

# Senate Bill 944

Sponsored by Senator SMITH DB, Representatives BOICE, LEVY B; Senators FINDLEY, KNOPP, MEEK, THATCHER, Representatives GOODWIN, OSBORNE, WRIGHT

## 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**.

Allows credit against net income taxes for portion of eligible costs of newly constructed single-family dwelling that sells for price affordable to household with annual income at or below 120 percent of area median income.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to tax incentives for affordable housing; 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 4 of this 2023 Act are added to and made a part of ORS chapter**  
6 **315.**

7 **SECTION 2. (1) As used in sections 2 to 4 of this 2023 Act:**

8 (a) **“Consumer Price Index for All Urban Consumers, West Region (All Items)” means**  
9 **the Consumer Price Index for All Urban Consumers, West Region (All Items), as published**  
10 **by the Bureau of Labor Statistics of the United States Department of Labor.**

11 (b)(A) **“Eligible costs” means the costs of acquisition, finance costs, permit costs and**  
12 **construction costs with respect to eligible residential property that in total equal not more**  
13 **than \$200 per square foot of the eligible residential property.**

14 (B) **The dollar amounts specified in subparagraph (A) of this paragraph shall be adjusted**  
15 **annually by multiplying the amounts by the percentage, if any, by which the monthly aver-**  
16 **aged Consumer Price Index for All Urban Consumers, West Region (All Items), for the 12**  
17 **consecutive months ending on the immediately preceding December 31 exceeds the monthly**  
18 **averaged Consumer Price Index for All Urban Consumers, West Region (All Items), for the**  
19 **12 consecutive months ending on the next preceding December 31.**

20 (c) **“Eligible residential property” means one or more newly constructed single-family**  
21 **dwelling units located in this state that are sold for a qualified price.**

22 (d) **“Qualified price” means a price that is affordable to a household with an annual in-**  
23 **come at or below 120 percent of the area median income.**

24 (e) **“Qualified purchaser” means an individual whose household has an annual income at**  
25 **or below 120 percent of the area median income.**

26 (f) **“Qualified reseller” means a qualified purchaser who engages in a transaction to resell**  
27 **the eligible residential property owned by the qualified purchaser.**

28 (g) **For purposes of earning a tax credit under this section, “taxpayer” includes pass-**  
29 **through and tax-exempt entities.**

30 (2) **A credit is allowed against the taxes otherwise due under ORS chapter 316, or, if the**

**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 taxpayer is a corporation, under ORS chapter 317 or 318, for eligible residential property for  
2 which a certificate of eligibility has been issued under section 3 of this 2023 Act.

3 (3) The credit shall be allowed for the first tax year of the taxpayer that begins after the  
4 taxpayer has closed on a contract of sale with a qualified purchaser who will occupy the eli-  
5 gible residential property as a single-family dwelling that is the qualified purchaser's primary  
6 residence.

7 (4) The credit shall be allowed in an amount equal to the lesser of:

8 (a) Fifty percent of the eligible costs incurred by the taxpayer with respect to the eligible  
9 residential property; or

10 (b) The tax liability of the taxpayer for the tax year in which the credit is allowed.

11 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer  
12 in the tax year described in subsection (3) of this section may be carried forward and offset  
13 against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining  
14 unused in the next succeeding tax year may be carried forward and used in the second suc-  
15 ceeding tax year, and any credit not used in the second succeeding tax year may be carried  
16 forward and used in the third succeeding tax year, but may not be carried forward for any  
17 succeeding tax year.

18 (6) The credit allowed under this section is not in lieu of any depreciation or amortization  
19 deduction to which the taxpayer otherwise may be entitled under ORS chapter 316, 317 or  
20 318 for the tax year.

21 (7) The taxpayer's adjusted basis for determining gain or loss may not be further de-  
22 creased by any amount of credit allowed under this section.

23 (8)(a) A nonresident shall be allowed the credit under this section in the proportion pro-  
24 vided in ORS 316.117.

25 (b) If a change in the status of a taxpayer from resident to nonresident or from nonres-  
26 ident to resident occurs, the credit allowed under this section shall be determined in a  
27 manner consistent with ORS 316.117.

28 (c) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or  
29 if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the  
30 credit allowed under this section shall be prorated or computed in a manner consistent with  
31 ORS 314.085.

32 (9)(a) At least 35 percent of the value of all credits allowed in a tax year under this sec-  
33 tion must be for eligible costs incurred for eligible residential property located in counties  
34 with a population of less than 125,000.

35 (b) The total credits allowed to all taxpayers in any tax year under this section may not  
36 exceed \$5 million. A partial credit may be certified under section 3 of this 2023 Act in order  
37 to bring the total of all credits allowed to not more than \$5 million.

38 (10)(a) Except as provided in paragraphs (b) and (c) of this subsection, a tax credit al-  
39 lowed under this section may not be sold or transferred.

40 (b) Tax credits allowed under this section that a partnership, limited liability company,  
41 S corporation or other pass-through entity is entitled to claim may be allocated to the  
42 partners, members or shareholders of the entity for their direct use in accordance with the  
43 provisions of any agreement among the partners, members or shareholders.

44 (c)(A) All or any portion of a tax credit allowed under this section that a nonprofit cor-  
45 poration, governmental entity or other tax-exempt entity is entitled to claim may be trans-

1 referred to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

2 (B) A tax credit that is transferable under this paragraph may be transferred on or be-  
3 fore the date on which the return is due for the tax year in which the credit may first be  
4 claimed. After that date, no portion of a credit allowed under this section may be trans-  
5 ferred.

6 (C) To transfer the tax credit, the taxpayer that earned and will transfer the credit and  
7 the transferee that will claim the credit shall, on or before the date prescribed in subpara-  
8 graph (B) of this paragraph, jointly file a notice of tax credit transfer with the Department  
9 of Revenue. The notice must be given on a form prescribed by the department that contains  
10 all of the following:

11 (i) The name and address of the transferor and transferee;

12 (ii) The amount of the tax credit that is being transferred;

13 (iii) The amount of the tax credit, if any, that is being retained by the transferor; and

14 (iv) Any other information required by the department.

15 (D) The department shall adopt rules establishing procedures for the transfer of tax  
16 credits under this paragraph.

17 **SECTION 3.** (1) In order to receive a tax credit under section 2 of this 2023 Act, a tax-  
18 payer must submit to the Housing and Community Services Department on a form pre-  
19 scribed by the department a claim with respect to each eligible residential property for which  
20 a credit is claimed.

21 (2) The claim must contain:

22 (a) Evidence showing:

23 (A) That the property is eligible residential property;

24 (B) That the taxpayer submitting the claim has closed on a contract of sale with a qual-  
25 ified purchaser for the eligible residential property;

26 (C) That the taxpayer notified the qualified purchaser in writing of the provisions of  
27 section 4 of this 2023 Act before the contract of sale was executed and that the qualified  
28 purchaser signed the notice; and

29 (D) The eligible costs for the eligible residential property; and

30 (b) Any other information the department may require.

31 (3)(a) If the department determines that the eligible residential property does not meet  
32 all the requirements under this section and section 2 of this 2023 Act, the department shall  
33 deny the claim.

34 (b) If the department determines that the eligible residential property meets all the re-  
35 quirements under this section and section 2 of this 2023 Act, the department shall issue to  
36 the taxpayer a certificate of eligibility for the tax credit allowable under section 2 of this 2023  
37 Act. The certificate shall state the approved amount of eligible costs for the eligible resi-  
38 dential property.

39 (4) At the end of each calendar year, the Housing and Community Services Department  
40 shall send to the Department of Revenue a list of the names, addresses and taxpayer iden-  
41 tification numbers of taxpayers to whom a certificate of eligibility has been issued under this  
42 section during the calendar year, along with approved amounts of eligible costs for each eli-  
43 gible residential property.

44 (5) Notwithstanding that a certificate of eligibility has been issued to a taxpayer under  
45 this section, the Department of Revenue may disallow, in whole or in part, a claim for credit

1 under section 2 of this 2023 Act upon the department's determination that, under the pro-  
2 visions of section 2 of this 2023 Act, the taxpayer is not entitled to the credit or is entitled  
3 to only a portion of the amount claimed.

4 **SECTION 4.** (1) A qualified reseller may resell an eligible residential property only to a  
5 qualified purchaser.

6 (2) The qualified reseller may resell the eligible residential property only at or below the  
7 qualified price for which the qualified reseller purchased the eligible residential property,  
8 increased by three percent for each year that the qualified reseller has owned the eligible  
9 residential property.

10 (3)(a) Notwithstanding ORS 205.130, a county clerk may not record or cause to be re-  
11 corded an instrument conveying or contracting to convey fee title to eligible residential  
12 property unless the instrument is accompanied by documentary evidence showing that the  
13 consideration for the transfer was not greater than the amount determined under subsection  
14 (2) of this section.

15 (b) Upon recording the instrument, the county clerk shall make a notation as a public  
16 record that the eligible residential property is subject to the provisions of this section.

17 (4) Subsections (1) to (3) of this section apply to an eligible residential property only for  
18 the period of 11 years beginning on the date on which the contract of sale with the first  
19 qualified purchaser to own the property closes.

20 (5) A qualified purchaser who purchases eligible residential property from a qualified re-  
21 seller for a purchase price in excess of the amount determined under subsection (2) of this  
22 section may bring suit in the circuit court of the county in which the eligible residential  
23 property is located to recover the amount of the excess. The suit must be filed within two  
24 years after the date on which the contract of sale closes.

25 **SECTION 5.** ORS 314.772, as amended by section 11, chapter 34, Oregon Laws 2022, and section  
26 15, chapter 115, Oregon Laws 2022, is amended to read:

27 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a  
28 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
29 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
30 allowable to the shareholders of the S corporation.

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

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

40 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
41 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
42 316.117, then that provision shall apply to the nonresident shareholder.

43 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104  
44 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141  
45 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture

1 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS  
 2 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee  
 3 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution  
 4 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy  
 5 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-  
 6 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-  
 7 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),  
 8 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS  
 9 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS  
 10 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643  
 11 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account  
 12 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone  
 13 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research  
 14 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,  
 15 Oregon Laws 2013 (alternative fuel vehicle contributions), section 2, chapter 34, Oregon Laws 2022  
 16 (small forest option), and section 8, chapter 115, Oregon Laws 2022 (agricultural overtime pay), **and**  
 17 **section 2 of this 2023 Act (newly constructed single-family dwelling units).**

18 **SECTION 6.** ORS 318.031, as amended by section 12, chapter 34, Oregon Laws 2022, and section  
 19 16, chapter 115, Oregon Laws 2022, is amended to read:

20 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
 21 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
 22 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
 23 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,  
 24 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and  
 25 315.643 and section 2, chapter 34, Oregon Laws 2022, and section 8, chapter 115, Oregon Laws 2022,  
 26 **and section 2 of this 2023 Act** (all only to the extent applicable to a corporation) and ORS chapter  
 27 317.

28 **SECTION 7.** **Sections 2 to 4 of this 2023 Act apply to tax years beginning on or after**  
 29 **January 1, 2024, and before January 1, 2030.**

30 **SECTION 8.** **This 2023 Act takes effect on the 91st day after the date on which the 2023**  
 31 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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