

SB 5-5  
(LC 4408)  
5/3/23 (CMT/ps)

Requested by JOINT COMMITTEE ON TAX EXPENDITURES

**PROPOSED AMENDMENTS TO  
SENATE BILL 5**

1 On page 1 of the printed bill, line 3, after “ORS” delete the rest of the  
2 line and delete line 4 and insert “314.772, 316.502, 317.850 and 318.031; and  
3 prescribing an effective date.”.

4 Delete lines 6 through 27 and delete pages 2 and 3 and insert:

5 **“SECTION 1. Sections 2 to 4 of this 2023 Act are added to and made**  
6 **a part of ORS chapter 315.**

7 **“SECTION 2. (1) As used in this section, ‘qualified semiconductor**  
8 **company’ means an entity whose primary business is the research,**  
9 **design, development, fabrication, assembly, testing, packaging or val-**  
10 **idation of semiconductors, or an entity whose primary business is the**  
11 **creation of semiconductor manufacturing equipment, semiconductor**  
12 **core intellectual property or electronic design automation software**  
13 **that is primarily intended for use in the semiconductor industry.**

14 **“(2) A credit against taxes otherwise due under ORS chapter 316 or,**  
15 **if the taxpayer is a corporation, under ORS chapter 317 or 318 shall**  
16 **be allowed to eligible taxpayers for increases in qualified research ex-**  
17 **penses and basic research payments. The credit shall be determined in**  
18 **accordance with section 41 of the Internal Revenue Code, except as**  
19 **follows:**

20 **“(a) The applicable percentage specified in section 41(a) of the**  
21 **Internal Revenue Code shall be 25 percent.**

1       “(b) ‘Qualified research’ and ‘basic research’ shall consist only of  
2 research conducted in Oregon by a qualified semiconductor company,  
3 in support of a trade or business directly related to semiconductors.

4       “(c) The following do not apply to the credit allowable under this  
5 section:

6       “(A) Section 41(c)(4) of the Internal Revenue Code (relating to the  
7 alternative incremental credit).

8       “(B) Section 41(h) of the Internal Revenue Code (relating to termi-  
9 nation of the federal credit).

10       “(3) The Income Tax Regulations as prescribed by the Secretary of  
11 the Treasury under authority of section 41 of the Internal Revenue  
12 Code apply for purposes of this section, except as modified by this  
13 section or as provided in rules adopted by the Department of Revenue.

14       “(4) The maximum credit under this section may not exceed \$5  
15 million, if the taxpayer employs fewer than 150 employees, or \$10  
16 million for all other taxpayers.

17       “(5) Prior to claiming a credit under this section, a taxpayer must  
18 obtain from the Oregon Business Development Department certifica-  
19 tion as provided in section 4 of this 2023 Act.

20       “(6) The Oregon Business Development Department shall provide  
21 information to the Department of Revenue about all certifications is-  
22 sued under section 4 of this 2023 Act, if required by ORS 315.058.

23       “(7) The Director of the Department of Revenue may order the  
24 suspension or revocation of a credit allowed under this section, as  
25 provided in ORS 315.061.

26       “(8) A deduction may not be taken for the portion of expenses or  
27 payments, otherwise allowable as a deduction, that is equal to the  
28 amount of the credit claimed under this section.

29       “(9) Any tax credit that is otherwise allowable under this section  
30 and that is not used by the taxpayer in that year may be carried for-

1 ward and offset against the taxpayer’s tax liability for the next suc-  
2 ceeding tax year. Any credit remaining unused in such next succeeding  
3 tax year may be carried forward and used in the second succeeding tax  
4 year, and likewise any credit not used in that second succeeding tax  
5 year may be carried forward and used in the third succeeding tax year,  
6 and any credit not used in that third succeeding tax year may be car-  
7 ried forward and used in the fourth succeeding tax year, and any  
8 credit not used in that fourth succeeding tax year may be carried  
9 forward and used in the fifth succeeding tax year, but may not be  
10 carried forward for any tax year thereafter.

11 **“SECTION 3. (1)(a) If the amount allowable as a credit under sec-**  
12 **tion 2 of this 2023 Act, after any reduction applicable under subsection**  
13 **(2) of this section, when added to the sum of the amount of estimated**  
14 **tax paid under ORS 314.515 and any other tax prepayment amounts,**  
15 **exceeds the taxes imposed by ORS chapters 314 and 317 for the tax year**  
16 **after application of any nonrefundable credits allowable for purposes**  
17 **of ORS chapter 317 for the tax year, the amount of the excess deter-**  
18 **mined under this subsection shall be refunded to the taxpayer as pro-**  
19 **vided in ORS 314.415.**

20 **“(b) If the amount allowable as a credit under section 2 of this 2023**  
21 **Act, after any reduction applicable under subsection (2) of this section,**  
22 **when added to the sum of the amounts allowable as payment of tax**  
23 **under ORS 316.187 or 316.583, other tax prepayment amounts and other**  
24 **refundable credit amounts, exceeds the taxes imposed by ORS chapters**  
25 **314 and 316 for the tax year after application of any nonrefundable**  
26 **credits allowable for purposes of ORS chapter 316 for the tax year, the**  
27 **amount of the excess shall be refunded to the taxpayer as provided in**  
28 **ORS 316.502.**

29 **“(2) If the taxpayer employs, in Oregon, at least 500 employees but**  
30 **fewer than 2,000 employees at the close of the tax year, the amount**

1 of credit used in the calculation in subsection (1) of this section shall  
2 be reduced by 50 percent.

3 “(3) This section applies only to taxpayers with fewer than 2,000  
4 employees, wherever located, at the close of the tax year.

5 “SECTION 4. (1) A taxpayer seeking to claim the credit provided  
6 under section 2 of this 2023 Act shall file a written application for  
7 certification with the Oregon Business Development Department. The  
8 application must include:

9 “(a) A description of how the taxpayer meets the definition of a  
10 qualified semiconductor company under section 2 of this 2023 Act;

11 “(b) A description of how proposed research and development ac-  
12 tivities for which the taxpayer seeks a tax credit under section 2 of  
13 this 2023 Act will support the taxpayer in conducting a business or  
14 trade directly related to semiconductors; and

15 “(c) Any other information that is required by the department by  
16 rule.

17 “(2) An application for certification under this section must be ac-  
18 companied by a payment of any fee established by the department by  
19 rule under subsection (4) of this section.

20 “(3) The department shall consider applications for certification  
21 under this section in the chronological order in which the applications  
22 are filed with the department. If the department determines that an  
23 applicant taxpayer is a qualified semiconductor company as that term  
24 is defined under section 2 of this 2023 Act, and that the proposed re-  
25 search and development activities of the taxpayer for which the tax-  
26 payer seeks the credit under section 2 of this 2023 Act will support the  
27 taxpayer in conducting a trade or business directly related to semi-  
28 conductors, the department shall issue a certification to the taxpayer.

29 “(4) The department shall establish by rule a fee for filing a written  
30 application for certification under this section. The fee shall be ade-

1 **quate to recover the costs incurred by the department in reviewing the**  
2 **applications under this section.**

3 **“SECTION 5.** ORS 316.502, as amended by section 13, chapter 115, Oregon  
4 Laws 2022, is amended to read:

5 “316.502. (1) The net revenue from the tax imposed by this chapter, after  
6 deducting refunds and amounts described in ORS 285B.630 and 285C.635, shall  
7 be paid over to the State Treasurer and held in the General Fund as mis-  
8 cellaneous receipts available generally to meet any expense or obligation of  
9 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 \$1 million.

13 “(3) Moneys are continuously appropriated to the Department of Revenue  
14 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 ORS  
17 315.174, 315.262, 315.264, 315.266 and 316.090 and section 3, chapter 589,  
18 Oregon Laws 2021, and section 8, chapter 115, Oregon Laws 2022, **and sec-**  
19 **tion 3 of this 2023 Act.**

20 **“SECTION 6.** ORS 317.850, as amended by section 14, chapter 115, Oregon  
21 Laws 2022, is amended to read:

22 “317.850. (1) The net revenue from the tax imposed by this chapter, after  
23 deduction of refunds, shall be paid over to the State Treasurer and held in  
24 the General Fund as miscellaneous receipts available generally to meet any  
25 expense or obligation of 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*] **may** not at the close of any fiscal year exceed the sum of  
29 \$500,000.

30 “(3) Moneys are continuously appropriated to the Department of Revenue

1 to make:

2 “(a) The refunds authorized under subsection (2) of this section; [and]

3 “(b) The refund payments in excess of tax liability authorized under sec-  
4 tion 8, chapter 115, Oregon Laws 2022[.]; and

5 **“(c) The refund payments in excess of tax liability authorized under**  
6 **section 3 of this 2023 Act.**

7 **“SECTION 7.** ORS 314.772, as amended by section 11, chapter 34, Oregon  
8 Laws 2022, and section 15, chapter 115, Oregon Laws 2022, is amended to  
9 read:

10 “314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits al-  
11 lowed or allowable to a C corporation for purposes of ORS chapter 317 or  
12 318 shall not be allowed to an S corporation. The business tax credits al-  
13 lowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
14 allowable to the shareholders of the S corporation.

15 “(2) In determining the tax imposed under ORS chapter 316, as provided  
16 under ORS 314.763, on income of the shareholder of an S corporation, there  
17 shall be taken into account the shareholder’s pro rata share of business tax  
18 credit (or item thereof) that would be allowed to the corporation (but for  
19 subsection (1) of this section) or recapture or recovery thereof. The credit (or  
20 item thereof), recapture or recovery shall be passed through to shareholders  
21 in pro rata shares as determined in the manner prescribed under section  
22 1377(a) of the Internal Revenue Code.

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

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

1 “(5) As used in this section, ‘business tax credit’ means the following  
2 credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish  
3 screening, by-pass devices, fishways), ORS 315.141 (biomass production for  
4 biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture  
5 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent  
6 care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-  
7 tributions for child care), ORS 315.237 (employee and dependent scholar-  
8 ships), ORS 315.271 (individual development accounts), ORS 315.304  
9 (pollution control facility), ORS 315.326 (renewable energy development con-  
10 tributions), ORS 315.331 (energy conservation projects), ORS 315.336 (trans-  
11 portation projects), ORS 315.341 (renewable energy resource equipment  
12 manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation fa-  
13 cilities), ORS 315.506 (tribal taxes on reservation enterprise zones and res-  
14 ervation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514  
15 (film production development contributions), ORS 315.523 (employee training  
16 programs), ORS 315.533 (low income community jobs initiative), ORS 315.593  
17 (short line railroads), ORS 315.640 (university venture development funds),  
18 ORS 315.643 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for  
19 Cultural Development Account contributions), ORS 317.097 (loans for af-  
20 fordable housing), ORS 317.124 (long term enterprise zone facilities), ORS  
21 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-  
22 search expenses) and ORS 317.154 (alternative qualified research expenses)  
23 and section 9, chapter 774, Oregon Laws 2013 (alternative fuel vehicle con-  
24 tributions), section 2, chapter 34, Oregon Laws 2022 (small forest option), and  
25 section 8, chapter 115, Oregon Laws 2022 (agricultural overtime pay), **and**  
26 **section 2 of this 2023 Act (semiconductors).**

27 **“SECTION 8.** ORS 318.031, as amended by section 12, chapter 34, Oregon  
28 Laws 2022, and section 16, chapter 115, Oregon Laws 2022, is amended to  
29 read:

30 “318.031. It being the intention of the Legislative Assembly that this

1 chapter and ORS chapter 317 shall be administered as uniformly as possible  
2 (allowance being made for the difference in imposition of the taxes), ORS  
3 305.140 and 305.150, ORS chapter 314 and the following sections are incor-  
4 porated into and made a part of this chapter: ORS 315.104, 315.141, 315.156,  
5 315.176, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506,  
6 315.507, 315.523, 315.533, 315.593 and 315.643 and section 2, chapter 34, Oregon  
7 Laws 2022, and section 8, chapter 115, Oregon Laws 2022, **and section 2 of**  
8 **this 2023 Act** (all only to the extent applicable to a corporation) and ORS  
9 chapter 317.

10 **SECTION 9. Sections 2 to 4 of this 2023 Act apply to tax years be-**  
11 **ginning on or after January 1, 2024, and before January 1, 2030.**

12 **SECTION 10. This 2023 Act takes effect on the 91st day after the**  
13 **date on which the 2023 regular session of the Eighty-second Legislative**  
14 **Assembly adjourns sine die.”**

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