

## HOUSE AMENDMENTS TO HOUSE BILL 4002

By COMMITTEE ON BUSINESS AND LABOR

February 15

- 1 On page 1 of the printed bill, line 2, after “314.772,” insert “316.502, 317.850,”.
- 2 In line 5, delete “section 2” and insert “sections 2 and 4a”.
- 3 After line 16, insert:
- 4 “(3) ‘Salary’ has the meaning given that term in ORS 653.010.”.
- 5 In line 17, delete “(3)” and insert “(4)”.
- 6 On page 2, after line 24, insert:
- 7 **“SECTION 4a. The provisions of section 2 of this 2022 Act relating to overtime compen-**
- 8 **sation requirements for agricultural workers do not apply to:**
- 9 **“(1) An individual described in ORS 653.020 (1).**
- 10 **“(2) An individual employed in agriculture whose principal duties are administrative,**
- 11 **executive or professional work and who:**
- 12 **“(a) Performs predominantly intellectual, managerial or creative tasks;**
- 13 **“(b) Exercises discretion and independent judgment; and**
- 14 **“(c) Earns a salary and is paid on a salary basis.”.**
- 15 On page 3, delete lines 25 through 45.
- 16 Delete pages 4 through 6 and insert:
- 17 **“SECTION 8. (1) As used in this section and sections 9 and 10 of this 2022 Act:**
- 18 **“(a) ‘Agricultural worker’ has the meaning given that term in section 1 of this 2022 Act.**
- 19 **“(b) ‘Eligible employer’ means an employer doing business in 2017 North American In-**
- 20 **dustry Classification System code 111, crop production, or code 112, animal production and**
- 21 **aquaculture.**
- 22 **“(c) ‘Full-time equivalent employee’ means an employee or a combination of employees**
- 23 **that perform at least 2,080 hours of work for an employer in a calendar year.**
- 24 **“(2)(a) A credit against taxes that are otherwise due under ORS chapter 316 or, if the**
- 25 **taxpayer is a corporation, under ORS chapter 317 or 318 is allowed for overtime compen-**
- 26 **sation paid by an eligible employer to agricultural workers on an hourly basis. The amount**
- 27 **of the credit shall equal a percentage of the actual excess paid to agricultural workers during**
- 28 **the calendar year in which the tax year begins, as determined under section 9 of this 2022**
- 29 **Act.**
- 30 **“(b) A labor contractor licensed under ORS 658.410 may not claim a credit under this**
- 31 **section. An eligible employer may claim a credit under this section for wages paid to workers**
- 32 **recruited, solicited, supplied or employed by a labor contractor on behalf of the eligible em-**
- 33 **ployer.**
- 34 **“(3) Prior to claiming the credit allowed under this section, a taxpayer is required to**
- 35 **receive written certification from the Department of Revenue stating that the taxpayer is**

1 an eligible employer and indicating the maximum amount of credit for which the taxpayer  
2 is eligible for the calendar year, as provided in section 10 of this 2022 Act.

3 “(4) If the amount allowable:

4 “(a) As a credit under this section against taxes imposed under ORS chapter 316, when  
5 added to the sum of the amounts allowable as payment of tax under ORS 316.187 or 316.583,  
6 other tax prepayment amounts and other refundable credit amounts, exceeds the taxes im-  
7 posed by ORS chapters 314 and 316 for the tax year after application of any nonrefundable  
8 credits allowable for purposes of ORS chapter 316 for the tax year, the amount of the excess  
9 shall be refunded to the taxpayer as provided in ORS 316.502.

10 “(b) As a credit under this section against taxes imposed under ORS chapter 317 or 318,  
11 when added to the sum of the amount of estimated tax paid under ORS 314.515 and any other  
12 tax prepayment amounts, exceeds the taxes imposed by ORS chapters 314 and 317 for the tax  
13 year (reduced by any nonrefundable credits allowable for purposes of ORS chapter 317 for the  
14 tax year), the amount of the excess shall be refunded to the taxpayer as provided in ORS  
15 314.415.

16 “(5) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,  
17 or if the Department of Revenue terminates the taxpayer’s taxable year under ORS 314.440,  
18 the credit allowed under this section shall be prorated or computed in a manner consistent  
19 with ORS 314.085.

20 “(6) The Department of Revenue shall adopt rules for the purposes of sections 8 to 11 of  
21 this 2022 Act, including policies and procedures for certifying taxpayers as eligible for the  
22 credit allowed under this section as required in section 10 of this 2022 Act.

23 “SECTION 9. (1) The amount of credit allowed under section 8 of this 2022 Act shall be  
24 equal to a percentage of the additional wages paid as overtime pay to agricultural workers  
25 by an eligible employer, in excess of regular pay, as set forth in subsections (2) and (3) of this  
26 section.

27 “(2) If during the calendar year the taxpayer employs more than 25 full-time equivalent  
28 employees, the following percentages shall apply:

29 “(a) 60 percent of excess wages paid in calendar year 2023 or 2024.

30 “(b) 45 percent of excess wages paid in calendar year 2025.

31 “(c) 30 percent of excess wages paid in calendar year 2026.

32 “(d) 15 percent of excess wages paid in calendar year 2027 or 2028.

33 “(3) If during the calendar year the taxpayer employs 25 or fewer fulltime equivalent  
34 employees, the following percentages shall apply:

35 “(a) 75 percent of excess wages paid in calendar year 2023 or 2024.

36 “(b) 60 percent of excess wages paid in calendar year 2025.

37 “(c) 45 percent of excess wages paid in calendar year 2026.

38 “(d) 30 percent of excess wages paid in calendar year 2027.

39 “(e) 15 percent of excess wages paid in calendar year 2028.

40 “SECTION 10. (1) In order to obtain certification from the Department of Revenue for a  
41 tax credit allowed under section 8 of this 2022 Act, a taxpayer shall submit to the department  
42 an application for certification under this section. The application shall be made in the form  
43 and manner prescribed by the department and must be submitted by the taxpayer no later  
44 than January 31 following the calendar year for which the taxpayer seeks credit.

45 “(2) The taxpayer must include with the application required under this section the fol-

1    **lowing:**

2       “(a) **The address and tax identification number of the taxpayer.**

3       “(b) **A statement by the taxpayer of the overtime hours worked and overtime wages paid,**  
4 **on an hourly basis, to each agricultural worker employed by the taxpayer and the amount**  
5 **of overtime wages paid on or behalf of the taxpayer as compensation to agricultural workers**  
6 **during the calendar year.**

7       “(c) **The number of the license issued under ORS 658.410 to any labor contractor used to**  
8 **recruit, solicit, supply or employ workers on behalf of the taxpayer, or other permit or reg-**  
9 **istration numbers issued to the labor contractor.**

10       “(d) **Any other information required by the department to verify the identity of the tax-**  
11 **payer, the eligibility of the taxpayer for the credit allowed under section 8 of this 2022 Act**  
12 **or the amount of credit allowable to the taxpayer.**

13       “(3) **Upon receipt of an application under this section, the department shall immediately**  
14 **allow an extension, from the next applicable due date, for filing of the taxpayer’s income or**  
15 **corporate excise tax return.**

16       “(4) **Not later than August 1 of the year in which the application under subsection (1) of**  
17 **this section is filed, the department shall issue written certification to taxpayers that are**  
18 **eligible to claim the credit under section 8 of this 2022 Act. The certification shall state the**  
19 **maximum amount of credit for which the taxpayer is eligible for the tax year. The credit**  
20 **claimed may not exceed the actual amount of excess paid as overtime wages to agricultural**  
21 **workers during the calendar year by the taxpayer.**

22       “**SECTION 11.** **The total amount certified by the Department of Revenue for tax credits**  
23 **for overtime wages under section 8 of this 2022 Act may not exceed \$27 million for all tax-**  
24 **payers for any calendar year. If the department receives applications for the credit sufficient**  
25 **to exceed this amount, the department shall by rule proportionately reduce the amount of**  
26 **certified credits among all taxpayers applying for the credit.**

27       “**SECTION 12.** **Section 8 of this 2022 Act applies to tax years beginning on or after Jan-**  
28 **uary 1, 2023, and before January 1, 2029.**

29       “**SECTION 13.** **ORS 316.502 is amended to read:**

30       “316.502. (1) **The net revenue from the tax imposed by this chapter, after deducting refunds and**  
31 **amounts described in ORS 285B.630 and 285C.635, shall be paid over to the State Treasurer and held**  
32 **in the General Fund as miscellaneous receipts available generally to meet any expense or obligation**  
33 **of the State of Oregon lawfully incurred.**

34       “(2) **A working balance of unreceipted revenue from the tax imposed by this chapter may be**  
35 **retained for the payment of refunds, but such working balance shall not at the close of any fiscal**  
36 **year exceed the sum of \$1 million.**

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

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

39       “(b) **The refund payments in excess of tax liability authorized under ORS 315.174, 315.262,**  
40 **315.264, 315.266 and 316.090 and section 3, chapter 589, Oregon Laws 2021, and section 8 of this**  
41 **2022 Act.**

42       “**SECTION 14.** **ORS 317.850 is amended to read:**

43       “317.850. (1) **The net revenue from the tax imposed by this chapter, after deduction of refunds,**  
44 **shall be paid over to the State Treasurer and held in the General Fund as miscellaneous receipts**  
45 **available generally to meet any expense or obligation of the State of Oregon lawfully incurred.**

1 “(2) A working balance of unreceipted revenue from the tax imposed by this chapter may be  
2 retained for the payment of refunds, but such working balance shall not at the close of any fiscal  
3 year exceed the sum of \$500,000.

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

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

6 “(b) **The refund payments in excess of tax liability authorized under section 8 of this 2022**  
7 **Act.**

8 “**SECTION 15.** ORS 314.772 is amended to read:

9 “314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to  
10 a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation.  
11 The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or  
12 are allowable to the shareholders of the S corporation.

13 “(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.763, on  
14 income of the shareholder of an S corporation, there shall be taken into account the shareholder’s  
15 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but  
16 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-  
17 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the  
18 manner prescribed under section 1377(a) of the Internal Revenue Code.

19 “(3) The character of any item included in a shareholder’s pro rata share under subsection (2)  
20 of this section shall be determined as if such item were realized directly from the source from which  
21 realized by the corporation, or incurred in the same manner as incurred by the corporation.

22 “(4) If the shareholder is a nonresident and there is a requirement applicable for the business  
23 tax credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
24 316.117, then that provision shall apply to the nonresident shareholder.

25 “(5) As used in this section, ‘business tax credit’ means the following credits: ORS 315.104  
26 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141  
27 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture  
28 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS  
29 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee  
30 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution  
31 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy  
32 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-  
33 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-  
34 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),  
35 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS  
36 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS  
37 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643  
38 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account  
39 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone  
40 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research  
41 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,  
42 Oregon Laws 2013 (alternative fuel vehicle contributions), **and section 8 of this 2022 Act (agri-  
43 cultural overtime pay).**

44 “**SECTION 16.** ORS 318.031 is amended to read:

45 “318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter

1 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
2 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
3 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,  
4 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and  
5 315.643 **and section 8 of this 2022 Act** (all only to the extent applicable to a corporation) and ORS  
6 chapter 317.

7 **“SECTION 17. This 2022 Act takes effect on the 91st day after the date on which the 2022**  
8 **regular session of the Eighty-first Legislative Assembly adjourns sine die.”**

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