Tax Credits for Review in 2019

This is the primary section of the report, containing detailed information on each tax credit scheduled to be reviewed in 2019. In total, there are nine such tax credits. To provide some context, the table below shows the cost to the biennial budget for the last, current, and following two biennia. These estimates are for current law; the declining cost estimates reflect the current sunset dates. The table reflects how this section is structured.

Tax Credit Costs Under Current Law and Costs to Extend Sunset Dates

	Biennium ($M)							
	Cost Under Current Law				Cost to Extend Sunset Date			
Tax Credit	2017-19	2019-21	2021-23	2023-25	2017-19	2019-21	2021-23	2023-25
Employer Provided Scholarships	< 50K	< 50K	< 50K	< 50K	0	< 50K	< 50K	< 50K
Earned Income	104.6	53.4	0.0	0.0	0	54.2	113.3	120.0
Volunteer Rural Emergency Medical Services Providers	0.2	0.1	0.0	0.0	0	0.1	0.2	0.2
Agriculture Workforce Housing Construction	4.8	2.7	0.5	0.3	0	2.0	4.1	4.1
Manufactured Dwelling Park Closure	0.1	0.0	0.0	0.0	0	< 50K	0.1	0.1
Crop Donations	0.4	0.3	0.1	0.0	0	0.2	0.4	0.5
Political Contributions	11.6	5.8	0.0	0.0	0	6.7	12.7	13.5
Oregon Cultural Trust	7.9	4.1	0.0	0.0	0	4.2	8.6	9.0
Certain Retirement Income	1.4	0.7	0.0	0.0	0	0.7	1.3	1.2
Total	***131.0***	***67.1***	***0.6***	***0.3***	***0.0***	***68.0***	***140.6***	***148.5***

The remainder of the report consists of separate reviews for each tax credit. Each review consists of eight subsections: description, policy purpose, beneficiaries, similar incentives available in Oregon, credit effectiveness and efficiency, analysis of potential direct appropriation, administrative & compliance costs and similar credits allowed in other states. The description provides detail on how the tax credit works under current law. The policy purpose is generally not in statute but is based on documentation from implementing or modifying legislation. Generally, the purposes are inferred from historical records. On occasion, Oregon statute provides a clear statement of the policy intent. The policy analysis describes academic research on relevant incentives if available, provides some discussion of the history, and an analysis of available data. Often the primary sources of data are certifications and tax returns. The review of items such as a summary of similar incentives in Oregon and other states and administrative costs conclude each tax credit analysis.

Statute requires this report to provide information on the public policy purpose or goal of each tax credit. The most basic of this information is simply the stated public policy purpose. Also required is information on the expected timeline for achieving that purpose, the best means of measuring its achievement, and whether or not the use of a tax credit is an effective and efficient way to achieve that goal. However, Oregon statute does not generally contain policy purposes or goals for tax credits. Consequently, statute does not generally identify timelines or metrics related to such goals. In the few cases where statute does provide a purpose or a goal, it is included in this report. The more common approach has been to rely on bill documentation and written testimony for the implementing legislation. This information is the basis for the purpose statements included in this report.

Statute requires that this report contain, among other things, an analysis of each credit regarding the extent to which each is an effective and efficient way to achieve the desired policy goals. Ideally, the best analytical approach would be to identify metrics for each desired outcome, measure them over time, and then estimate the degree to which each credit contributes to the success of obtaining those

Crop Donations

315.154-156 (318.031)	Year Enacted:	1977	Transferable:	No
	Length:	1-year	Means Tested:	No
	Refundable:	No	Carryforward:	3-years
TER 1.430	Kind of cap:	None	Inflation Adjusted:	No

Description

The crop donations credit provides a credit against personal or corporate income taxes available to crop growers that make a qualified donation of the crop to a food bank or other charitable organization including but not limited to gleaning cooperatives. To be a qualified donation, donated crop must go to food banks, gleaning cooperatives and other charitable organizations engaged in the distribution of food without charge.

Credit amount is equal to fifteen percent of the value of the quantity of the crop donated computed at the wholesale market price. Credit is nonrefundable but unused credit amounts can be carried forward for up to three succeeding tax years.

For purposes of the credit, crop is defined as an agricultural crop producing food for human consumption and includes livestock that can be processed into food for human consumption. 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. Donated food must be fit for human consumption and meet all quality and labeling standards imposed by federal, state or local laws. However, donated food is not required to be readily marketable due to appearance, age, freshness, grade, size, surplus or other condition.

To claim the credit taxpayers must keep form OR-CROP and maintain necessary records and invoices substantiating crop donation amount and price of crops donated.

Policy

A specific policy purpose statement regarding the crop donations credit is not contained in statute. Rather, a general policy purpose of the credit can be derived by referencing the relevant legislative committee discussions and deliberations that took place when the credit was enacted and substantively modified.

While originally enacted in 1977, the scope of the crop donations credit has existed in two similar but fundamentally different conditions. From 1977 to 2001, the credit was specific to crop donations made vis-á-vi gleaning organizations. ***The primary policy purpose of the credit was to encourage farmers to participate in gleaning programs and to incentivize more gleaning projects throughout the state.*** The credit was assumed to encourage participation by farmers allowing gleaning as the credit provided the only means of compensation to non-corporate farmers. The credit was designed in part to offset costs related to dedicating time to facilitating gleaning of crops and/or forgoing use of fields while gleaners were gleaning along with offsetting potential degradation costs of the gleaning process.[21] Parity

[21] Testimony from farmers regarding gleaning participation included examples of potential gleaning costs stemming from lost time in overseeing gleaners along with inability to work in the field while gleaners were

between corporate and non-corporate farmers was also discussed as a purpose for the credit. At time of enactment, federal law allowed corporate farmers to claim a tax deduction equal to 50% of the wholesale value of products donated for charitable purposes. (House Agriculture and Natural Resources Committee, 1977) (House Committee on Revenue, 1979)

Supportive testimony of gleaning organizations/operations presented included:

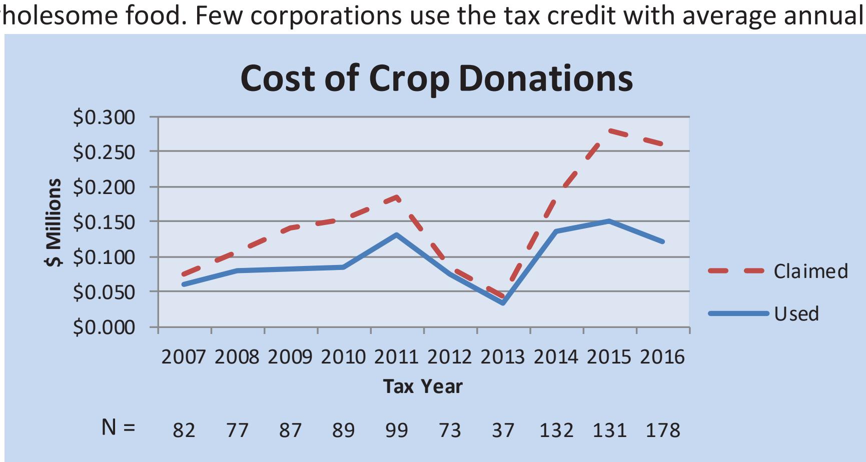
- It encourages people within the community to work together to help each other
- It encourages use of good food that might otherwise be left to rot
- It helps to meet real needs with dignity, from the perspective of helping people to help themselves rather than giving a dole. (House Committee on Revenue, 1979)

Enacted in 2001, House Bill 2718 expanded the scope of the credit allowing post-harvest contributions to qualify for the credit. HB 2718 also defined livestock as an allowable crop that could be donated and qualify for the credit. Expanding the credit also expanded the policy purpose of the credit. Supportive testimony provided in 2001 viewed ***the purpose of expanding the credit to be to increase the amount of food donated to gleaning cooperatives, food banks and other charitable organizations as well as providing compensation to farmers who donate already harvested crops*** (House School Funding and Tax Fairness/Revenue Committee, 2001). With the credit expansion, purpose for the credit also expanded to include aiding farmers as well as incentivizing food/gleaning donations. Examples provided in supportive testimony included the credit functioning as compensation to farmers wanting to keep migrant workers who will be needed for future work by allowing them to pick crops for donation (House School Funding and Tax Fairness/Revenue Committee, 2001).

The crop donation credit was allowed to sunset in 2012 but was reinstated and expanded in 2014 by SB 1541. Credit was expanded from 10% to 15% of the wholesale price of donated food. The following policy purpose statement was Included in the revenue impact statement, ***to increase the amount of food donated by food producers to charities that serve individuals and families experiencing hunger by offsetting expenses incurred during the collection, transportation, and storage of donated food***.

Beneficiaries

The direct beneficiaries of the crop donations tax credit are the growers that make qualified donations of apparently wholesome food. Few corporations use the tax credit with average annual usage of the



present. Examples of farm roads being damaged were discussed as well. Gleaning organizations were considered to be well organized with costs to farmers and potential damage to farm land as being pretty minimal.

credit by corporations ranging from zero to five per year. For tax years 2005-2011 when the credit was equal to 10% of the value of the crops donated, the average number of personal income taxpayers claiming the credit was about 85 per year. Since reenactment of the credit at 15% of value, the average annual number of personal income taxpayers claiming the credit is about 145 with a corresponding average reduction in tax liability from the credit of $900. The crop donation tax credit is nonrefundable meaning taxpayers without tax liability are unable to benefit from the credit. The credit can be carried forward for up to three years allowing taxpayers without liability to potentially use the credit in later tax years.

Indirect beneficiaries include organizations that receive the donated food, gleaning organizations and the final recipients of the food.

Personal Income Tax - Crop Donations Credit

Tax Year	Returns Claiming the Credit	Amount Claimed	Reduction in Tax Liability	Reduction as % of Claimed
2005	83	80,000	60,000	77%
2006	89	90,000	80,000	89%
2007	82	80,000	60,000	80%
2008	76	100,000	70,000	74%
2009	86	140,000	80,000	58%
2010	87	150,000	80,000	55%
2011	98	180,000	130,000	71%
2012*	73	80,000	80,000	90%
2013*	37	40,000	30,000	79%
2014	127	170,000	130,000	77%
2015	128	240,000	130,000	54%
2016	178	220,000	110,000	49%

*Credit expired in 2012, was then reinstated beginning TY 2014 and expanded to 15% (from 10%) of the value of the crop. Continued usage of the credit in TYs 2012 & 2013 reflect 3 yr. carryforward of credit.

Note: Figures have been rounded

Similar Incentives Available in Oregon

After nearly a decade of temporary on-again off-again enhanced deductibility of food, the U.S. congress passed legislation in December of 2015 that permanently extended an enhanced deduction for tax-paying businesses that donate food to qualified domestic 501(c)(3) nonprofit organizations that use the food in a manner consistent with the purpose constituting that organization's exempt status (H.R. 2029 114th Congress, 2015). The enhanced deduction is available to all businesses including C-corps, S-corps, limited liability corporations (LLCs), partnerships and sole proprietorships. Limitations exist for both C-corps and non C-corp businesses that deduct donated food.[22] Generally, donations exceeding established limits can be carried forward for five succeeding tax years.

To receive the enhanced tax deduction, businesses are required to meet four primary requirements:

1) Donor organization must donate food to qualified domestic 501(c)(3) nonprofit organizations
2) Recipient organization must use the donated food in a manner consistent with the charitable organizations exempt status
3) The recipient organization may not use or transfer the food in exchange for money, other property or services
4) Businesses claiming the enhanced deduction must receive a written statement from the recipient organization and maintain proper documentation.

(Harvard Food Law and Policy Clinic, University of Arkansas Food Recovery Project, 2018)

[22] Limits on food donation are interconnected with overall limits on charitable deductions for businesses, see IRC chapter 170.

The enhanced deduction is equal to the lesser of:

a) $Basis\ Value\ of\ Food * 2$

or

b) $Basis\ Value\ of\ Food + \left(\frac{Expected\ profit\ margin}{2}\right)$

Basis value of food is the amount it costs to grow the donated food. For smaller businesses that are permitted to use cash accounting the business has the option of calculating basis value by multiplying the product's fair market value by 25%. In determining fair market value for certain products that cannot or will not be sold by, businesses are given the option of using the price of the same or substantially similar food items that are being sold by the business. For example, this allows a business to potentially determine the fair market value of blemished produce as equal to unblemished produce previously sold by the business.

Credit Effectiveness and Efficiency

Part of the policy purpose of the tax credit for crop donations is to offset the expenses incurred during the collection, transportation, and storage of donated food. The credit partially achieves this purpose by compensating growers making qualified donations of apparently wholesome food in an amount equal to 15% of the wholesale market price of the donated food. The following table provides two examples of potential benefit to growers that make qualified donations of food. The value of Oregon's tax credit is based upon the wholesale market price of the crop whereas the enhanced charitable deduction for donated food can vary depending upon the grower's basis in the crop. As the enhanced deduction overlaps with Oregon's tax credit, both computations are included in the example as the intent of the example is to provide a simplified contextual framework in how to think about tax incentives for crop donations. Actual value of the enhanced deduction and Oregon's tax credit will depend upon particular circumstances of the taxpayer and for this reason, two examples are provided, one with basis equal to 25% the value of the crop and the second example using an assumed 75% basis.

Example 1 illustrates the value of the enhanced deduction and Oregon's tax credit for a non C-corp hypothetical farm that makes a qualified donation of crops worth $5,000. Example 1 assumes the grower's basis is equal to 25% of the value of the crop creating an enhanced deduction equal to

Example of Potential Benefit of Crop Donation Deduction & Credit			**Example of Potential Benefit of Crop Donation Deduction & Credit**		
-----Example 1-----		**Notes on Calculations**	-----Example 2-----		**Notes on Calculations**
Fair market value (FMV)	$5,000		Fair market value (FMV)	$5,000	
Basis	$1,250	Assumed 25% of FMV	Basis	$3,750	Assumed 75% of FMV
Enhanced Deduction	$2,500	Basis x2	Deduction	$4,375	Basis + profit/2
Reduction in Tax Liability from Enhanced Deduction	$225	Assumed 9% tax rate (9% * 2,500)	Reduction in tax liability from enhanced deduction	$394	Assumed 9% tax rate (9% * 2,500)
OR Credit	$750	15% of FMV	OR Credit	$750	15% of FMV
Total OR Tax Savings	$975		Total OR tax savings	$1,144	
Savings as Pct. of Basis	18%	Deduction only	Savings as Pct. of Basis	11%	Deduction only
Savings as Pct. of Basis	78%	Deduction & Credit	Savings as Pct. of basis	31%	Deduction & Credit

Note: Simplified example intended for contextual purposes and assumes farm has tax liability.

$2,500.[23] Using an assumed 9% marginal tax rate, the value of the enhanced deduction is equal to $225 in reduced tax liability. Applying Oregon's tax credit using the $5,000 fair market value results in a decrease in Oregon tax liability of $750, for a net benefit of $975, or 78% of the grower's basis in the donated crop. Example 2 displays the same computations but assumes a basis of 75% of value rather than 25%. In this example, Oregon's credit stays the same, but the value of the deduction increases to $394 for a net reduction in tax liability of $1,144 (deduction plus credit). While the net reduction in tax is greater in example 2, as a percentage of crop basis, example 2 provides a lesser benefit at 31%.

While the above examples provide a framework in which to view the incentive to donate created by the credit, the effectiveness of the credit in inducing donations ultimately depends on particular circumstances of each grower. The marginal cost of donating crops will vary by grower. For example, a grower that has strawberries in the field post harvest will incur greater costs in harvesting the crop for subsequent donation than a grower that harvested a field of carrots, 5% of which are unmarketable for appearance purposes and subsequently donates the unmarketable carrots that are otherwise fit for consumption.

To receive benefit from the enhanced deduction or Oregon's crop donation credit, a grower must have tax liability as the credit may only reduce a taxpayer's tax liability to zero. This lack of credit refundability potentially limits the incentive to donate crops as the majority of farms in Oregon generally report a net loss (USDA, 2014). [24] However, a farm operating at a loss does not necessarily indicate lack of tax liability. In tax year 2016, about one-third of Schedule F (Profit and loss from farming) filers that reported a loss from farming reported adjusted gross income greater than $100,000 (DOR Research Section, 2018). Unused credit amounts can also be carried forward for three successive tax years allowing growers with no tax liability for the tax year in which the donation was made to potentially benefit from the credit in later tax years. It should also be noted that about half of Oregon farms have sales of less than $5,000.

Analysis of Potential Direct Appropriation

Part of the underlying rationale for encouraging crop donation is to distribute extra food that would otherwise not be consumed by humans (U.S. Environmental Protection Agency, 2018). One way to achieve that purpose is by diverting crops not destined for sale to nonprofit organizations that distribute food to those in need. Oregon's credit is designed to offset grower's costs associated with donating extra crops.

A direct appropriation program could potentially replace the tax credit. An example of such a program would be a reimbursement voucher that a grower would receive from the nonprofit organization following the donation of crops. This would be in addition to the donation documentation the nonprofit organization currently provides to the growers following donation. The grower would then submit the voucher to an administering agency such as the Oregon Department of Agriculture that would then disburse a reimbursement payment. Such a direct spending program could have advantages over a tax credit in that reimbursement could arrive more quickly for growers (as opposed to waiting until tax filing) and growers would not need sufficient tax liability to benefit as is required under the credit

[23] Basis is the amount it costs to grow the crop. 25% of value is the assumed basis for farms permitted to use cash accounting in computing the enhanced deduction.
[24] According to the 2012 Census of Agriculture, 22,451 farms in Oregon reported net losses compared to 12,988 with net gains.

framework. A disadvantage of a direct spending program is the potential for greater administrative costs as the tax credit leverages Oregon's established tax structure to compensate growers.

Administrative & Compliance Costs

Administrative and costs for the Department of Revenue are minimal.

Similar Credits Allowed in Other States

Multiple states offer crop donation tax credits similar to Oregon's credit. While an exhaustive 50 state examination was not conducted, the states of West Virginia, New York and Colorado provide examples of other states with a similar credit. The three states each require the donations to be made by farmers to charitable food distribution organizations. The value of the credit is generally a percentage of the wholesale value of the crop donated and ranges from 10%-25% for the three states. All three states have caps on the credit amount for individual farmers and New York's credit is refundable (Capouet, 2018).

Statute	Tax Expenditure (TE) Name and TE Number (Number aligns with Governor's Tax Expenditure Report)
315.154-156 (318.031)	1.430 Crop Donations

Year	Bill	Chapter	Section(s)	Policy
1977	**HB 3322**	**852**	**2**	**Enacting legislation | Credit equal to 10% of the value of the crop donated (gleaned) | Required certification by State Department of Agriculture | Defined terms**
1979	**HB 2255**	**622**	**2**	**Modified definition of "wholesale market price" | Eliminated donation certification requirements administered by State Department of Agriculture | Added requirements that crop is grown primarily to be sold for cash and that crop is still usable as food for human**
1985	HB 2487	521	3	Required gleaning to be done in Oregon | Non-substantive statutory revisions
1993	HB 2413	730	15,16,18	Measure combined and moved business tax credits from ORS chapters 316, 317, & 318 into chapter 315
1995	HB 2200	54	5	Allowed Department of Revenue to waive requirements of taxpayer to submit proof of eligibility when claiming income tax credits or deductions
1999	HB 2518	21	39,40	Non-substantive statutory revisions
2001	**HB 2718**	**222**	**1,2**	**Expanded list of recipients eligible to receive donated food to include food banks and other tax exempt organizations engaged in charitable food distribution | Change had effect of changing emphasis of credit from crop gleaning to crop donation (which includes, but is not limited to, gleaning)**
2009	**HB 2067**	**913**	**5**	**Placed sunset of 1/1/2012 (was allowed to sunset)**
2014	**SB 1541**	**115**	**1,2**	**Reinstated credit for tax years 2014 to 2019 | Increased the wholesale price allowed as credit to 15% from 10%**

ORS 316.102 — 1.446 Political Contributions

Year	Bill	Chapter	Section(s)	Policy
1969	**HB 1572**	**432**	**2**	**Enacting Legislation | Credit equal to least of: amount contributed, 50% of total contribution with a max of $5 (S) $10 (J), tax liability of taxpayer**
1973	**HB 2221**	**119**	**3**	**Increased amount of credit to one-half of total contribution not to exceed $12.50 (S) $25 (J) | Disallowed tax credit if taxpayer has claimed a deduction for a political contribution on federal tax return | Modified definitional language**
1975	**SB 204**	**177**	**1**	**Increased amount of credit to one-half of total contribution not to exceed $25 (S) $50 (J) | Amended definitional language to which donations could be made**
1977	HB 2300	268	1	Modified language related to candidacy and trust, committee, association or organization to which voluntary donations can be made
1979	SB 376	190	413	Aligned credit statute with changes made elsewhere in measure
1985	HB 2011	802	6	IRC connection update
1987	**HB 2225**	**293**	**16**	**Limits on credit increased to $50 (S) $100 (J) and made credit equal to full amount of contribution up to credit limit (increased from half of contribution) | Eliminated language disallowing credit if taxpayer claimed a deduction for a political contribution on taxpayer's federal return | Defined "national political party" | Refined definitional language**
1989	HB 3130	986	1	Aligned definition of "national political party or to a committee thereof" with existing definitions provided elsewhere in statute
1993	HB 2276	797	27	Aligned credit with definitional changes to types of candidates and/or political parties made in other sections of measure
1995	B.M. 9	1	19	Disallows credit for political contributions to a state candidate that has not filed a declaration of limitation on expenditures per Ballot Measure 9 (1994) restrictions.
1995	SB 928	712	104	Statutory language alignment with Ch. 1 Section 19 (1995)
1999	SB 369	999	27	Removed Measure 9 restrictions on political contributions qualifying for the Political Contributions Tax Credit (aligned with 1994 Ballot Measure 9 provisions declared void by
2009	HB 2067	913	34	Placed sunset of 1/1/2014
2013	**HB 3367**	**750**	**6,7**	**Disallowed credit for taxpayers with FAGI > $200,000 (joint return) $100,000 (all others) | Sunset extended to 1/1/2020**