

# House Bill 2243

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Business Oregon)

## 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**.

Increases maximum number of zones for electronic commerce. Provides that increase in maximum number of zones shall occur in thirds over three-year period.

Requires authorized business firm claiming enterprise zone exemption to include with claim amount of tax credits on investments in enterprise zone or city designated for electronic commerce that were claimed and used by firm or collectively by owners or shareholders of firm. Requires Department of Revenue to prescribe manner in which authorized business firm shall acknowledge disclosure of tax credit information required to be included with claim. Provides such information is exempt if reporting or release would create reasonable risk of disclosing identity or income of any individual.

For purposes of income or corporate excise tax credit allowed for investment in electronic commerce in zone or city designated for electronic commerce, allows taxpayer with allowable credit in excess of tax liability to elect to receive partial refund of credit in lieu of carryforward. Modifies definition of property that must receive property tax exemption in order for operator to claim income tax credit.

Extends sunset for income tax credit for electronic commerce.  
Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to zones designated for electronic commerce; creating new provisions; amending ORS  
3 285C.095, 315.507, 315.508, 316.502 and 317.850 and section 3, chapter 913, Oregon Laws 2009;  
4 and prescribing an effective date.

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

6 **SECTION 1.** ORS 285C.095 is amended to read:

7 285C.095. (1) A sponsor of an existing enterprise zone may designate the zone for electronic  
8 commerce under this section by resolution of the governing body of the sponsor.

9 (2) There may be designated at any time no more than *[15]* **21** zones for electronic commerce.

10 (3) The sponsor may by resolution revoke an electronic commerce designation made under this  
11 section. If an election is revoked, the sponsor may not subsequently seek reinstatement of electronic  
12 commerce designation.

13 (4) Designation of a zone for electronic commerce under this section is not final until a positive  
14 determination has been made in favor of the zone by the Oregon Business Development Department  
15 under ORS 285C.102.

16 **SECTION 2.** The amendments to ORS 285C.095 by section 1 of this 2017 Act apply so that  
17 **one-third of the additional zones for electronic commerce may be designated on January 1,**  
18 **2018, January 1, 2019, and January 1, 2020.**

19 **SECTION 3.** Section 4 of this 2017 Act is added to and made a part of ORS 285C.050 to  
20 **285C.250.**

21 **SECTION 4.** (1) When filing a claim under ORS 285C.220 for the exemption granted under  
22 **ORS 285C.175, an authorized business firm allowed tax credits under ORS 315.507 on invest-**

**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 **ments in an enterprise zone or city designated for electronic commerce shall include with**  
 2 **the exemption claim the amount, if any, of the credits that were claimed and used by the**  
 3 **firm, or collectively by the owners or shareholders of the firm, to the extent the latter is**  
 4 **known by the firm, in:**

5 **(a) The firm’s most recent income or corporation excise tax year ending at least six**  
 6 **months before the date of filing the exemption claim; and**

7 **(b) In prior income or corporation excise tax years if:**

8 **(A) The exemption claim is the first such exemption claim filed pursuant to the invest-**  
 9 **ment; or**

10 **(B) Inclusion is necessary to submit information missing from the filing of the previous**  
 11 **assessment year.**

12 **(2) The Department of Revenue shall prescribe the manner in which an authorized busi-**  
 13 **ness firm shall:**

14 **(a) Include information described in subsection (1) of this section with an exemption**  
 15 **claim filed under ORS 285C.220 (2); and**

16 **(b) Acknowledge disclosure of information under subsection (3)(a) of this section.**

17 **(3)(a) The sponsor of the enterprise zone in which the property of an authorized business**  
 18 **firm described in subsection (1) of this section is located, the assessor of the county in which**  
 19 **the enterprise zone is located, the Oregon Business Development Department or,**  
 20 **notwithstanding ORS 314.835, the Department of Revenue may publicly report or release the**  
 21 **information, organized by the names of the business firms, that is required to be included**  
 22 **in a claim under subsection (1) of this section.**

23 **(b) Notwithstanding paragraph (a) of this subsection, any information described in sub-**  
 24 **section (1) of this section, the reporting or release of which would create a reasonable risk**  
 25 **of disclosing the identity or income of any individual, is exempt from disclosure under ORS**  
 26 **192.410 to 192.505. Such information may be disclosed only as part of aggregated or summary**  
 27 **level data in a manner that effectively eliminates the risk of disclosure.**

28 **SECTION 5. Section 4 of this 2017 Act applies to claims for exemption filed under ORS**  
 29 **285C.220 on or after January 1, 2018.**

30 **SECTION 6. ORS 315.507 is amended to read:**

31 **315.507. (1) As used in this section, “authorized business firm,” “business firm,” “elec-**  
 32 **tronic commerce” and “qualified property” have the meanings given those terms in ORS**  
 33 **285C.050.**

34 **[(1)] (2) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the**  
 35 **taxpayer is a corporation, under ORS chapter 317 or 318, shall be allowed to a taxpayer that is:**

36 **(a) A business firm engaged or preparing to engage in electronic commerce in an enterprise zone**  
 37 **that has been designated for electronic commerce under ORS 285C.095; or**

38 **(b) A business firm engaged or preparing to engage in electronic commerce in a city that has**  
 39 **been designated for electronic commerce under ORS 285C.100.**

40 **[(2)] (3) The credit shall equal 25 percent of the investments made by the business firm in capital**  
 41 **assets:**

42 **(a) Located in the area designated for electronic commerce;**

43 **(b) Used or constructed, installed or otherwise prepared for use in electronic commerce oper-**  
 44 **ations within the area designated for electronic commerce that are related to electronic commerce**  
 45 **sales, customer service, order fulfillment, broadband infrastructure or other electronic commerce**

1 operations; and

2 (c)(A) During the period that commences with the income or corporate excise tax year in which  
3 the firm applied to be an authorized business firm under ORS 285C.140 and ends on the last day of  
4 the income or corporate excise tax year in which begins the first property tax year in which quali-  
5 fied property of the firm used in eligible electronic commerce activities is exempt from property  
6 taxation under ORS 285C.175; or

7 (B) During any income or corporate excise tax year in which begins a property tax year in  
8 which qualified property of the firm used in eligible electronic commerce operations is exempt from  
9 property taxation under ORS 285C.175.

10 [(3)] (4) Except as provided in subsection [(5)] (7) of this section, the credit must be claimed for  
11 the income or corporate excise tax year that is:

12 (a) The year in which the investment for which a credit is being claimed is made; and

13 (b) A year, all or part of which is described in subsection [(2)(c)] (3)(c) of this section.

14 [(4)] (5) A credit allowed under this section for any one tax year may not exceed [*the lesser of*  
15 *\$2 million or the tax liability of the taxpayer*] **\$2 million.**

16 **(6) If the amount allowable as a credit under this section, when added to the sum of the**  
17 **amounts allowable as a payment of tax under ORS 314.505 to 314.525, 316.187 and 316.583,**  
18 **other payments of tax and other refundable credit amounts, exceeds the taxes imposed by**  
19 **ORS chapters 314 to 318 (reduced by any nonrefundable credits allowed for the tax year), and**  
20 **if the taxpayer elects to receive a refund in lieu of any carryforward allowable under sub-**  
21 **section (7) of this section, 80 percent of the excess amount shall be treated as an overpay-**  
22 **ment of tax and shall be refunded or applied in the same manner as other tax overpayments.**  
23 **A taxpayer who elects a refund under this section may not carry forward any amount for**  
24 **the tax year under subsection (7) of this section.**

25 [(5)] (7) **Except as provided in subsection (6) of this section,** any tax credit otherwise al-  
26 lowable under this section that is not used by the taxpayer in a particular year may be carried  
27 forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit  
28 remaining unused in the next succeeding tax year may be carried forward and used in the second  
29 succeeding tax year, and likewise any credit not used in that second succeeding tax year may be  
30 carried forward and used in the third succeeding tax year, and any credit not used in that third  
31 succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any  
32 credit not used in that fourth succeeding tax year may be carried forward and used in the fifth  
33 succeeding tax year, but may not be carried forward for any tax year thereafter.

34 [(6)] (8) The credit allowed under this section is not in lieu of any depreciation or amortization  
35 deduction to which the taxpayer otherwise may be entitled under ORS chapter 316, 317 or 318 for  
36 the tax year.

37 [(7)] (9) The taxpayer's adjusted basis for determining gain or loss may not be further decreased  
38 by any amount of credit allowed under this section.

39 [(8)(a)] (10)(a) A nonresident shall be allowed the credit under this section in the proportion  
40 provided in ORS 316.117.

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

44 (c) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the  
45 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-

1 lowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

2 [(9) As used in this section, “authorized business firm,” “business firm,” “electronic commerce” and  
3 “qualified property” have the meanings given those terms in ORS 285C.050.]

4 **(11) The credit shall be claimed on a form prescribed by the department that contains the**  
5 **information required by the department.**

6 **SECTION 7.** ORS 315.508 is amended to read:

7 315.508. (1) **As used in this section, “associated qualified property” means property de-**  
8 **scribed in ORS 285C.180, which may comprise some or all of the capital assets for which a**  
9 **credit is claimed under ORS 315.507, that is constructed, modified or installed in conjunction**  
10 **with the electronic commerce operations and the capital assets, the investment in which is**  
11 **the basis for a credit allowed under ORS 315.507.**

12 [(1)] (2) A taxpayer [who] **that** has claimed a credit under ORS 315.507 shall maintain records  
13 sufficient to show:

14 (a) That within three years following the year in which a credit was claimed under ORS 315.507,  
15 [property owned or] **associated qualified property** operated by the taxpayer and used in electronic  
16 commerce operations was exempt from property taxation under ORS 285C.175; and

17 (b) That at no time was property described in paragraph (a) of this subsection disqualified from  
18 exemption pursuant to ORS 285C.240.

19 [(2)] (3) The taxpayer shall provide these records to the Department of Revenue if requested by  
20 the department.

21 [(3)] (4) The taxpayer shall maintain the records described in this section for at least five years  
22 following the last tax year for which the taxpayer claims any credit under ORS 315.507.

23 [(4)] (5) If [property owned or] **associated qualified property** operated by the taxpayer is not  
24 both used in electronic commerce operations in an area designated for electronic commerce and  
25 exempt from property taxation under ORS 285C.175 within three years following the year in which  
26 a credit is first claimed under ORS 315.507, the department shall disallow the credit for the current  
27 or any prior tax year and collect any taxes that were not paid as a result of application of the  
28 credit.

29 [(5) If property owned or operated by the taxpayer, used in electronic commerce operations in an  
30 area designated for electronic commerce and exempt from property taxation under ORS 285C.175 is  
31 disqualified from exemption under ORS 285C.240,]

32 **(6) If the taxpayer is disqualified from the exemption under ORS 285C.240, with respect**  
33 **to electronic commerce operations the investment in which is the basis of a credit under**  
34 **ORS 315.507, the department shall disallow the credit for the current or any prior tax year and**  
35 **collect any taxes that were not paid as a result of application of the credit.**

36 [(6)] (7) For purposes of collecting taxes due under subsection [(4) or (5)] (5) or (6) of this sec-  
37 tion, the department shall have the benefit of all laws of this state pertaining to the collection of  
38 income and corporate excise taxes. [No] **An** assessment of these taxes [shall be] **is not** necessary  
39 and [no] **a** statute of limitations [shall] **does not** preclude the collection of these taxes.

40 **(8) Notwithstanding section 4 of this 2017 Act, any information obtained by the Depart-**  
41 **ment of Revenue under this section is exempt from disclosure under ORS 192.410 to 192.505.**

42 **SECTION 8.** ORS 316.502 is amended to read:

43 316.502. (1) The net revenue from the tax imposed by this chapter, after deducting refunds and  
44 amounts described in ORS 285B.630 and 285C.635, shall be paid over to the State Treasurer and held  
45 in the General Fund as miscellaneous receipts available generally to meet any expense or obligation

1 of the State of Oregon lawfully incurred.

2 (2) A working balance of unreceipted revenue from the tax imposed by this chapter may be re-  
3 tained for the payment of refunds, but such working balance shall not at the close of any fiscal year  
4 exceed the sum of \$1 million.

5 (3) Moneys are continuously appropriated to the Department of Revenue to make:

6 (a) The refunds authorized under subsection (2) of this section; and

7 (b) The refund payments in excess of tax liability authorized under ORS 315.174, 315.262, 315.264  
8 [*and*], 315.266 **and 315.507** and section 17, chapter 906, Oregon Laws 2007.

9 **SECTION 9.** ORS 317.850 is amended to read:

10 317.850. (1) The net revenue from the tax imposed by this chapter, after deduction of refunds,  
11 shall be paid over to the State Treasurer and held in the General Fund as miscellaneous receipts  
12 available generally to meet any expense or obligation of the State of Oregon lawfully incurred.

13 (2) A working balance of unreceipted revenue from the tax imposed by this chapter may be re-  
14 tained for the payment of refunds, but such working balance [*shall*] **may** not at the close of any  
15 fiscal year exceed the sum of \$500,000.

16 (3) **Moneys are continuously appropriated to the Department of Revenue to make:**

17 (a) **The refunds authorized under subsection (2) of this section; and**

18 (b) **The refund payments in excess of tax liability authorized under ORS 315.507.**

19 **SECTION 10.** **The amendments to ORS 315.507, 315.508, 316.502 and 317.850 by sections 6**  
20 **to 9 of this 2017 Act apply to tax years beginning on or after January 1, 2019.**

21 **SECTION 11.** Section 3, chapter 913, Oregon Laws 2009, as amended by section 5, chapter 730,  
22 Oregon Laws 2011, is amended to read:

23 **Sec. 3.** Except as provided in ORS 315.507 [(5)] (7), a credit may not be claimed under ORS  
24 315.507 for tax years beginning on or after January 1, [2018] **2024.**

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

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