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SUMMARY

Creates tax credit for employers that pay wages to youth workers, defined as workers between 16 and 25 years of age. Allows taxpayer to claim credit by retaining portion of withholding tax, calculated as percentage of wages paid to youth worker. Bases percentage to be retained on age of youth worker.

Applies to wages paid to youth workers on or after January 1, 2018, and to tax years beginning on or after January 1, 2018, and before January 1, 2024.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to a withholding tax credit for wages paid to youth workers; creating new provisions; amending ORS 314.752, 316.187, 316.197, 316.202 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 2017 Act are added to and made a part of ORS chapter 315.

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

(a) “Wages” has the meaning given that term in ORS 316.162.

(b)(A) “Youth worker” means a person who is employed during the tax year and who, on the first day of the tax year, is at least 16 years of age and, on the last day of the tax year, is not older than 24 years of age.

(B) “Youth worker” does not include an employee whose services to the employer consist solely of labor in connection with the planting, cultivating or harvesting of seasonal agricultural crops.

(2) A credit against the taxes otherwise due under ORS chapter 316 (or if the taxpayer is a corporation, under ORS chapter 317 or 318) shall be allowed for wages paid by an employer to youth workers during the tax year. An employer that is a tax-exempt entity or a governmental entity may use the credit under this section. Employers are subject to the certification requirement in section 3 of this 2017 Act.

(3) An employer is not allowed the credit under this section unless the employer:

(a) Has a net increase in the monthly average number of full-time employees through the tax year, or, if the employer is a tax-exempt or governmental entity, through the calendar year;

(b) Does not terminate during the tax year or calendar year, other than for cause, a youth worker for whom the employer claims a credit under this section; and

(c) Pays an annual average hourly wage to employees other than youth workers that is at least equal to the annual average hourly wage paid by the employer to employees other than youth workers in the immediately preceding tax year or calendar year.

(4) In order to use the credit allowed under this section, the employer shall retain a portion of the amount that the employer has withheld, as required under ORS 316.167 and 316.172, from the wages of youth workers.

(5) The amount that the employer may retain shall be a percentage of the wages paid by the employer to each youth worker in a payroll period, as follows:

(a) For a youth worker who is at least 16 years of age on the first day of the tax year, and is not older than 18 years of age by the last day of the tax year, three percent of the youth worker's wages for the payroll period.

(b) For a youth worker who is at least 19 years of age on the first day of the tax year, and is not older than 21 years of age by the last

day of the tax year, two percent of the youth worker's wages for the payroll period.

(c) For a youth worker who is at least 22 years of age on the first day of the tax year, and is not older than 24 years of age by the last day of the tax year, one percent of the youth worker's wages for the payroll period.

(6) The credit allowed under this section may exceed the tax liability of a taxpayer for the tax year.

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

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

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

(10) The Department of Revenue shall adopt rules for the purposes of this section and section 3 of this 2017 Act.

SECTION 3. (1) After the close of the tax year, or, in the case of a tax-exempt or governmental entity, after the end of the calendar year, an employer that has retained amounts as provided in section 2 of this 2017 Act shall verify with the Employment Department that the employer is eligible to claim the credit allowed under section 2 of this 2017 Act. The Employment Department shall by rule establish procedures for determining eligibility of employers to claim the credit and shall provide written certification of employer eligibility.

1 **(2) At the time of filing the employer's return for the tax year, the**
2 **employer shall claim the credit in the form and manner established**
3 **by the Department of Revenue by rule and shall include the written**
4 **certification required by subsection (1) of this section. The Department**
5 **of Revenue shall by rule establish procedures for claiming the credit.**

6 **(3) If an employer has retained amounts under section 2 of this 2017**
7 **Act but the Employment Department or the Department of Revenue**
8 **determines that the employer is not eligible for some or all of the**
9 **claimed credit amount, the employer shall pay over all improperly re-**
10 **tained amounts to the Department of Revenue as provided in ORS**
11 **316.197. The employer may not claim the disallowed amount of the**
12 **credit.**

13 **(4) The Department of Revenue may treat improperly retained**
14 **amounts as deficiencies, which, if still outstanding as of the due date**
15 **of the employer's return for the tax year, shall accrue interest as**
16 **provided in ORS 305.220 and 305.265.**

17 **SECTION 4.** ORS 316.187 is amended to read:

18 316.187. The amounts deducted from the wages of an employee during any
19 calendar year in accordance with ORS 316.167 and 316.172, **including**
20 **amounts retained by an employer under section 2 of this 2017 Act, re-**
21 **gardless of whether the employer is determined to be eligible for a**
22 **credit under section 2 of this 2017 Act,** shall be considered to be in part
23 payment of the tax on such employee's income for the taxable year which
24 begins within such calendar year, and the return made by the employer
25 pursuant to ORS 316.202 shall be accepted by the Department of Revenue as
26 evidence in favor of the employee of the amounts so deducted from the
27 employee's wages.

28 **SECTION 5.** ORS 316.197 is amended to read:

29 316.197. (1)(a) Except as provided under ORS 316.191 or paragraph (b) **or**
30 **(c)** of this subsection, within the time that each employer is required to pay
31 over taxes withheld for federal income tax purposes for any period, the em-

1 employer shall pay over to the Department of Revenue or to a financial agent
2 of the department the amounts required to be withheld under ORS 316.167
3 and 316.172 for the same period. Any employer not required to withhold fed-
4 eral income taxes for any period but who is required to deduct and retain
5 amounts from wages paid to an employee under ORS 316.167 and 316.172 for
6 the same period shall pay over to the department or financial agent of the
7 department, taxes withheld for the period, within the time and in the man-
8 ner, as if the employer were required to withhold taxes for the period under
9 federal law.

10 (b) Notwithstanding the provisions of paragraph (a) of this subsection,
11 any employer of agricultural employees who is not required to withhold
12 federal income taxes for any period but who is required to deduct and retain
13 amounts from wages paid to those employees under ORS 316.167 and 316.172
14 shall pay over to the department, or financial agent of the department, taxes
15 so withheld at the same time and for the same period for which the employer
16 is required to pay over employer and employee taxes under chapter 21 of the
17 Internal Revenue Code (Federal Insurance Contributions Act).

18 **(c) An employer that retains amounts under section 2 of this 2017**
19 **Act shall reduce the amount paid over by the amount retained by the**
20 **employer under section 2 of this 2017 Act for the same period.**

21 (2) Every amount so paid over shall be accounted for as part of the col-
22 lections under this chapter. No employee has any right of action against an
23 employer in respect of any moneys deducted from wages and paid over in
24 compliance or intended compliance with this section.

25 (3) If any amount required to be withheld and paid over to the department
26 is delinquent, interest shall accrue at the rate prescribed under ORS 305.220
27 on that amount from the last day of the month following the end of the
28 calendar quarter within which the amount was required to be paid to the
29 department to the date of payment. The provisions of this subsection shall
30 not relieve any employer from liability for a late payment penalty under any
31 other provision of law.

1 **SECTION 6.** ORS 316.202 is amended to read:

2 316.202. (1) With each payment made to the Department of Revenue, every
3 employer shall deliver to the department, on a form prescribed by the de-
4 partment showing the total amount of withheld taxes in accordance with
5 ORS 316.167 and 316.172, and supply such other information as the depart-
6 ment may require. The employer is charged with the duty of advising the
7 employee of the amount of moneys withheld, in accordance with such regu-
8 lations as the department may prescribe, using printed forms furnished or
9 approved by the department for such purpose.

10 (2) Except as provided in subsection (4) of this section, every employer
11 shall submit a combined quarterly return to the department on a form pro-
12 vided by it showing the number of payments made, the withheld taxes paid
13 during the quarter, **amounts retained by the employer under section 2**
14 **of this 2017 Act** and an explanation of federal withholding taxes as com-
15 puted by the employer. The report shall be filed with the department on or
16 before the last day of the month following the end of the quarter.

17 (3) The employer shall make an annual return to the department on forms
18 provided or approved by it, summarizing the total compensation paid and the
19 taxes withheld for all employees during the calendar year, **including**
20 **amounts retained by the employer under section 2 of this 2017 Act**, and
21 shall file the same with the department on or before the due date of the
22 corresponding federal return for the year for which report is made. Failure
23 to file the annual report without reasonable excuse on or before the 30th day
24 after notice has been given to the employer of failure subjects the employer
25 to a penalty of \$100. The department may by rule require additional infor-
26 mation the department finds necessary to substantiate the annual return,
27 including but not limited to copies of federal form W-2 for individual em-
28 ployees, and may prescribe circumstances under which the filing requirement
29 imposed by this subsection is waived.

30 (4) Notwithstanding the provisions of subsection (2) of this section, em-
31 ployers of agricultural employees may submit returns annually showing the

1 number of payments made and the withheld taxes paid. However, such em-
2 ployers shall make and file a combined quarterly tax report with respect to
3 other tax programs, as required by ORS 316.168.

4 (5) In addition to any other penalty required by law:

5 (a) A person who fails to substantiate a report required under subsection
6 (3) of this section, or who files incomplete or incorrect substantiation, shall
7 be subject to a penalty of \$50 per federal form W-2 after the date on which
8 the substantiation is due, up to a maximum penalty of \$2,500.

9 (b) A person who knowingly fails to substantiate a report required under
10 subsection (3) of this section, or who knowingly files incomplete or incorrect
11 substantiation, shall be subject to a penalty of \$250 per federal form W-2
12 after the date on which the substantiation is due, up to a maximum penalty
13 of \$25,000.

14 **SECTION 7.** ORS 314.752 is amended to read:

15 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits al-
16 lowed or allowable to a C corporation for purposes of ORS chapter 317 or
17 318 shall not be allowed to an S corporation. The business tax credits al-
18 lowed or allowable for purposes of ORS chapter 316 shall be allowed or are
19 allowable to the shareholders of the S corporation.

20 (2) In determining the tax imposed under ORS chapter 316, as provided
21 under ORS 314.734, on income of the shareholder of an S corporation, there
22 shall be taken into account the shareholder's pro rata share of business tax
23 credit (or item thereof) that would be allowed to the corporation (but for
24 subsection (1) of this section) or recapture or recovery thereof. The credit (or
25 item thereof), recapture or recovery shall be passed through to shareholders
26 in pro rata shares as determined in the manner prescribed under section
27 1377(a) of the Internal Revenue Code.

28 (3) The character of any item included in a shareholder's pro rata share
29 under subsection (2) of this section shall be determined as if such item were
30 realized directly from the source from which realized by the corporation, or
31 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 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 285C.309 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture workforce housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), 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 315.507 (electronic commerce) and ORS 315.533 (low income community jobs initiative) **and section 2 of this 2017 Act (youth worker withholding credit).**

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 285C.309, 315.104, 315.141, 315.156, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.507 and 315.533 **and section 2 of this 2017 Act** (all only to the extent applicable to

1 a corporation) and ORS chapter 317.

2 **SECTION 9.** (1) Sections 2 and 3 of this 2017 Act and the amend-
3 ments to ORS 316.187, 316.197 and 316.202 by sections 4 to 6 of this 2017
4 Act apply to wages paid to youth workers on or after January 1, 2018,
5 and to tax years beginning on or after January 1, 2018, and before
6 January 1, 2024.

7 (2) The amendments to ORS 314.752 and 318.031 by sections 7 and 8
8 of this 2017 Act apply to tax years beginning on or after January 1,
9 2018.

10 **SECTION 10.** This 2017 Act takes effect on the 91st day after the
11 date on which the 2017 regular session of the Seventy-ninth Legislative
12 Assembly adjourns sine die.