

HB 4002-2
(LC 66)
2/8/22 (CMT/JAS/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR (at the request of Representative Paul Holvey)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4002**

1 On page 1 of the printed bill, line 2, after “314.772,” insert “316.502,
2 317.850.”.

3 In line 5, delete “section 2” and insert “sections 2 and 4a”.

4 After line 16, insert:

5 “(3) ‘Salary’ has the meaning given that term in ORS 653.010.”.

6 In line 17, delete “(3)” and insert “(4)”.

7 On page 2, after line 24, insert:

8 **“SECTION 4a. The provisions of section 2 of this 2022 Act relating**
9 **to overtime compensation requirements for agricultural workers do**
10 **not apply to:**

11 **“(1) An individual described in ORS 653.020 (1).**

12 **“(2) An individual employed in agriculture whose principal duties**
13 **are administrative, executive or professional work, regardless of**
14 **whether the individual 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**
18 **2022 Act:**

19 **“(a) ‘Agricultural worker’ has the meaning given that term in sec-**
20 **tion 1 of this 2022 Act.**

21 **“(b) ‘Eligible employer’ means an employer doing business in 2017**

1 North American Industry Classification System code 111, crop pro-
2 duction, or code 112, animal production and aquaculture.

3 “(c) ‘Full-time equivalent employee’ means an employee or a com-
4 bination of employees that perform at least 2,080 hours of work for an
5 employer in a calendar year.

6 “(2)(a) A credit against taxes that are otherwise due under ORS
7 chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317
8 or 318 is allowed for overtime compensation paid by an eligible em-
9 ployer to agricultural workers on an hourly basis. The amount of the
10 credit shall equal a percentage of the actual excess paid to agricultural
11 workers during the calendar year in which the tax year begins, as de-
12 termined under section 9 of this 2022 Act.

13 “(b) A labor contractor licensed under ORS 658.410 may not claim
14 a credit under this section. An eligible employer may claim a credit
15 under this section for wages paid to workers recruited, solicited, sup-
16 plied or employed by a labor contractor on behalf of the eligible em-
17 ployer.

18 “(3) Prior to claiming the credit allowed under this section, a tax-
19 payer is required to receive written certification from the Department
20 of Revenue stating that the taxpayer is an eligible employer and indi-
21 cating the maximum amount of credit for which the taxpayer is eligi-
22 ble for the calendar year, as provided in section 10 of this 2022 Act.

23 “(4) If the amount allowable:

24 “(a) As a credit under this section against taxes imposed under ORS
25 chapter 316, when added to the sum of the amounts allowable as pay-
26 ment of tax under ORS 316.187 or 316.583, other tax prepayment
27 amounts and other refundable credit amounts, exceeds the taxes im-
28 posed by ORS chapters 314 and 316 for the tax year after application
29 of any nonrefundable credits allowable for purposes of ORS chapter
30 316 for the tax year, the amount of the excess shall be refunded to the

1 taxpayer as provided in ORS 316.502.

2 (b) As a credit under this section against taxes imposed under ORS
3 chapter 317 or 318, when added to the sum of the amount of estimated
4 tax paid under ORS 314.515 and any other tax prepayment amounts,
5 exceeds the taxes imposed by ORS chapters 314 and 317 for the tax year
6 (reduced by any nonrefundable credits allowable for purposes of ORS
7 chapter 317 for the tax year), the amount of the excess shall be re-
8 funded to the taxpayer as provided in ORS 314.415.

9 “(5) A nonresident shall be allowed the credit under this section.
10 The credit shall be computed in the same manner and be subject to
11 the same limitations as the credit granted to a resident. However, the
12 credit shall be prorated using the proportion provided in ORS 316.117.

13 “(6) If a change in the taxable year of the taxpayer occurs as de-
14 scribed in ORS 314.085, or if the Department of Revenue terminates the
15 taxpayer’s taxable year under ORS 314.440, the credit allowed under
16 this section shall be prorated or computed in a manner consistent with
17 ORS 314.085.

18 “(7) If a change in the status of a taxpayer from resident to non-
19 resident or from nonresident to resident occurs, the credit allowed
20 under this section shall be determined in a manner consistent with
21 ORS 316.117.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **“SECTION 10. (1) In order to obtain certification from the Depart-**
15 **ment of Revenue for a tax credit allowed under section 8 of this 2022**
16 **Act, a taxpayer shall submit to the department an application for**
17 **certification under this section. The application shall be made in the**
18 **form and manner prescribed by the department and must be submitted**
19 **by the taxpayer no later than January 31 following the calendar year**
20 **for which the taxpayer seeks credit.**

21 **“(2) The taxpayer must include with the application required under**
22 **this section the following:**

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

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

29 **“(c) The number of the license issued under ORS 658.410 to any la-**
30 **bor contractor used to recruit, solicit, supply or employ workers on**

1 **behalf of the taxpayer, or other permit or registration numbers issued**
2 **to the labor contractor.**

3 **“(3) Not later than August 1 of the year in which the application**
4 **under subsection (1) of this section is filed, the department shall issue**
5 **written certification to taxpayers that are eligible to claim the credit**
6 **under section 8 of this 2022 Act. The certification shall state the**
7 **maximum amount of credit for which the taxpayer is eligible for the**
8 **tax year. The credit claimed may not exceed the actual amount of**
9 **excess paid as overtime wages to agricultural workers during the cal-**
10 **endar year by the taxpayer.**

11 **“SECTION 11. The total amount certified by the Department of**
12 **Revenue for tax credits for overtime wages under section 8 of this 2022**
13 **Act may not exceed \$27 million for all taxpayers for any calendar year.**
14 **If the department receives applications for the credit sufficient to ex-**
15 **ceed this amount, the department shall by rule proportionately reduce**
16 **the amount of certified credits among all taxpayers applying for the**
17 **credit.**

18 **“SECTION 12. Section 8 of this 2022 Act applies to tax years begin-**
19 **ning on or after January 1, 2023, and before January 1, 2029.**

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

21 **“316.502. (1) The net revenue from the tax imposed by this chapter, after**
22 **deducting refunds and amounts described in ORS 285B.630 and 285C.635, shall**
23 **be paid over to the State Treasurer and held in the General Fund as mis-**
24 **cellaneous receipts available generally to meet any expense or obligation of**
25 **the State of Oregon lawfully incurred.**

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

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

1 “(a) The refunds authorized under subsection (2) of this section; and
2 “(b) The refund payments in excess of tax liability authorized under ORS
3 315.174, 315.262, 315.264, 315.266 and 316.090 and section 3, chapter 589,
4 Oregon Laws 2021 **and section 8 of this 2022 Act.**

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

6 “317.850. (1) The net revenue from the tax imposed by this chapter, after
7 deduction of refunds, shall be paid over to the State Treasurer and held in
8 the General Fund as miscellaneous receipts available generally to meet any
9 expense or obligation of the State of Oregon lawfully incurred.

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

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

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

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

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

19 “314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits al-
20 lowed or allowable to a C corporation for purposes of ORS chapter 317 or
21 318 shall not be allowed to an S corporation. The business tax credits al-
22 lowed or allowable for purposes of ORS chapter 316 shall be allowed or are
23 allowable to the shareholders of the S corporation.

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

1 1377(a) of the Internal Revenue Code.

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

6 “(4) If the shareholder is a nonresident and there is a requirement appli-
7 cable for the business tax credit that in the case of a nonresident the credit
8 be allowed in the proportion provided in ORS 316.117, then that provision
9 shall apply to the nonresident shareholder.

10 “(5) As used in this section, ‘business tax credit’ means the following
11 credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish
12 screening, by-pass devices, fishways), ORS 315.141 (biomass production for
13 biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
14 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent
15 care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-
16 tributions for child care), ORS 315.237 (employee and dependent scholar-
17 ships), ORS 315.271 (individual development accounts), ORS 315.304
18 (pollution control facility), ORS 315.326 (renewable energy development con-
19 tributions), ORS 315.331 (energy conservation projects), ORS 315.336 (trans-
20 portation projects), ORS 315.341 (renewable energy resource equipment
21 manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation fa-
22 cilities), ORS 315.506 (tribal taxes on reservation enterprise zones and res-
23 ervation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514
24 (film production development contributions), ORS 315.523 (employee training
25 programs), ORS 315.533 (low income community jobs initiative), ORS 315.593
26 (short line railroads), ORS 315.640 (university venture development funds),
27 ORS 315.643 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for
28 Cultural Development Account contributions), ORS 317.097 (loans for af-
29 fordable housing), ORS 317.124 (long term enterprise zone facilities), ORS
30 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-

1 search expenses) and ORS 317.154 (alternative qualified research expenses)
2 and section 9, chapter 774, Oregon Laws 2013 (alternative fuel vehicle con-
3 tributions), **and section 8 of this 2022 Act (agricultural overtime pay).**

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

5 “318.031. It being the intention of the Legislative Assembly that this
6 chapter and ORS chapter 317 shall be administered as uniformly as possible
7 (allowance being made for the difference in imposition of the taxes), ORS
8 305.140 and 305.150, ORS chapter 314 and the following sections are incor-
9 porated into and made a part of this chapter: ORS 315.104, 315.141, 315.156,
10 315.176, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506,
11 315.507, 315.523, 315.533, 315.593 and 315.643 **and section 8 of this 2022 Act**
12 (all only to the extent applicable to a corporation) and ORS chapter 317.

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

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