest in the agriculture workforce
14 housing as a holder of a security interest.

15 [(9)] **(10)** "Rehabilitation" means to make repairs or improvements to a building that improve its
16 livability and are consistent with applicable building codes.

17 [(10)] **(11)** "Relative" means a brother or sister (whether by the whole or by half blood), spouse,
18 ancestor (whether by law or by blood), or lineal descendant of an individual.

19 [(11)] **(12)** "Taxpayer" includes a nonprofit corporation, a tax-exempt entity or any other person
20 not subject to tax under ORS chapter 316, 317 or 318.

21 **SECTION 2.** ORS 315.164 is amended to read:

22 315.164. (1) A taxpayer who is the owner or operator of agriculture workforce housing is allowed
23 a credit against the taxes otherwise due under ORS chapter 316, if the taxpayer is a resident indi-
24 vidual, or against the taxes otherwise due under ORS chapter 317, if the taxpayer is a corporation.
25 The total amount of the credit shall be equal to 50 percent of the eligible costs actually paid or
26 incurred by the taxpayer to:

27 **(a)** Complete an agriculture workforce housing project, to the extent the eligible costs actually
28 paid or incurred by the taxpayer do not exceed the estimate of eligible costs approved by the
29 Housing and Community Services Department under ORS 315.167[.]; **or**

30 **(b) Operate agriculture workforce housing, except that the taxpayer:**

31 **(A) Must be the owner of the agriculture workforce housing for which the credit is
32 claimed under this paragraph; and**

33 **(B) May not claim a credit under this paragraph in any tax year for which the taxpayer
34 claims a credit for eligible costs other than operation costs.**

35 (2) A taxpayer who is otherwise eligible to claim a credit under this section may elect to
36 transfer all or a portion of the credit to a contributor in the manner provided in ORS 315.169.

37 (3)(a) The credit allowed under this section may be taken for the tax year in which the agri-
38 culture workforce housing project is completed or in any of the nine tax years succeeding the tax
39 year in which the project is completed.

40 (b) The credit allowed in any one tax year may not exceed 20 percent of the amount determined
41 under subsection (1) of this section.

42 (4)(a) To claim a credit under this section, a taxpayer must show in each year following the
43 completion of an agriculture workforce housing project that the housing continues to be operated
44 as agriculture workforce housing.

45 (b) A taxpayer need not make the showing required in paragraph (a) of this subsection if the

1 Housing and Community Services Department waives the requirement after the taxpayer has suc-
2 cessfully met the requirement for the first five years after completion of the agriculture workforce
3 housing project.

4 (c) The Housing and Community Services Department shall determine by rule the factors nec-
5 cessary to grant a waiver. Such factors may include a documented decline in a particular area for
6 agriculture workforce housing.

7 (5) The credit shall apply only to an agriculture workforce housing project that is located within
8 this state and physically begun on or after January 1, 1990.

9 (6)(a) A credit may not be allowed under this section unless the taxpayer claiming credit under
10 this section:

11 (A) Obtains a letter of credit approval from the Housing and Community Services Department
12 pursuant to ORS 315.167; and

13 (B) Files with the Department of Revenue an annual certification providing that all occupied
14 units for which credit is being claimed are occupied by agricultural workers, including agricultural
15 workers who are retired or disabled, and their immediate families.

16 (b) The certification described under this subsection shall be made on the form and in the time
17 and manner prescribed by the Department of Revenue.

18 (7) Except as provided under subsection (8) of this section, the credit allowed in any one year
19 may not exceed the tax liability of the taxpayer.

20 (8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
21 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next
22 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
23 forward and used in the second succeeding tax year, and likewise any credit not used in that second
24 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
25 credit not used in that third succeeding tax year may be carried forward and used in the fourth
26 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
27 forward and used in the fifth succeeding tax year, and any credit not used in that fifth succeeding
28 tax year may be carried forward and used in the sixth succeeding tax year, and any credit not used
29 in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax
30 year, and any credit not used in that seventh succeeding tax year may be carried forward and used
31 in the eighth succeeding tax year, and any credit not used in that eighth succeeding tax year may
32 be carried forward and used in the ninth succeeding tax year, but may not be carried forward for
33 any tax year thereafter.

34 (9)(a) The credit provided by this section is not in lieu of any depreciation or amortization de-
35 duction for the agriculture workforce housing project to which the taxpayer otherwise may be en-
36 titled under ORS chapter 316 or 317 for the year.

37 (b) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by
38 any tax credits allowed under this section.

39 (10) For a taxpayer to receive a credit under this section, the agriculture workforce housing
40 must:

41 (a) Comply with all occupational safety or health laws, rules, regulations and standards;

42 (b) If registration is required, be registered as a farmworker camp with the Department of
43 Consumer and Business Services under ORS 658.750;

44 (c) Upon occupancy and if an indorsement is required, be operated by a person who holds a valid
45 indorsement as a farmworker camp operator under ORS 658.730; and

1 (d) Continue to be operated as agriculture workforce housing for a period of at least 10 years
2 after the completion of the agriculture workforce housing project, unless a waiver has been granted
3 under subsection (4) of this section.

4 (11)(a) Pursuant to the procedures for a contested case under ORS chapter 183, the Department
5 of Revenue may order the disallowance of the credit allowed under this section if it finds, by order,
6 that:

7 (A) The credit was obtained by fraud or misrepresentation; or

8 (B) In the event that an owner or operator claims or claimed the credit:

9 (i) The taxpayer has failed to continue to substantially comply with the occupational safety or
10 health laws, rules, regulations or standards;

11 (ii) After occupancy and if registration is required, the agriculture workforce housing is not
12 registered as a farmworker camp with the Department of Consumer and Business Services under
13 ORS 658.750;

14 (iii) After occupancy and if an indorsement is required, the agriculture workforce housing is not
15 operated by a person who holds a valid indorsement as a farmworker camp operator under ORS
16 658.730; or

17 (iv) The taxpayer has failed to make a showing that the housing continues to be operated as
18 agriculture workforce housing as required under subsection (4)(a) of this section and the taxpayer
19 has not been granted a waiver by the Housing and Community Services Department under sub-
20 section (4)(b) of this section.

21 (b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or
22 other law, all prior tax relief provided to the taxpayer shall be forfeited and the Department of
23 Revenue shall proceed to collect those taxes not paid by the taxpayer as a result of the prior
24 granting of the credit.

25 (c) If the tax credit is disallowed pursuant to this subsection, the taxpayer shall be denied any
26 further credit provided under this section, in connection with the agriculture workforce housing
27 project, as the case may be, from and after the date that the order of disallowance becomes final.

28 (12) In the event that the agriculture workforce housing is destroyed by fire, flood, natural dis-
29 aster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the
30 credit as if no destruction had taken place. In the event of fire, if the fire chief of the fire protection
31 district or unit determines that the fire was caused by arson, as defined in ORS 164.315 and 164.325,
32 by the taxpayer or by another at the taxpayer's direction, then the fire chief shall notify the De-
33 partment of Revenue. Upon conviction of arson, the Department of Revenue shall disallow the credit
34 in accordance with subsection (11) of this section.

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

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

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

44 (14) The Department of Revenue may adopt rules for carrying out the provisions of this section.

45 **SECTION 3.** ORS 315.167 is amended to read:

1 315.167. (1) *[Prior to the completion of an agriculture workforce housing project for which credit*
2 *under ORS 315.164 will be claimed,]* An owner or operator of agriculture workforce housing shall
3 apply to the Housing and Community Services Department for a letter of credit approval[.];

4 **(a) Prior to the completion of an agriculture workforce housing project for which credit**
5 **under ORS 315.164 (1)(a) will be claimed; or**

6 **(b) Prior to the close of the tax year for which a credit under ORS 315.164 (1)(b) will be**
7 **claimed.**

8 (2) The application shall be on such form as is prescribed by the Housing and Community Ser-
9 vices Department and shall provide:

10 (a) The name, address and taxpayer identification number of the taxpayer;

11 (b) The location of the proposed **or existing** agriculture workforce housing;

12 (c) A description of the project identifying the type of housing that is the subject of the agri-
13 culture workforce housing project;

14 (d) An estimate of the eligible costs of the agriculture workforce housing project;

15 (e) The number of units in the project dedicated to agriculture workforce housing and the eli-
16 gible costs associated with the units;

17 (f) The amount of credit to be claimed by the owner or operator of agriculture workforce hous-
18 ing, and the amount of credit, if any, to be claimed by a contributor under ORS 315.169; and

19 (g) Any other information as the Housing and Community Services Department may require.

20 (3) The Housing and Community Services Department may review applications using any rea-
21 sonable system of prioritizing review established by department rule.

22 (4) Applications filed in compliance with this section shall be approved by the Housing and
23 Community Services Department to the extent that the total of estimated eligible costs for all ap-
24 proved agriculture workforce housing projects for the calendar year is equal to or less than \$7.25
25 million. No application shall be approved if the addition of the estimated eligible costs of the project
26 to the estimated eligible costs for all approved projects for the calendar year would exceed \$7.25
27 million.

28 (5) Upon approval of an application, the Housing and Community Services Department shall
29 prepare a letter of credit approval. The letter shall state the approved amount of estimated eligible
30 costs for the agriculture workforce housing project and, if applicable, the portion of credit to be
31 claimed by an owner or operator of agriculture workforce housing under ORS 315.164 and the por-
32 tion of credit to be claimed by a contributor under ORS 315.169. The letter shall be sent:

33 (a) To the owner or operator of agriculture workforce housing, if any credit is to be claimed
34 under ORS 315.164; and

35 (b) To the contributor, if any credit is to be claimed under ORS 315.169 and if the contributor
36 has been identified at the time of approval.

37 (6) At the conclusion of each calendar year, the Housing and Community Services Department
38 shall send a list of the names, addresses and taxpayer identification numbers of taxpayers to whom
39 a letter of credit approval has been issued under this section during the calendar year, along with
40 approved amounts of estimated eligible costs for each agriculture workforce housing project, to the
41 Department of Revenue.

42 (7) Notwithstanding that a letter of credit approval has been issued to a taxpayer under this
43 section, the Department of Revenue may disallow, in whole or in part, a claim for credit under ORS
44 315.164 upon the Department of Revenue's determination that under the provisions of ORS 315.164
45 the taxpayer is not entitled to the credit or is only entitled to a portion of the amount claimed.

1 **SECTION 4.** The amendments to ORS 315.163, 315.164 and 315.167 by sections 1 to 3 of this
2 2016 Act apply to tax years beginning on or after January 1, 2017.

3 **SECTION 5.** This 2016 Act takes effect on the 91st day after the date on which the 2016
4 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

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