

Enrolled
Senate Bill 1502

Sponsored by Senator COURTNEY; Representative NOSSE

CHAPTER

AN ACT

Relating to tax credits for small forestland owners; creating new provisions; amending ORS 314.772 and 318.031; and prescribing an effective date.

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

SECTION 1. Sections 2 to 6 of this 2022 Act are added to and made a part of ORS chapter 315.

SECTION 2. (1) As used in sections 2 to 6 of this 2022 Act:

(a) “Common ownership” means direct ownership by one or more individuals or ownership by a corporation, partnership, association or other entity in which an individual owns a significant interest.

(b) “Dry channel area” means that area between the inside edge of the small forest owner minimum option and the edge of the dry stream channel that:

(A) Is within a surveyed dry channel portion of a small nonfish perennial stream in Western Oregon that under the small forest owner minimum option is a required no-harvest buffer;

(B) Does not flow water year-round; and

(C) Is 100 feet or more in length.

(c) “Forest conservation area” means a riparian forestland area that is not harvested, that is adjacent to a harvested riparian area and that is the excess riparian area allowed for harvest under the small forest owner minimum option beyond that allowed under the standard practice harvest restrictions, and any adjacent dry channel area.

(d) “Forestland” has the meaning given that term in ORS 527.620.

(e) “Professional forester” means a person that is engaged in the business of appraising or valuing timber or forestland as described in ORS 674.100.

(f) “Small forestland owner” means a person that owns or holds common ownership in fewer than 5,000 acres of forestland.

(g) “Small forest owner minimum option” means the option to harvest timber allowed to a small forestland owner under rules adopted under the Oregon Forest Practices Act.

(h) “Standard practice harvest restrictions” means the harvest restrictions applicable to large forestland owners under the Oregon Forest Practices Act.

(i) “Stumpage value” means the value of standing timber based on the value that would be received for the timber if harvested and delivered to a mill, minus the cost of harvest and delivery to the mill.

(j) “Timber harvest” means a harvest type 1, harvest type 2 or harvest type 3, as those terms are defined in ORS 527.620.

(k) "Western Oregon" means that area west of the crest of the Cascade Mountains.

(2)(a) A credit against taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer that is a small forestland owner that is eligible to conduct a timber harvest using a small forest owner minimum option and elects to use standard practice harvest restrictions instead. The credit shall be allowed for the tax year in which the timber harvest is completed.

(b) A credit under this section may not be transferred to a successor forestland owner.

(3) In order to be eligible for a credit under this section, a small forestland owner must:

(a) Have harvested not more than two million board feet of merchantable forest products from forestland in this state owned by the small forestland owner, as averaged over the three years immediately preceding the date of filing a notification of operation as described in section 3 of this 2022 Act;

(b) Conduct a timber harvest in an area that is:

(A) Adjacent to a riparian area subject to the Oregon Forest Practices Act; and

(B) Equal in size to or larger than that portion of the forest conservation area that the small forestland owner elects not to harvest and upon which the small forestland owner claims the credit; and

(c) Abide by the standard practice harvest restrictions, which shall remain in effect for the forest conservation area for which the small forestland owner claims the credit for 50 years beginning with the date on which the certification is issued under section 3 of this 2022 Act.

(4) The amount of the credit allowed under this section shall be based on the stumpage value of timber within the forest conservation area and shall be calculated as provided in section 4 of this 2022 Act.

(5) Prior to claiming the credit allowed under this section, a small forestland owner is required to receive written certification of eligibility from the State Forestry Department, as provided in section 3 of this 2022 Act.

(6) Upon the death of a small forestland owner that holds a certification under section 3 of this 2022 Act, and to the extent that any amount of credit remains, the credit allowed under this section:

(a) May be used by the executor of the small forestland owner's estate:

(A) As a credit against taxes imposed under ORS chapter 316, 317 or 318; and

(B) As provided in section 9 of this 2022 Act, as a credit against estate tax imposed under ORS chapter 118 on the estate of the small forestland owner; and

(b) May be used, to the extent remaining after application of paragraph (a) of this subsection, by the heirs or devisees of the small forestland owner as a credit against the taxes imposed under ORS chapter 316, 317 or 318.

(7) The credit allowed under this section may not exceed the tax liability of the taxpayer for the tax year.

(8) A forest conservation area for which a credit is allowed under this section:

(a) May not be disqualified from eligibility for special assessment as forestland under ORS 321.257 to 321.390 or 321.805 to 321.855 or from qualification for small tract forestland assessment under 321.700 to 321.754 solely due to the use of the credit allowed under this section.

(b) Shall remain eligible for the deferral allowed under ORS 308A.119, if otherwise eligible.

(c) Shall be classified as described in ORS 321.210 as land class FX.

(9) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability in any succeeding tax year thereafter, and may be carried forward to nonconsecutive tax years.

(10) A nonresident shall be allowed the credit under this section. The credit shall be computed in the same manner and be subject to the same limitations as the credit granted to a resident.

(11) The State Forestry Department, after consultation with the Department of Revenue, shall adopt rules for the purposes of sections 2 to 6 of this 2022 Act, including policies and procedures for certifying taxpayers as eligible for the credit allowed under this section as required in section 3 of this 2022 Act.

(12) The Department of Revenue shall adopt rules for the purposes of sections 2 to 6 of this 2022 Act.

SECTION 3. (1) In order to obtain certification of eligibility from the State Forestry Department for a tax credit allowed under section 2 of this 2022 Act, a small forestland owner must:

(a) File, as provided in ORS 527.670, a notification of operation with the State Forester for an operating area that includes the forest conservation area for which the small forestland owner seeks a credit under section 2 of this 2022 Act;

(b) Indicate in the notification of operation that the small forestland owner intends to use the standard practice harvest restrictions in lieu of the small forest owner minimum option;

(c) Submit to the department an application for certification under this section; and

(d) Provide documentation of stumpage values and costs of appraisal to the department after filing the notification of operation and within three months after the timber harvest has been completed.

(2) The State Forestry Department shall timely provide written certification to taxpayers that are eligible to claim the credit under section 2 of this 2022 Act.

(3) A small forestland owner that receives certification under this section must:

(a) Sign and record in the deed records for the county where the eligible forest conservation area is located an irrevocable deed restriction prohibiting the owner and the owner's successors in interest from conducting a harvest or otherwise removing trees within the forest conservation area for which a credit has been claimed. The deed restriction shall allow for incidental tree removal and for tree removal for public safety purposes. The deed restriction shall specify the amount of the credit and the expiration date of the harvest restriction on the forest conservation area. The State Forestry Department shall provide the small forestland owner with appropriate documentation for this purpose.

(b) Maintain the written documentation of the amount certified for tax credit under this section, and the amount of credit claimed, in its records as long as any tax return remains open for years in which the credit has been claimed, and provide the written documentation to the Department of Revenue upon request.

(c) Provide documentation of all costs claimed as part of the credit, including costs of appraisal and costs to file and record the deed restriction required under this section.

(d) Notify any immediate successor owner of the forest conservation area of the terms of the credit and the potential obligation of successor owners to repay the amount of credit allowed upon violation of the applicable harvest restrictions as described in section 5 of this 2022 Act.

(4) The State Forestry Department shall:

(a) Maintain in the department reporting and notice system operated under ORS 527.786 to 527.793 records of harvest restrictions applicable to certifications issued under this section.

(b) Provide information to the Department of Revenue about all certifications issued under this section, if required by the Department of Revenue under ORS 315.058.

SECTION 4. (1) The amount of the tax credit allowed under section 2 of this 2022 Act shall be the sum of:

(a) The certified stumpage value of standing timber in that portion of the forest conservation area that is not harvested as a result of using the standard practice harvest restrictions in lieu of the small forest owner minimum option, using the standard measuring techniques of professional foresters;

(b) The cost to the small forestland owner of establishing the stumpage value, including the cost of appraisal performed by a professional forester, and of filing and recording a deed restriction as described in section 3 (3) of this 2022 Act; and

(c) If applicable, one-half of the certified stumpage value of retained timber in a dry channel area adjacent to the forest conservation area.

(2) If the small forestland owner is barred from using the small forest owner minimum option by the horizontal lineal feet limitation applicable to fifth field watersheds, the certified stumpage value described in subsection (1)(a) of this section shall be multiplied by 125 percent.

(3) The applicable stumpage values under this section shall be the values as of the date of filing a notification of operation under ORS 527.670, as described in section 3 (1)(a) of this 2022 Act, and shall be calculated using one of the following methods:

(a) The conversion return method, in which the volume of timber being retained is determined by species and log grades, and a value is established from current delivered log price information, less a reasonable cost for harvest and delivery, for the area in which the retained timber would ordinarily be sold.

(b) The actual comparison method, which may be used if the timber being retained is similar in species and log grades to the timber being harvested, and which is calculated using actual revenues from the timber being harvested by the small forestland owner in the harvest area adjacent to the forest conservation area.

(c) The cash flow modeling method, in which the value of standing timber is determined by using the projected volume of the stand over a harvest rotation based on species and site class, determining the value at harvest age and then discounting the value to the present date using an interest rate equal to the direct farm ownership loan interest rate of the Farm Service Agency of the United States Department of Agriculture.

(4) Costs, including the cost of an appraisal and the cost of filing and recording a deed restriction, may be included in the credit amount only to the extent that the amount attributable to those costs is not claimed as an income tax deduction by the taxpayer.

SECTION 5. (1) If a small forestland owner, or the owner's estate, heirs or devisees, elects to conduct a timber harvest within a forest conservation area for which a tax credit has been allowed under section 2 of this 2022 Act and for which a harvest restriction has been recorded or otherwise elects to remove the harvest restriction, the certification of the credit shall be revoked and the Department of Revenue may proceed to collect any amounts not paid as a result of the credit, as provided in ORS 315.061.

(2)(a) If the timber harvest or the removal of a harvest restriction that results in revocation is conducted by an owner other than the small forestland owner that originally received certification for the credit under section 3 of this 2022 Act, that successor owner shall be liable for the entire amount certified for credit under section 3 of this 2022 Act. Interest shall be charged at the rate established in ORS 305.220 from the date of transfer of the title to the successor owner.

(b) A revocation under this subsection does not impair the right of a prior owner to claim the credit.

(3) After repayment is complete, the small forestland owner shall notify the State Forestry Department of the repayment and the department shall remove the record of the harvest restriction from the department reporting and notice system operated under ORS 527.786 to 527.793. The small forestland owner shall cause the deed restriction to be removed from the county deed records. The department shall provide the small forestland owner with appropriate documentation for this purpose.

(4) The small forestland owner that conducts the timber harvest shall be responsible for any penalties imposed for violations of the Oregon Forest Practices Act arising from the harvest.

SECTION 6. If the credit allowed under section 2 of this 2022 Act is repealed, or is allowed by the Legislative Assembly to expire, taxpayers that have previously received certification shall be allowed to continue to claim the credit. Any deed restrictions associated with the credit shall be retained.

SECTION 7. Notwithstanding ORS 315.037, section 2 of this 2022 Act applies to all tax years beginning on or after January 1, 2023.

SECTION 8. Section 9 of this 2022 Act is added to and made a part of ORS chapter 118.

SECTION 9. (1) The definitions in section 2 of this 2022 Act apply to this section.

(2) If, at the date of death, a decedent held the certification for a credit under section 2 of this 2022 Act, the estate of the decedent shall be allowed a credit for use of the small forest owner minimum option, as provided in section 2 of this 2022 Act, to the extent that the credit has not been used to offset income taxes.

(3) If the forest conservation area for which a credit under section 2 of this 2022 Act was allowed is contained in the decedent's estate, and if the timber in the forest conservation area is subsequently harvested or otherwise removed in violation of the harvest restriction recorded for the forest conservation area, the Department of Revenue may impose additional tax, interest and penalties under ORS 118.005 to 118.540. The additional tax liability shall be the amount of credit used against the decedent's taxable estate.

(4) The estate shall provide notice of the amount of credit received to the heirs or devisees, who will maintain records of the credit used.

(5) Any unused amount of credit may be distributed to the heirs or devisees for use as a credit against the taxes imposed under ORS chapter 316, 317 or 318.

SECTION 10. Section 9 of this 2022 Act applies to estates of decedents dying on or after January 1, 2023.

SECTION 11. ORS 314.772 is amended to read:

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

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

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

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

(5) As used in this section, "business tax credit" means the following credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-

source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774, Oregon Laws 2013 (alternative fuel vehicle contributions), **and section 2 of this 2022 Act (small forest option).**

SECTION 12. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and 315.643 **and section 2 of this 2022 Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

SECTION 13. This 2022 Act takes effect on the 91st day after the date on which the 2022 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by Senate February 28, 2022

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House March 3, 2022

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2022

Approved:

.....M.,....., 2022

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2022

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Shemia Fagan, Secretary of State