

HOUSE AMENDMENTS TO HOUSE BILL 2978

By COMMITTEE ON REVENUE

June 6

1 On page 1 of the printed bill, line 5, delete “7” and insert “9”.

2 In line 7, delete “7” and insert “9”.

3 In line 15, after “by” insert “or used to qualify for”.

4 In line 16, delete the period and insert “, or costs that are used to claim a federal tax credit.

5 “(5) ‘Tier I short line railroad’ means a short line railroad owned or leased by a person for
6 whom the total length of short line railroad track owned or leased in Oregon is equal to or greater
7 than 200 miles. The total amount of short line railroad track in Oregon calculated under this sub-
8 section includes any short line railroad track owned or leased by the person, or if the person is a
9 corporation, by the person’s parent corporation or subsidiaries, regardless of whether the track is
10 owned or leased by one or more railroads.

11 “(6) ‘Tier II short line railroad’ means a short line railroad that is not a tier I short line railroad
12 or is a short line railroad owned or leased by the state, a city, a county, a port or any other public
13 or municipal corporation.”.

14 Delete lines 17 through 30 and delete page 2.

15 On page 3, delete lines 1 through 19 and insert:

16 **“SECTION 3. (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer
17 is a corporation, under ORS chapter 317 or 318) is allowed to a taxpayer, based upon short
18 line railroad rehabilitation project costs actually paid or incurred by the taxpayer during the
19 tax year for which the credit is claimed.**

20 **“(2) The credit allowed under this section shall be the least of:**

21 **“(a) In the case of a tier I short line railroad, \$1,000 multiplied by the number of miles
22 of short line railroad track the taxpayer owns or leases in this state on the day the short line
23 railroad rehabilitation project is completed;**

24 **“(b) In the case of a tier II short line railroad, \$3,500 multiplied by the number of miles
25 of short line railroad track the taxpayer owns or leases in this state on the day the short line
26 railroad rehabilitation project is completed; or**

27 **“(c) Fifty percent of the short line railroad rehabilitation project costs paid or incurred
28 by the taxpayer during the tax year in which the credit is claimed.**

29 **“(3) For the credit to be allowed under this section:**

30 **“(a) The infrastructure must be located in Oregon; and**

31 **“(b) The taxpayer must:**

32 **“(A) Own or lease the infrastructure;**

33 **“(B) Be a short line railroad; and**

34 **“(C) Receive a final written certification from the Department of Transportation before
35 claiming the credit.**

1 “(4) The amount of the credit claimed under this section for any one tax year may not
2 exceed the tax liability of the taxpayer.

3 “(5) Any tax credit otherwise allowable under this section that is not used by the tax-
4 payer in a particular tax year may be carried forward and offset against the taxpayer’s tax
5 liability for the next succeeding tax year. Any credit remaining unused in that next suc-
6 ceeding tax year may be carried forward and used in the second succeeding tax year, and
7 likewise, any credit not used in that second succeeding tax year may be carried forward and
8 used in the third succeeding tax year, and likewise, any credit not used in that third suc-
9 ceeding tax year may be carried forward and used in the fourth succeeding tax year, and
10 likewise, any credit not used in that fourth succeeding tax year may be carried forward and
11 used in the fifth succeeding tax year but may not be carried forward for any tax year
12 thereafter.

13 “(6) The credit allowed under this section is not in lieu of any depreciation or amorti-
14 zation deduction for the short line railroad rehabilitation project to which the taxpayer oth-
15 erwise may be entitled for purposes of ORS chapter 316, 317 or 318 for the tax year.

16 “(7) The taxpayer’s adjusted basis for determining gain or loss may not be decreased by
17 any tax credit allowed under this section.

18 “(8)(a) The Department of Revenue may by rule require that the Department of Trans-
19 portation provide information about a certification issued under section 5 of this 2019 Act,
20 including the name and taxpayer identification number of the taxpayer or other person re-
21 ceiving certification, the date the certification was issued in its final form, the approved
22 amount of credit and the first tax year for which the credit may be claimed.

23 “(b) A taxpayer that is a pass-through entity that has received certification under section
24 5 of this 2019 Act shall provide to the Department of Revenue, within two months after the
25 close of the tax year in which the certification was issued, the name, taxpayer identification
26 number and any other information required by the department of each owner receiving a
27 distributive share of the credit, in a manner prescribed by the department.

28 “(9) The Department of Revenue shall prescribe by rule the manner and the timing of
29 submission of the information described in subsection (8) of this section to the department.

30 “(10) The credit shall be claimed on a form prescribed by the Department of Revenue that
31 contains the information required by the department.

32 “(11) In the case of a credit allowed under this section:

33 “(a) A nonresident shall be allowed the credit under this section in the proportion pro-
34 vided in ORS 316.117.

35 “(b) If a change in the status of a taxpayer from resident to nonresident or from non-
36 resident to resident occurs, the credit allowed by this section shall be determined in a man-
37 ner consistent with ORS 316.117.

38 “(c) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or
39 if the Department of Revenue terminates a taxpayer’s taxable year under ORS 314.440, the
40 credit allowed under this section shall be prorated or computed in a manner consistent with
41 ORS 314.085.

42 “**SECTION 4.** (1) Prior to construction of a short line railroad rehabilitation project, a
43 taxpayer may apply to the Department of Transportation for preliminary certification of the
44 project in the manner prescribed by rules adopted under this section, which must include:

45 “(a) Timelines and deadlines for submission of application materials;

1 “(b) A description of the information required by the department to determine that the
2 taxpayer qualifies for the credit allowed under section 3 of this 2019 Act;

3 “(c) Criteria for determining the amount of the tax credit allowed under section 3 of this
4 2019 Act, including standards for what constitutes completion of a short line railroad reha-
5 bilitation project;

6 “(d) The process by which an applicant will be notified of an incomplete application and
7 the time allowed for the applicant to provide the missing information; and

8 “(e) The month and date by which the department must notify an applicant of the pre-
9 liminary certification decision and the potential amount of the tax credit for which the ap-
10 plicant has received preliminary certification.

11 “(2) If the total amount of potential tax credits allowed under section 3 of this 2019 Act
12 for all taxpayers that have applied for preliminary certification exceeds the limit in section
13 8 of this 2019 Act, the department shall allocate the tax credits allowed under section 3 of
14 this 2019 Act as follows:

15 “(a) By giving first priority to all tier II short line railroads that own or lease less than
16 75 miles of short line railroad track in this state; and

17 “(b) By giving second priority to all tier II short line railroads not described in paragraph
18 (a) of this subsection.

19 “(3) If the department must allocate tax credits to a group of taxpayers in an amount
20 that is less than the amount the taxpayers would otherwise receive under section 3 of this
21 2019 Act, the department shall divide the available tax credits among the group propor-
22 tionally, based on the amount each taxpayer would have otherwise received under section 3
23 of this 2019 Act.

24 “SECTION 5. (1) A taxpayer may apply to the Department of Transportation for final
25 certification of a short line railroad rehabilitation project if:

26 “(a) The taxpayer received preliminary certification for the project under section 4 of this
27 2019 Act; and

28 “(b) The project is completed.

29 “(2) After approving the application, the department shall certify the project, including
30 the amount of the tax credit for which the taxpayer has received final certification. The de-
31 partment may not certify an amount that is more than the amount approved in the prelim-
32 inary certification for the project.

33 “(3) The department may establish by rule a process for accepting applications and issu-
34 ing final certifications under this section.

35 “SECTION 6. (1) The Department of Transportation may charge and collect a fee from
36 taxpayers for preliminary or final certification of short line rehabilitation projects under
37 sections 4 and 5 of this 2019 Act. The fee may not exceed the cost to the department of is-
38 suing certifications.

39 “(2) All fees collected under this section shall be deposited in the State Treasury to the
40 credit of the Railroad Fund established under ORS 824.014. Moneys deposited under this
41 section are continuously appropriated to the Department of Transportation for the purpose
42 of administering and enforcing the provisions of sections 2 to 9 of this 2019 Act.

43 “SECTION 7. (1) A person that has obtained a tax credit under section 3 of this 2019 Act
44 may transfer the credit to a taxpayer under ORS chapter 316, 317 or 318. A transfer that
45 occurs on or after January 1, 2020, is conditioned upon compliance with this section and ORS

1 315.052 and 315.053.

2 “(2) The Department of Revenue may require that the person that has earned the credit
3 and the taxpayer that intends to claim the credit jointly file a notice of tax credit transfer
4 with the department on or before the earliest of the following dates:

5 “(a) A date 30 days after the transfer of the credit;

6 “(b) The date on which the transferee files a return; or

7 “(c) The due date, including extensions, of the transferee’s return.

8 “(3) The notice shall be given on a form prescribed by the department that contains:

9 “(a) The name and address of the transferor and of the transferee;

10 “(b) The taxpayer identification number of the transferor and of the transferee;

11 “(c) The dates on which the person earning the credit received certifications for the
12 credit;

13 “(d) The amount of the credit that is certified, the amount that is being transferred and
14 the amount that is being retained by the transferor; and

15 “(e) Any other information required by the department.

16 “(4)(a) A transferor may separately transfer the entirety of that portion corresponding
17 to the tax year to one or more transferees, subject to subsection (5) of this section.

18 “(b) Any amount of credit that would be allowed due only to a carryforward provision
19 may not be transferred.

20 “(5) Any transfer of a tax credit or a portion of a tax credit must be completed no later
21 than the earliest of the following dates in relation to the tax return on which the credit is
22 claimed:

23 “(a) The original due date, including extensions, of the transferor’s return;

24 “(b) The date on which the transferor’s return is actually filed;

25 “(c) The original due date, including extensions, of the transferee’s return; or

26 “(d) The date on which the transferee’s return is actually filed.

27 “(6) Notwithstanding subsection (5) of this section, if the transferor is a tax-exempt en-
28 tity, the transfer must be completed on or before a date one year after the close of the tax
29 year for which the credit was certified. As used in this subsection, ‘tax-exempt entity’ means
30 a government agency or an organization that is recognized as exempt under section 501(c)(3)
31 of the Internal Revenue Code.

32 “(7) The transferee shall claim the credit in accordance with the credit provisions for the
33 tax years in which the credit is allowed.

34 “(8) The department by rule may establish policies and procedures for the implementa-
35 tion of this section.

36 “SECTION 8. The total amount of potential tax credits allowed under section 3 of this
37 2019 Act at the time of preliminary certification under section 4 of this 2019 Act may not
38 exceed \$4 million for any biennium.

39 “SECTION 9. (1) Under the procedures for a contested case under ORS chapter 183, the
40 Director of Transportation may order the suspension, revocation or forfeiture of a tax credit
41 certification under section 4 or 5 of this 2019 Act, or of a portion thereof, if the director finds
42 that:

43 “(a) The certification was obtained by fraud or misrepresentation;

44 “(b) The certification was obtained by mistake or miscalculation; or

45 “(c) The taxpayer otherwise violates or has violated a condition or requirement for el-

1 **igibility for the tax credit.**

2 **“(2) As soon as an order of revocation under this section becomes final, the director shall**
3 **notify the Department of Revenue and the person that received the tax credit certification**
4 **of the order of revocation. Upon notification, the Department of Revenue immediately shall**
5 **proceed to collect:**

6 **“(a) If no portion of a credit has been transferred, those taxes not paid by the holder of**
7 **the certification as a result of the tax credits provided to the holder under the revoked ap-**
8 **proval, from the holder or a successor in interest to the business interests of the holder.**
9 **All tax credits provided to the holder and attributable to the fraudulently or mistakenly ob-**
10 **tained certification or portion of the certification shall be forfeited.**

11 **“(b) If all of a credit has been transferred, an amount equal to the amount of the tax**
12 **credits allowable to the transferee under the revoked certification, from the transferor.**

13 **“(c) If a portion of a tax credit has been transferred, those taxes not paid by the**
14 **transferor as a result of the tax credits provided to the transferor pursuant to the revoked**
15 **certification, from the transferor or a successor in interest to the business interests of the**
16 **transferor, and an amount equal to the amount of the tax credits allowable to the transferee**
17 **pursuant to the revoked certification, from the transferor.**

18 **“(3)(a) The Department of Revenue shall have the benefit of all laws of the state per-**
19 **taining to the collection of income and excise taxes and may proceed to collect the amounts**
20 **described in subsection (2) of this section from the person that obtained certification or a**
21 **successor in interest to the business interests of that person. An assessment of tax is not**
22 **necessary and the collection of taxes described in this subsection is not precluded by any**
23 **statute of limitations.**

24 **“(b) For purposes of this subsection, a lender, bankruptcy trustee or other person that**
25 **acquires an interest through bankruptcy or through foreclosure of a security interest is not**
26 **considered to be a successor in interest to the business interests of the person that obtained**
27 **certification.**

28 **“(4) If the certification is ordered revoked pursuant to this section, the holder of the**
29 **certification shall be denied any further relief in connection with the credit from and after**
30 **the date that the order of revocation becomes final.**

31 **“(5) Notwithstanding subsections (1) to (4) of this section, a certification or portion of a**
32 **certification held by a transferee may not be considered revoked for purposes of the**
33 **transferee, the tax credit allowable to the transferee may not be reduced and a transferee**
34 **is not liable under this section.**

35 **“(6) Interest under this section shall accrue at the rate established in ORS 305.220 be-**
36 **ginning the day after the due date of the return on which the credit may first be claimed.**

37 **“(7) The Department of Revenue may collect amounts owed under this section by a**
38 **partnership from the partnership.”.**

39 In line 20, delete “8” and insert “10”.

40 On page 4, line 12, delete “9” and insert “11”.

41 Delete lines 21 and 22 and insert:

42 **“SECTION 12. (1) Sections 2 to 9 of this 2019 Act apply to tax years beginning on or after**
43 **January 1, 2020, and before January 1, 2026.**

44 **“(2) Except as provided in section 3 (5) of this 2019 Act, a credit may not be claimed un-**
45 **der section 3 of this 2019 Act for tax years beginning on or after January 1, 2026.”.**

1 In line 23, delete "11" and insert "13".

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