Opportunity Grant Contributions

ORS 315.643	Year Enacted:	2018	Transferable:	No
	Length:	1-year	Means Tested:	No
	Refundable:	No	Carryforward:	3-years
TER 1.403	Kind of cap:	Program	Inflation Adjusted:	No

Policy Purpose

The Opportunity Grant tax credit was enacted in 2018 as part of SB 1528. The revenue impact statement for SB 1528 stated ***the policy purpose of the credit for certified Opportunity Grant contributions is to establish an additional funding source to be used to support the Oregon Opportunity Grant program thereby expanding support to Oregon higher education students in need of financial assistance.*** Testimony provided in support of the tax credit emphasized that the intent of the credit was to provide a net increase in Opportunity Grant funding rather than a shift from existing funding sources (Higher Education Coordinating Commission, 2018).

An additional purpose expressed by credit proponents during 2018 Senate Finance and Revenue committee discussions was the credit providing a means in which Oregon taxpayers could circumvent the itemized deduction limit on state and local taxes. This purpose was described within the context of the federal Tax Cuts and Jobs Act (TCJA) legislation (passed in December of 2017) which limited the federal personal itemized deduction for state and local taxes to no more than $10,000.

Description

A tax credit against personal or corporate income/excise taxes is available to taxpayers who purchase tax credits from an auction conducted by the Department of Revenue (DOR), in cooperation with the Higher Education Coordinating Commission (HECC). Net proceeds from the tax credit auction(s) are deposited in the Opportunity Grant Fund.[3] Purchased tax credits may not reduce a taxpayer's tax liability below zero, but unused portions of tax credits may be carried forward for three succeeding tax years. The total amount of certified tax credits is limited to $14 million per fiscal year. No tax credits may be newly certified beginning with tax year 2024.

Credits are auctioned in $500 face value increments, with an increment purchase price floor set at a minimum of $450 (statute requires an auction reserve amount no lower than 90% of credit value).[4] Auction duration is generally a week. Taxpayers submit bids online through DOR's website. Taxpayers then finalize their bid by filing Form OR-TCA with DOR, accompanied by an acceptable form of payment.[5] Winning bids are those made with the highest bid value and where payment is received by the deadline (generally one week following auction window closure). Taxpayers with successful bids subsequently receive tax credit certificates from the HECC. Certified tax credits are subsequently claimed when the taxpayer files their tax return. Unsuccessful bids and payments are returned to taxpayers by DOR. The exhibit below provides an overview of the auctioned tax credit process.

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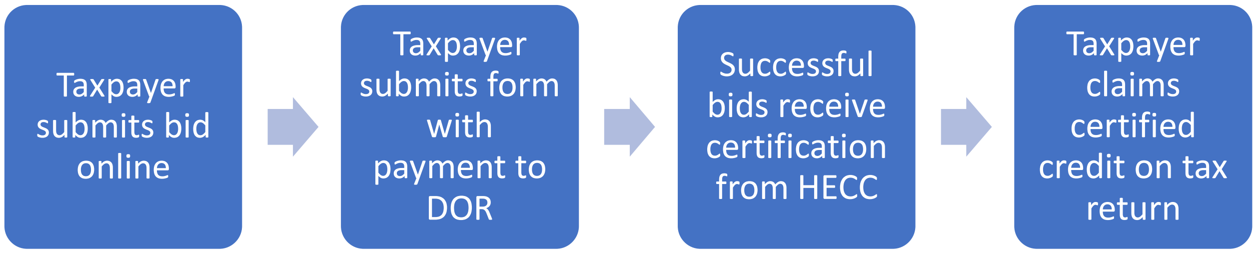
[3] Both DOR and HECC may each receive up to 0.25% of auction proceeds as reimbursement for administrative costs associated with conducting the auction.
[4] 315.643(2)(a)
[5] Acceptable forms of payment are certified check, cashier's check, or money order.

Opportunity Grant Auctioned Tax Credit Process



Statute requires auctions to be conducted no later than April 15 following December 31 of any tax year for which the credit is allowed. Tax credits are allowed for the tax year in which a credit is purchased at auction, or for the tax year immediately preceding the tax year in which a credit is purchased if the taxpayer has not filed a tax return for the preceding year and the auction was help prior to April 15.

Policy Analysis

The Oregon Opportunity Grant is Oregon's largest state-funded, need-based grant program for college students. The grant is available to eligible students attending Oregon college and universities for up to four years at full-time enrollment. If funds are insufficient to serve all qualified students, then grant awards are prioritized to students with the greatest financial need. The policy analysis in this report is focused on the tax credit for Opportunity Grant contributions. The HECC produces an evaluation of the Opportunity Grant program.[6]

The primary policy purpose of the auctioned tax credit is to establish an additional funding source for the Opportunity Grant program. The secondary policy purpose is to allow taxpayers the ability to avoid the limit on the tax deductibility of state and local taxes (SALT). This section first examines the latter policy purpose to provide a foundation for analysis of the credit's primary purpose.

Mitigating the federal limit on state and local taxes (SALT)

When filing their income taxes, taxpayers can lower their taxable income by claiming either the standard deduction or itemized deductions. The primary deduction categories are displayed in Figure 1 on the following page and include state & local income taxes and charitable donations.[7]

Internal Revenue Code (IRC) section 170(a)(1) generally allows a deduction for any charitable contribution payment made within the taxable year. Included in the definition of "charitable contribution" are contributions or gifts to a state if the contribution or gift is made exclusively for public purposes.[8] While not being settled law, IRS advice memoranda did suggest that a taxpayer may take a charitable deduction for the full amount of a state contribution even in instances where a state tax credit equal to such contribution amount was received (Department of the Treasury, 2019). For taxpayers not subject to the

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[6] See https://www.oregon.gov/highered/research/Documents/Reports/HECC-HB-2407-OOG-2021-Report.pdf
[7] Various limitations on itemized deductions existed prior to and post TCJA enactment. To minimize complexity, discussion of itemized deductions focuses on pertinent limitations and changes to law.
[8] IRC 170(c)(1)

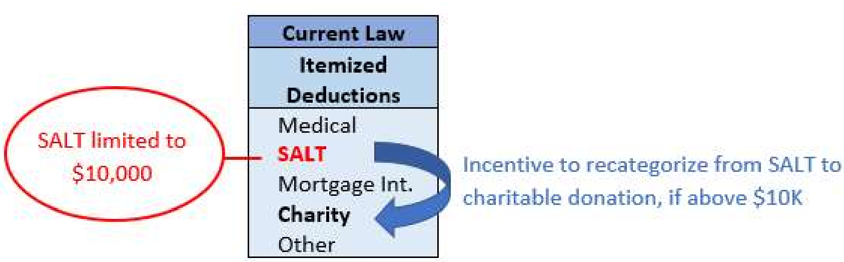
federal Alternative Minimum Tax (AMT), a state tax credit could have an offsetting effect by reducing a taxpayer's SALT deduction while at the same time increasing a taxpayer's charitable contribution deduction and ultimately leaving the taxpayer's taxable income unchanged.[9] However, a net benefit to a taxpayer subject to the AMT could arise as a SALT deduction is not available to such taxpayers. As displayed in Figure 1, making a state donation and receiving a state tax credit equal to the donation amount has the effect of transforming a non-deductible SALT payment into a deductible charitable contribution.

Figure 1. - Benefit to AMT Taxpayer

For Oregon filers, the SALT deduction is comprised of state/local income & property taxes.[10] Prior to the $10K SALT limitation, states had the ability to effectively shift some of their state tax burden to the federal government. If for example a taxpayer had a state income tax liability of $100,000 and deducted the full $100,000 from their federal income tax at a marginal rate of 26%, then the $100,000 in state personal income tax would result in a reduction of federal income tax equal to $26,000. Due to the SALT deduction, the state could generate $100,000 in revenue while the taxpayer's net after tax income was reduced by $74,000. The TCJA limited the SALT deduction to $10,000 per tax year, significantly reducing this tax shift.

Following the TCJA's limitation of the SALT deduction, multiple states devised plans to allow taxpayers to "donate" to the state and receive a state tax credit offsetting the donated amount. As illustrated in Figure 2, the intent was to mitigate the effect of the SALT limit by recategorizing SALT payments to deductible charitable donations. In this way, Oregon's Opportunity Grant credit had the potential to fulfill the secondary purpose of the credit, to provide a way for itemizing taxpayers to get beyond the new SALT limit.

Figure 2. - Recategorize SALT



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[9] For example, a taxpayer making a $20,000 charitable contribution to their state receives a state income tax credit equal to the $20,000 donation. The credit reduces the taxpayer's deductible state income tax by $20,000 (amount of credit) and increases the taxpayer's charitable deduction by $20,000. The deductions effectively offset one another.

[10] Taxpayers can elect to deduct state and local general sales taxes instead of state and local income taxes, but not both.

Following the TCJA's limitation placed on the SALT deduction, numerous states signaled their intention to explore ways in which to mitigate the impact of the $10,000 deduction limit. In response, the US Treasury Department released proposed rules regarding contributions in exchange for state or local tax credits.[11] A key determination in the proposed rule was the IRS finding that:

> *When a taxpayer receives or expects to receive a state or local tax credit in return for a payment or transfer to an entity listed in [IRC] section 170(a) [charitable contribution defined], the receipt of this tax benefit constitutes a quid pro quo that may preclude a full deduction under section 170(a). Thus...the amount otherwise deductible as a charitable contribution must generally be reduced by the amount of the state or local tax credit received or expected to be received, just as it is reduced for many other benefits. (Department of the Treasury, 2018)*

This IRS finding effectively eliminated a taxpayer's ability to claim a charitable deduction for the amount that is offset by a state or local tax credit. For example, if a taxpayer makes a $1,000 contribution and receives a state tax credit equal to 70% of the contribution, then the taxpayer may only claim a charitable deduction of $300. The proposed regulations apply to all such tax credit for contribution programs regardless of when such credit programs were established. In June of 2019, the proposed rule was permanently adopted with only minimal changes. The applicable date of the proposed rule did have an impact on the initial auction held for the Opportunity Grant credit.

The first Opportunity Grant tax credit auction was held August 20th through the 24th of 2018. On August 23rd, the IRS issued a press release containing the contents of the proposed rule. The applicability of the proposed rule for the deduction limit was for contributions made after August 27, 2018. This fortuitous applicability date was significant for the Opportunity Grant auction in that contributions made prior to August 28, 2018, would not be subject to the IRS's updated interpretation. Following the IRS press release on Thursday, August 23rd, credit auction bids surged with the vast majority of winning bids coming in on Friday the 24th. The average winning bid was $518 for each $500 credit increment sold, or about 104% of the credit's face value. In the three auctions held under the new IRS rule, winning auction bids have averaged $465 for a $500 credit, or about $0.93 cents of the face value of the credit. In the 2018 auction year, taxpayers were able to utilize auctioned credits to minimize the effect of the deduction SALT limit, however, in later years after the applicability of the new IRS rules, taxpayers were unable to circumvent the SALT deduction limit.

Establishing an Additional Funding Source

The Legislative Fiscal Office categorizes funding for the Opportunity Grant program to three sources, General Fund (GF), lottery funds (LF), and other funds. Lottery funds represent statutorily directed Education Stability Fund (ESF) interest earnings of which at least 25% of ESF earnings are required to be transferred to the Opportunity Grant Program.[12] Other funds consist primarily of tax credit auction proceeds. The table and exhibit that follow detail the three funding sources for the current and recent biennia.

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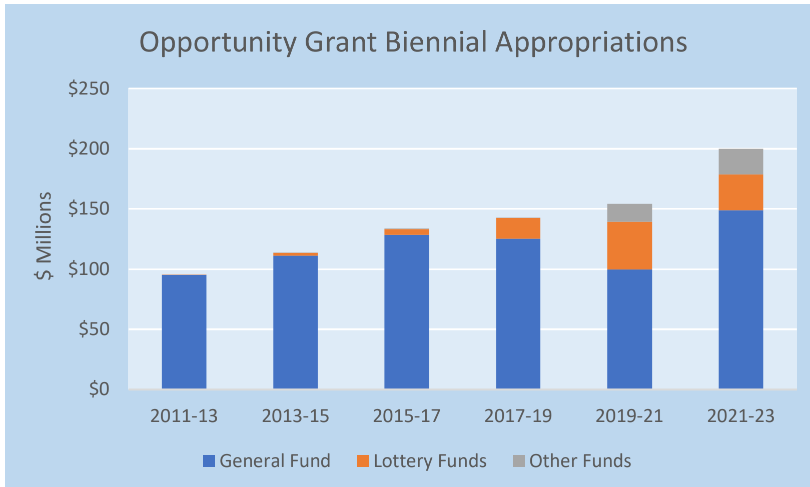
[11] For IRS news release and text of proposed rules, see https://www.irs.gov/newsroom/treasury-irs-issue-proposed-regulations-on-charitable-contributions-and-state-and-local-tax-credits

[12] ORS 348.696

Opportunity Grant Biennial Appropriations by Funding Source						
Fund Source	**Actuals 2011-13**	**Actuals 2013-15**	**Actuals 2015-17**	**Actuals 2017-19**	**Actuals 2019-21**	**Approved 2021-23**
General Fund	$95,139,260	$111,206,740	$128,349,485	$125,217,521	$99,657,416	$148,878,818
Lottery Funds	$240	$2,546,223	$4,951,069	$17,302,488	$39,670,215	$29,820,982
Other Funds	$0	$158,459	$402,364	$163,213	$14,814,721	$21,300,200
Total	**$95,139,500**	**$113,911,422**	**$133,702,918**	**$142,683,222**	**$154,142,352**	**$200,000,000**



As displayed, as recently as ten years ago the Opportunity Grant's primary funding source was the General Fund. The effect of the tax credit auction can be seen in the Other Funds category beginning with the 2019-21 biennium. In 2019-21, the tax credit proceeds represented about 9.6% of overall funding. Between the 2017-19 and the 2019-21 biennium, combined GF and LF decreased by about $3.2 million, a reduction of 2.2%. Including the credit proceeds in the funding mix results in a net increase in biennial funding of about $11.5 million, or 8.0%. Approved 2021-23 biennial appropriations reflect increased net funding from GF and lottery sources as well as total funding from all sources including the proceeds from the credit auctions.

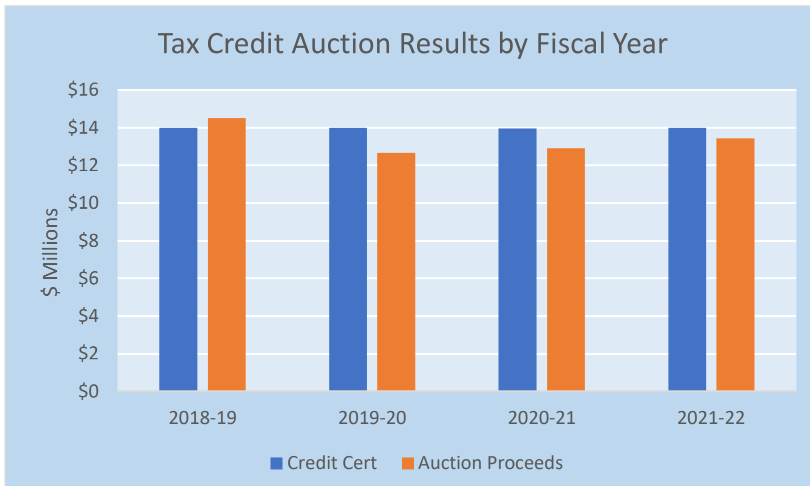
Establishing the tax credit auction did result in an additional funding source for the Opportunity Grant. What is unclear is whether the tax credit auction proceeds represent net additional funding for the Opportunity Grant or whether such funding was offset to some extent by reduced General Fund appropriations. Without knowing the Legislature's intentions regarding Opportunity Grant appropriations, a conclusive determination is unachievable. Rather than engage in a speculative counterfactual examination, this report continues with an analysis of the tax credit auction including an examination of the proceeds derived from the auction and the taxpayers purchasing such credits at auction.

Auction Bids

The Oregon DOR conducts the tax credit auction in cooperation with the HECC. A tax credit auction is generally held once per year, though multiple auctions may be held if necessary to sell the full $14 million in certified tax credits available each fiscal year. The auction is generally held in December of each year and bids are accepted for only a few days. Taxpayers submit their auction bids online during the auction window. Following the auction bid window, taxpayers generally have one week to submit form OR-TCA along with their payment for the full amount of their bid(s). Payment must be a cashier's check, certified check, or money order. Tax credits are sold in $500 increments with a minimum bid price of $450. Winning bids must be timely received and are determined by DOR based on highest bid price received. If a bid is unsuccessful, DOR returns the payment to the taxpayer. This process requires taxpayers to submit payment without knowing whether their bid will be successful. Tax credit certificates are issued by HECC following DOR's determination of the winning bids. Both DOR and HECC may receive up to 0.25% of auction proceeds for reimbursement of administrative expenses.

Opportunity Grant Tax Credit Auction Results, by Fiscal Year				
		Auctions Post IRS Rule Modification		
	2018-19	2019-20	2020-21	2021-22
Total Certified Credits	$14,000,000	$14,000,000	$13,966,500	$13,999,500
Winning Bids Total	$14,578,505	$12,740,714	$12,980,698	$13,495,454
Admin. Costs	$72,893	$63,704	$64,903	$67,477
Net Auction Proceeds	$14,505,612	$12,677,010	$12,915,795	$13,427,977
Proceeds per $ of Credit Certificate	***$1.04***	***$0.91***	***$0.92***	***$0.96***

(Higher Education Coordinating Commission, 2020)



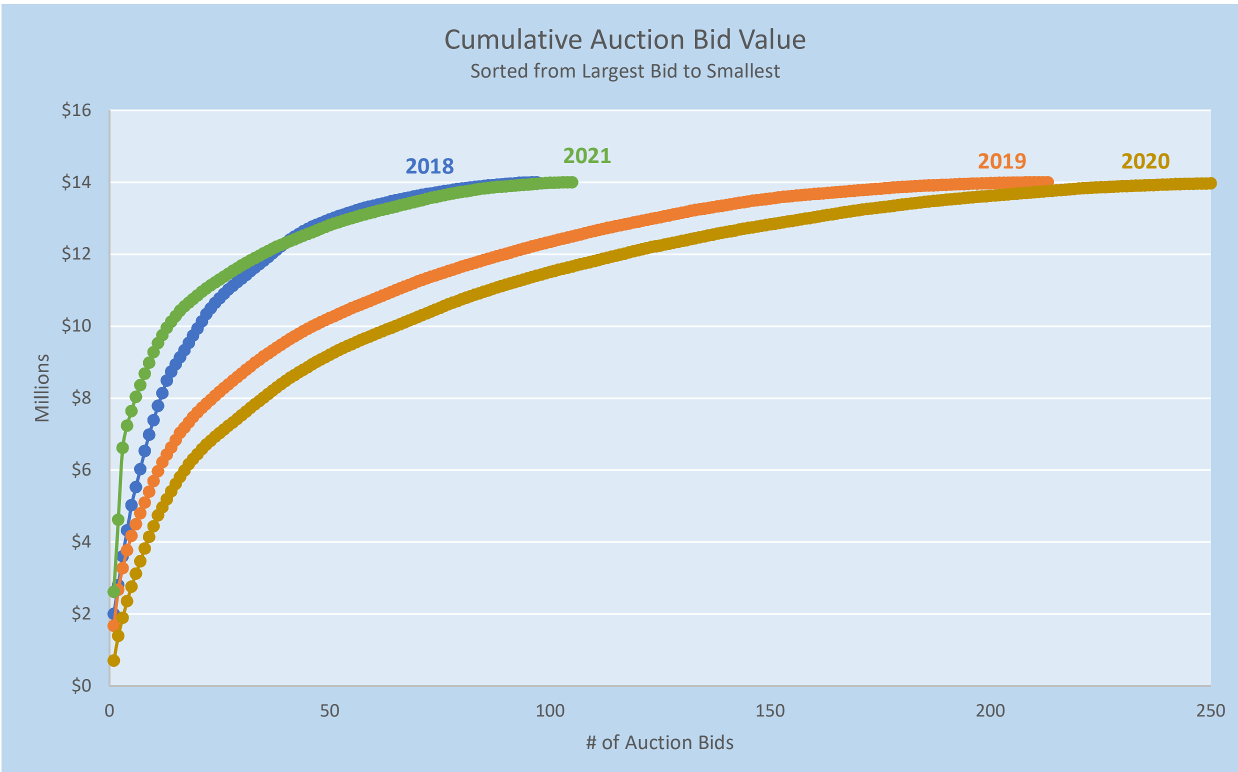
The table above and the chart to the right display the results of the Opportunity Grant tax credit auctions held to date.[13] Statute limits the ***total certified credits*** to $14 million per fiscal year. ***Net auction proceeds*** is the sum total paid for the auction tax credits minus administrative costs for both DOR and HECC. ***Proceeds per $ of credit certificate*** is the proceeds of the auction per $1 of credit. For example, in 2021-22, taxpayers paid on average $0.96 for every $1 in tax credits. Net auction proceeds are deposited in the Opportunity Grant Fund whereas tax credits are used by taxpayers to offset their income tax liability thereby decreasing General Fund revenue when the credits are claimed. In this way, the tax credit auction functions akin to a General Fund appropriation to the Opportunity Grant Fund.

As displayed, the 2018-19 proceeds from the auction were about $14.5 million for the $14 million in tax credits sold. This unique outcome of the 2018-19 auction was the result of the applicability of the IRS proposed rules that were released during the auction period (see page 12 for further discussion). The applicability of the temporary IRS rules increased the potential federal tax value of the auctioned Oregon tax credits. In subsequent auctions, the overall average price paid per $1 in credit is $0.93 with individual years ranging from $0.90 to $0.96. Summing the results for the three auctions held post IRS rule modifications yields total auction proceeds of about $39 million and total credits certified of $42 million.

The Department of Revenue auctions credits in $500 increments with a total of 28,000 increments available at auction each fiscal year. When submitting a bid, taxpayers indicate the bid price and number of increments they are bidding for. Taxpayers are able to submit multiple bids that can vary in price and quantity. The chart below displays, for each auction year, the cumulative total value of winning bids sorted

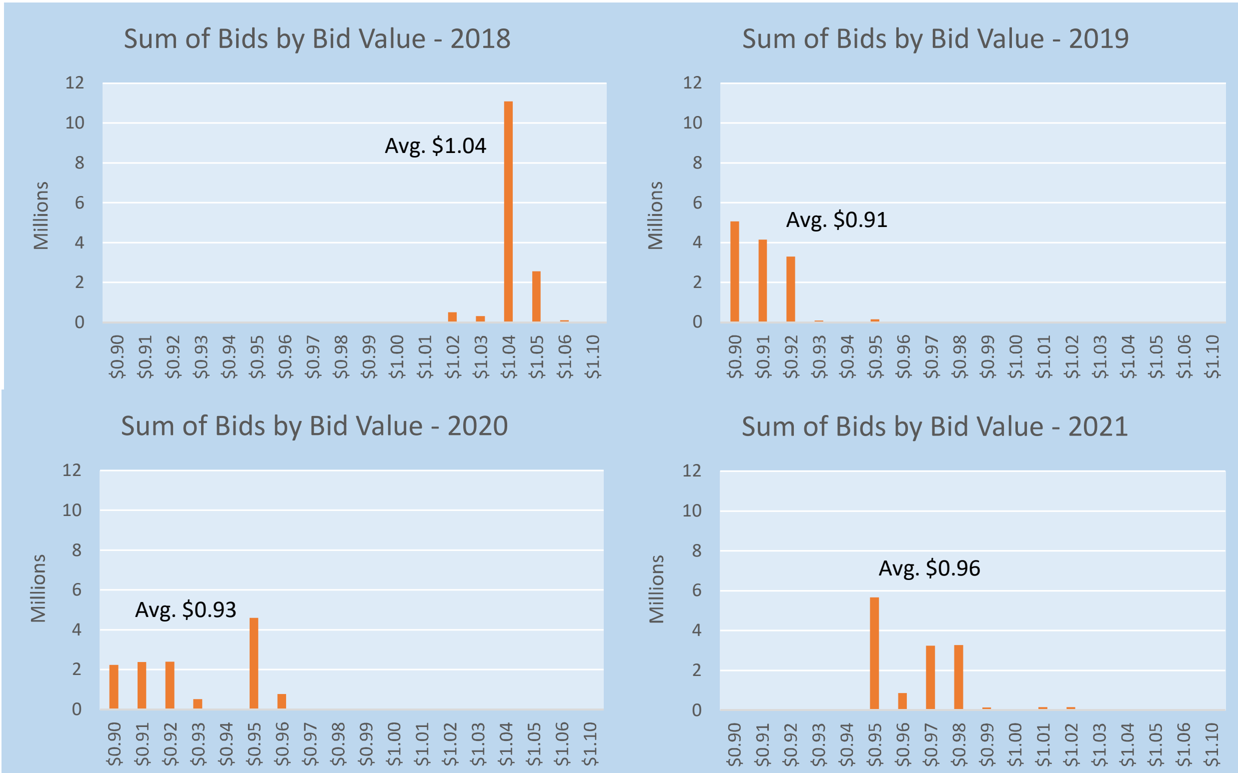
[13] At time of publication, the next tax credit auction was scheduled to be held in December of 2022.

by largest bid amount to smallest. The vertical axis reports the total credit value of the bid, and the horizontal axis is the cumulative number of the bids. Each dot on the chart represents an individual bid. A fair amount of concentration exists in the tax credit auction with fewer than 10% of the bids accounting for over 50% of the total amount of available credits sold at auction. Looking at the 2021 year, the chart displays that the first two largest bids alone account for nearly $5 million of the total $14 million in auctioned credits.



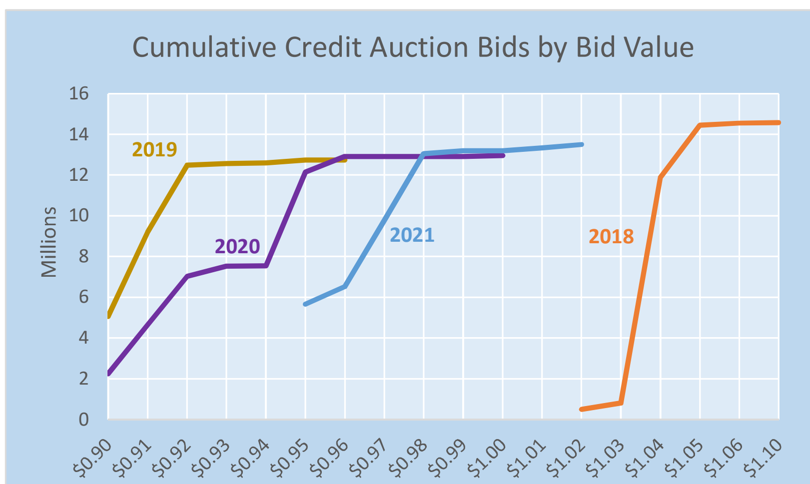
(Higher Education Coordinating Commission, 2022)

The value of auction bids has varied by auction year. As previously discussed, auction bids in 2018 were the highest of the four years due to timing of IRS rules regarding the deductibility of state tax credits. The average bid value and the bid distribution shifted upward from 2019 to 2021. The column charts that follow display the distribution of the auction bids for each year.



(Higher Education Coordinating Commission, 2022)

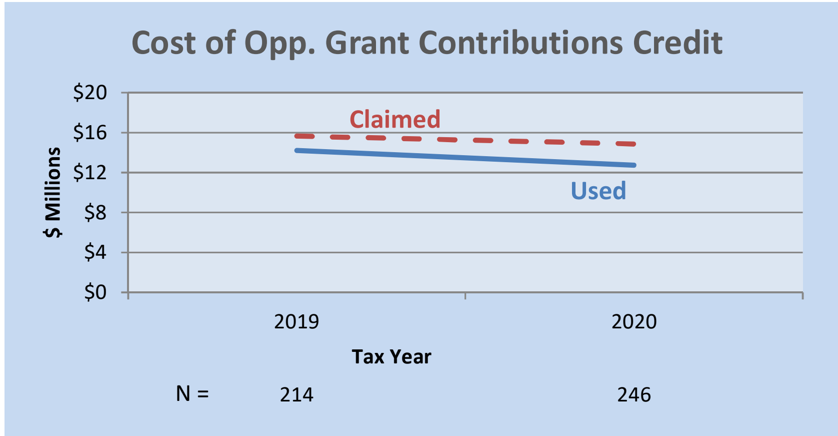
The chart to the right displays the same information as the column charts but displayed as cumulative credit auction bids by bid value for auctions 2018 - 2021. The vertical axis displays the cumulative bid amount, and the horizontal axis displays the bid value. The chart is intended to allow a visual comparison of bid values for each of the auction years. As displayed, bid values in 2018 were far higher than in the other three years.



Using 2021 as an example year on how to interpret the chart, the lowest value winning bid in 2021 was $0.95, and about $5.7 million in cumulative bids of $0.95 were received. Nearly $1 million cumulative bids at $0.96 were received in 2021, causing the total cumulative to that point of about $6.5 million. Adding bids valued at $0.97 brings the cumulative total to about $9.7 million and reaching a cumulative total of about $13 million when accounting for bids at $0.98.

Credit Usage

The following chart displays the total amount of opportunity grant credit claimed in tax years 2019 and 2020, the amount actually used to reduce tax liability, and the number of taxpayers claiming the credit. Due to confidentiality limitations, published data for 2018 is only a subset of the total amount of tax credit claimed and used in that year. For this reason, 2018 is not presented in the line chart below. As displayed, fewer than 250 taxpayers claimed the credit in any one year.

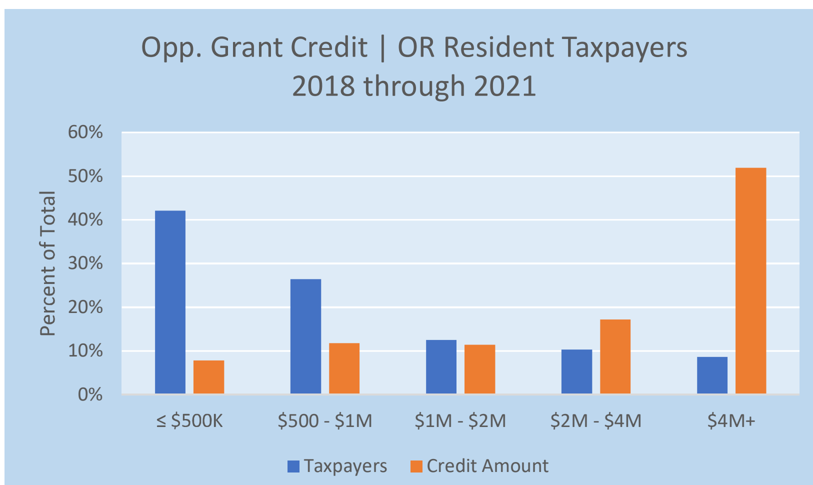


The credit is claimed almost entirely by high income taxpayers. The table to the right displays summed amounts for Oregon full-year resident taxpayers for all four tax years, 2018 through 2021.[14] Tax year 2021 data is preliminary unpublished data and is subject to change.[15] As displayed, when summing individual years, 656 taxpayers claimed the credit. As displayed, 42% of taxpayers that claimed the credit had an AGI less than $500K and claimed a credit equal to $14,458 on average.[16] By contrast, while taxpayers with an AGI exceeding $4 million represented 9% of all taxpayers claiming the credit, such taxpayers accounted for 52% of the amount of the tax credits claimed. The column chart provides a visual display of the same information contained in the table relating to the

Opp. Grant | OR Resident Personal Inc. Taxpayers | TYs 2018 - 2021

AGI	--- Taxpayers ---		----- Credit Amount -----		
	Number	Pct. of Total	$'s in Millions	Pct. of Total	Avg. Claimed
≤ $500K	276	42%	$4.0	8%	$14,458
$500 - $1M	173	26%	$6.0	12%	$34,856
$1M - $2M	82	13%	$5.9	11%	$71,350
$2M - $4M	68	10%	$8.8	17%	$129,568
$4M+	57	9%	$26.6	52%	$467,203
Total	**656**	**100%**	**$51.3**	**100%**	**$78,220**

Note: Includes preliminary tax year 2021 data



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[14] The table reflects summed amounts for the individual four years, not summed amounts by taxpayers for all four years. For example, the number of taxpayers for the four years reported in the table is 656 whereas the unique number of taxpayers that claimed the credit in the four-year span was 427, reflecting that some taxpayers claimed the credit in multiple years.

[15] Any changes are expected to be minor.

[16] Very few taxpayers with AGI less than 100K claim the credit.

proportionate share of taxpayers and amount of credit claimed by taxpayers in each AGI category.

Similar Incentives Available in Oregon

The Opportunity Grant tax credit is based on Oregon's existing film production development contributions tax credit. Proceeds from film production tax credit auction(s) are directed to the Oregon Production Investment Fund (OPIF) where they are used to reimburse qualifying filmmakers or local media production services companies for a portion of their qualified Oregon expenses. With the exception of differences in annual credit certification limits and credit sunset dates, the two auction tax credits are nearly identical and statutory changes have occurred concurrently.

The Oregon Promise program provides grants to recent Oregon high school graduates or GED test graduates to cover the cost of tuition at Oregon community colleges. Beginning in the second year of the 2017-19 biennium, the Office of Student Access and Completion (OSAC) also began administering tuition assistance programs for Oregon National Guard members. Beginning in the second year of the 2021-23 biennium, OSAC began administering the Oregon Tribal Student Grant, which provides grants to eligible students who are members of Oregon's nine federally recognized Tribes to offset the cost of attendance at eligible Oregon colleges and universities.

OSAC also processes and administers grant and scholarship programs for a variety of foundations and other entities (e.g., Oregon Community Foundation). OSAC provides a number of services for the programs including "marketing" the programs, collecting applications, in some cases making preliminary decisions, and distributing the funds for these programs. The functions OSAC performs varies from program to program. In the table below, "Other Funds" is primarily made up of funding from tax credit auctions.

	2021-23 Legislatively Adopted Budget ($M)		
Direct Spending Program	***General Fund***	***Lottery Funds***	***Other Funds***
Opportunity Grant Fund	$148.9	$29.8	$21.3
Private Scholarships			$18.0
Oregon Promise	$42.2		
National Guard Tuition Assistance	$4.2		
Oregon Tribal Student Grant	$19.0		

Credits of Similar Structure

From a credit structure perspective, other Oregon tax credits exist that provide an incentive for taxpayers to make contributions to specified organizations. The Individual Development Account Contributions tax credit provides a tax credit equal to up to 90% of contributions made by taxpayers to the fiduciary organization. Oregon's University Development Account contributions tax credit provides taxpayers with a credit up to 60% of the amount of their contribution to a Public University Venture Development Fund. Oregon's Cultural Trust credit provides a credit to taxpayers equal to the lesser of, $500 or the amount of the contribution made to the Cultural Trust.[17] To qualify for the Cultural Trust credit, taxpayers must first make an equal or greater contribution to an Oregon cultural organization during the tax year. All three of these credits are designed to offset some of the taxpayer's contribution cost. By comparison, the

[17] Credit is up to $1,000 for married taxpayers filing jointly and up to $2,500 for corporations.

Opportunity Grant credits are auctioned at a price no less than $0.90 per $1.00 face value of the tax credit, or up to 111% of the contribution amount.[18]

Administrative Costs

Administrative costs are born by both the DOR and the HECC. Additional marginal tax administrative costs for the DOR related to the tax credit are relatively minimal. Statute allows DOR to keep up to 0.25% of auction proceeds to cover administrative costs related to administering the auction. HECC is also reimbursed (up to 0.25% of auction proceeds) for costs associated with tax credit auction/administration.[19]

Other States

In 2012, Maryland held a one-time tax credit auction to raise money for "InvestMaryland". The program auctioned tax credits to be used against Maryland's Insurance Premium Tax, thus focusing the tax credit auction to insurance companies. Proceeds from the auction were used to fund venture development capital investments. Auctioned tax credits were intended to be used over five years, with 20% of the value of the credit used in each year. Unused credit amounts could be indefinitely carried forward for use in later tax years and credits were transferable. The credits were purchased over a three-year period in which one-third installment payments were made annually. The auction sold $100 million in tax credits to eleven insurers at a total purchase price of $84 million.

[18] The average winning auction bid for auctions held in 2019, 2020 & 2021 was $0.93 equating to 108% of the contribution amount.
[19] HECC's costs are primarily related to mailing tax credit certificates, staff costs are minimal.