

# Senate Bill 1502

Sponsored by Senator COURTNEY

## 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**.

Creates income or corporate excise tax credit allowed to small forestland owner that elects to observe riparian timber harvest restriction applicable to large forestland owner, in lieu of using harvest option available to small forestland owner. Provides for allowance of credit and retention of harvest restrictions for 50 years.

Applies to all tax years beginning on or after January 1, 2023.

Allows credit to be used against estate tax, in the alternative to use as income tax credit. Applies to estates of decedents dying on or after January 1, 2023.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to tax credits for small forestland owners; creating new provisions; amending ORS 314.772  
3 and 318.031; and prescribing an effective date.

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

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

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

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

11 (b) **“Forest conservation area” means a riparian forestland area that is not harvested,**  
12 **that is adjacent to a harvested riparian area and that is the excess riparian area allowed for**  
13 **harvest under the small forest owner minimum option beyond that allowed under the**  
14 **standard practice harvest restrictions.**

15 (c) **“Forestland” has the meaning given that term in ORS 527.620.**

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

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

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

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

24 (h) **“Stumpage value” means the value of standing timber based on the value that would**  
25 **be received for the timber if harvested and delivered to a mill, minus the cost of delivery to**  
26 **mills.**

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

**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       **(2) A credit against taxes that are otherwise due under ORS chapter 316 or, if the tax-**  
2 **payer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer that is a small**  
3 **forestland owner that is eligible to conduct a timber harvest using a small forest owner**  
4 **minimum option and elects to use standard practice harvest restrictions instead. The credit**  
5 **shall be allowed for the tax year in which the timber harvest is completed. A credit under**  
6 **this section may be transferred to a successor owner as provided in ORS 315.056.**  
7 **Notwithstanding ORS 315.052, a credit may be transferred more than once.**

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

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

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

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

15       **(B) Equal in size to or larger than the forest conservation area for which the small**  
16 **forestland owner claims the credit; and**

17       **(c) Abide by the standard practice harvest restrictions, which shall remain in effect for**  
18 **the forest conservation area for which the small forestland owner claims the credit for 50**  
19 **years beginning with the year in which a deed restriction is first recorded for the forest**  
20 **conservation area under section 3 of this 2022 Act.**

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

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

27       **(6) Upon the death of a taxpayer that holds a certification under section 3 of this 2022**  
28 **Act, and to the extent that any amount of credit remains, the credit allowed under this**  
29 **section may be used by the heirs or devisees of the taxpayer:**

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

31       **(b) As provided in section 9 of this 2022 Act, as a credit against estate tax imposed under**  
32 **ORS chapter 118 on the estate of the small forestland owner.**

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

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

36       **(a) May not be disqualified from eligibility for the special assessment as forestland under**  
37 **ORS 321.257 to 321.390 solely due to the use of the credit allowed under this section.**

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

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

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

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

1 to a resident.

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

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

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

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

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

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

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

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

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

30 (b) Maintain the written documentation of the amount certified for tax credit under this  
31 section, and the amount of credit claimed, in its records throughout the period during which  
32 a harvest restriction applies and provide the written documentation to the Department of  
33 Revenue upon request.

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

36 (d) Notify any immediate successor owner of the forest conservation area of the terms  
37 of the credit and the potential obligation of successor owners to repay the amount of credit  
38 allowed upon violation of the applicable harvest restrictions as described in section 5 of this  
39 2022 Act.

40 (4) The State Forestry Department shall:

41 (a) Maintain in the department reporting and notice system operated under ORS 527.786  
42 to 527.793 records of harvest restrictions applicable to certifications issued under this sec-  
43 tion.

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

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

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

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

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

14       (3) The applicable stumpage value of the forest conservation area shall be the value as  
15 of the date of filing a notification of operation under ORS 527.670 and shall be calculated  
16 using one of the following methods:

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

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

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

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

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

39       (2)(a) If the timber harvest or the removal of a harvest restriction that results in revo-  
40 cation is conducted by an owner other than the small forestland owner that originally re-  
41 ceived certification for the credit under section 3 of this 2022 Act, that successor owner shall  
42 be liable for the amounts due as a result of the revocation. Interest shall be charged at the  
43 rate established in ORS 305.220 from the date of transfer of the title to the successor owner.

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

1 (3) After repayment is complete, the small forestland owner shall notify the State  
2 Forestry Department of the repayment and the department shall remove the record of the  
3 harvest restriction from the department reporting and notice system operated under ORS  
4 527.786 to 527.793. The small forestland owner shall cause the deed restriction to be removed  
5 from the county deed records. The department shall provide the small forestland owner with  
6 appropriate documentation for this purpose.

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

10 **SECTION 6.** If the credit allowed under section 2 of this 2022 Act is repealed, or is al-  
11 lowed by the Legislative Assembly to expire, taxpayers that have previously received certi-  
12 fication shall be allowed to continue to claim the credit. Any deed restrictions associated  
13 with the credit shall be retained.

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

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

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

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

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

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

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

32 **SECTION 11.** ORS 314.772 is amended to read:

33 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a  
34 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
35 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
36 allowable to the shareholders of the S corporation.

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

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

1 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
 2 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
 3 316.117, then that provision shall apply to the nonresident shareholder.

4 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104  
 5 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141  
 6 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture  
 7 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS  
 8 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee  
 9 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution  
 10 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy  
 11 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-  
 12 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-  
 13 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),  
 14 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS  
 15 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS  
 16 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643  
 17 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account  
 18 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone  
 19 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research  
 20 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,  
 21 Oregon Laws 2013 (alternative fuel vehicle contributions), **and section 2 of this 2022 Act (small  
 22 forest option).**

23 **SECTION 12.** ORS 318.031 is amended to read:

24 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
 25 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
 26 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
 27 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,  
 28 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and  
 29 315.643 **and section 2 of this 2022 Act** (all only to the extent applicable to a corporation) and ORS  
 30 chapter 317.

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