

House Bill 2808

Sponsored by Representative SMITH DB; Representatives LEIF, ZIKA (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**.

Allows credit against net income taxes for portion of eligible costs of newly constructed single-family dwelling that sells for price affordable to household with annual income at or below 120 percent of area median income.

Sunsets on January 2, 2027.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1 Relating to tax incentives for affordable housing; and prescribing an effective date.

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

SECTION 1. (1) As used in sections 1 to 3 of this 2021 Act:

4 (a) **“Consumer Price Index for All Urban Consumers, West Region (All Items)” means**
5 **the Consumer Price Index for All Urban Consumers, West Region (All Items), as published**
6 **by the Bureau of Labor Statistics of the United States Department of Labor.**

7 (b)(A) **“Eligible costs” means the costs of acquisition, finance costs, permit costs and**
8 **construction costs with respect to eligible residential property that in total equal not less**
9 **than \$100 and not more than \$120 per square foot of the eligible residential property.**

10 (B) **The dollar amounts specified in subparagraph (A) of this paragraph shall be adjusted**
11 **annually by multiplying the amounts by the percentage, if any, by which the monthly aver-**
12 **aged Consumer Price Index for All Urban Consumers, West Region (All Items) for the 12**
13 **consecutive months ending on the immediately preceding December 31 exceeds the monthly**
14 **averaged Consumer Price Index for All Urban Consumers, West Region (All Items) for the**
15 **12 consecutive months ending on the next preceding December 31.**

16 (c) **“Eligible residential property” means one or more newly constructed single-family**
17 **dwelling units located in this state that are sold for a qualified price.**

18 (d) **“Qualified price” means a price that is affordable to a household with an annual in-**
19 **come at or below 120 percent of the area median income.**

20 (e) **“Qualified purchaser” means an individual whose household has an annual income at**
21 **or below 120 percent of the area median income.**

22 (f) **“Qualified reseller” means a qualified purchaser who engages in a transaction to resell**
23 **the eligible residential property owned by the qualified purchaser.**

24 (g) **For purposes of earning a tax credit under this section, “taxpayer” includes pass-**
25 **through and tax-exempt entities.**

26 (2) **A credit is allowed against the taxes otherwise due under ORS chapter 316, or, if the**
27 **taxpayer is a corporation, under ORS chapter 317 or 318, for eligible residential property for**
28 **which a certificate of eligibility has been issued under section 2 of this 2021 Act.**

29 (3) **The credit shall be allowed for the first tax year of the taxpayer that begins after the**
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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 taxpayer has closed on a contract of sale with a qualified purchaser who will occupy the eli-
2 gible residential property as a single-family dwelling that is the qualified purchaser's primary
3 residence.

4 (4) The credit shall be allowed in an amount equal to the lesser of:

5 (a) Fifty percent of the eligible costs incurred by the taxpayer with respect to the eligible
6 residential property; or

7 (b) The tax liability of the taxpayer for the tax year in which the credit is allowed.

8 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer
9 in the tax year described in subsection (3) of this section may be carried forward and offset
10 against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining
11 unused in the next succeeding tax year may be carried forward and used in the second suc-
12 ceeding tax year, and any credit not used in the second succeeding tax year may be carried
13 forward and used in the third succeeding tax year, but may not be carried forward for any
14 succeeding tax year.

15 (6) The credit allowed under this section is not in lieu of any depreciation or amortization
16 deduction to which the taxpayer otherwise may be entitled under ORS chapter 316, 317 or
17 318 for the tax year.

18 (7) The taxpayer's adjusted basis for determining gain or loss may not be further de-
19 creased by any amount of credit allowed under this section.

20 (8)(a) A nonresident shall be allowed the credit under this section in the proportion pro-
21 vided in ORS 316.117.

22 (b) If a change in the status of a taxpayer from resident to nonresident or from nonres-
23 ident to resident occurs, the credit allowed under this section shall be determined in a
24 manner consistent with ORS 316.117.

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

29 (9)(a) At least 35 percent of the value of all credits allowed in a tax year under this sec-
30 tion must be for eligible costs incurred for eligible residential property located in counties
31 with a population of less than 125,000.

32 (b) The total credits allowed to all taxpayers in any tax year under this section may not
33 exceed \$5 million. A partial credit may be certified under section 2 of this 2021 Act in order
34 to bring the total of all credits allowed to not more than \$5 million.

35 (10)(a) Except as provided in paragraphs (b) and (c) of this subsection, a tax credit al-
36 lowed under this section may not be sold or transferred.

37 (b) Tax credits allowed under this section that a partnership, limited liability company,
38 S corporation or other pass-through entity is entitled to claim may be allocated to the
39 partners, members or shareholders of the entity for their direct use in accordance with the
40 provisions of any agreement among the partners, members or shareholders.

41 (c)(A) All or any portion of a tax credit allowed under this section that a nonprofit cor-
42 poration, governmental entity or other tax-exempt entity is entitled to claim may be trans-
43 ferred to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

44 (B) A tax credit that is transferable under this paragraph may be transferred on or be-
45 fore the date on which the return is due for the tax year in which the credit may first be

1 **claimed. After that date, no portion of a credit allowed under this section may be trans-**
 2 **ferred.**

3 **(C) To transfer the tax credit, the taxpayer that earned and will transfer the credit and**
 4 **the transferee that will claim the credit shall, on or before the date prescribed in subpara-**
 5 **graph (B) of this paragraph, jointly file a notice of tax credit transfer with the Department**
 6 **of Revenue. The notice must be given on a form prescribed by the department that contains**
 7 **all of the following:**

- 8 **(i) The name and address of the transferor and transferee;**
- 9 **(ii) The amount of the tax credit that is being transferred;**
- 10 **(iii) The amount of the tax credit, if any, that is being retained by the transferor; and**
- 11 **(iv) Any other information required by the department.**

12 **(D) The department shall adopt rules establishing procedures for the transfer of tax**
 13 **credits under this paragraph.**

14 **SECTION 2. (1) In order to receive a tax credit under section 1 of this 2021 Act, a tax-**
 15 **payer must submit to the Housing and Community Services Department on a form pre-**
 16 **scribed by the department a claim with respect to each eligible residential property for which**
 17 **a credit is claimed.**

18 **(2) The claim must contain:**

19 **(a) Evidence showing:**

20 **(A) That the property is eligible residential property;**

21 **(B) That the taxpayer submitting the claim has closed on a contract of sale with a qual-**
 22 **ified purchaser for the eligible residential property;**

23 **(C) That the taxpayer notified the qualified purchaser in writing of the provisions of**
 24 **section 3 of this 2021 Act before the contract of sale was executed and that the qualified**
 25 **purchaser signed the notice; and**

26 **(D) The eligible costs for the eligible residential property; and**

27 **(b) Any other information the department may require.**

28 **(3)(a) If the department determines that the eligible residential property does not meet**
 29 **all the requirements under this section and section 1 of this 2021 Act, the department shall**
 30 **deny the claim.**

31 **(b) If the department determines that the eligible residential property meets all the re-**
 32 **quirements under this section and section 1 of this 2021 Act, the department shall issue to**
 33 **the taxpayer a certificate of eligibility for the tax credit allowable under section 1 of this 2021**
 34 **Act. The certificate shall state the approved amount of eligible costs for the eligible resi-**
 35 **dential property.**

36 **(4) At the end of each calendar year, the Housing and Community Services Department**
 37 **shall send to the Department of Revenue a list of the names, addresses and taxpayer iden-**
 38 **tification numbers of taxpayers to whom a certificate of eligibility has been issued under this**
 39 **section during the calendar year, along with approved amounts of eligible costs for each eli-**
 40 **gible residential property.**

41 **(5) Notwithstanding that a certificate of eligibility has been issued to a taxpayer under**
 42 **this section, the Department of Revenue may disallow, in whole or in part, a claim for credit**
 43 **under section 1 of this 2021 Act upon the department's determination that, under the pro-**
 44 **visions of section 1 of this 2021 Act, the taxpayer is not entitled to the credit or is entitled**
 45 **to only a portion of the amount claimed.**

1 **SECTION 3.** (1) A qualified reseller may resell an eligible residential property only to a
2 qualified purchaser.

3 (2) The qualified reseller may resell the eligible residential property only at or below the
4 qualified price for which the qualified reseller purchased the eligible residential property,
5 increased by three percent for each year that the qualified reseller has owned the eligible
6 residential property.

7 (3)(a) Notwithstanding ORS 205.130, a county clerk may not record or cause to be re-
8 corded an instrument conveying or contracting to convey fee title to eligible residential
9 property unless the instrument is accompanied by documentary evidence showing that the
10 consideration for the transfer was not greater than the amount determined under subsection
11 (2) of this section.

12 (b) Upon recording the instrument, the county clerk shall make a notation as a public
13 record that the eligible residential property is subject to the provisions of this section.

14 (4) Subsections (1) to (3) of this section apply to an eligible residential property only for
15 the period of 11 years beginning on the date on which the contract of sale with the first
16 qualified purchaser to own the property closes.

17 (5) A qualified purchaser who purchases eligible residential property from a qualified re-
18 seller for a purchase price in excess of the amount determined under subsection (2) of this
19 section may bring suit in the circuit court of the county in which the eligible residential
20 property is located to recover the amount of the excess. The suit must be filed within two
21 years after the date on which the contract of sale closes.

22 **SECTION 4.** (1) Sections 1 to 3 of this 2021 Act are repealed on January 2, 2027.

23 (2) Notwithstanding the date specified in subsection (1) of this section:

24 (a) A taxpayer allowed a credit under section 1 of this 2021 Act before the date specified
25 in subsection (1) of this section may carry unused portions of the credit forward as provided
26 under section 1 (5) of this 2021 Act.

27 (b) Section 3 of this 2021 Act applies to the resale of eligible residential property during
28 the 11-year period specified in section 3 of this 2021 Act for property first purchased before
29 the date specified in subsection (1) of this section.

30 **SECTION 5.** Sections 1 to 3 of this 2021 Act become operative on January 1, 2022.

31 **SECTION 6.** This 2021 Act takes effect on the 91st day after the date on which the 2021
32 regular session of the Eighty-first Legislative Assembly adjourns sine die.
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