

Requested by Representative RESCHKE

**PROPOSED AMENDMENTS TO
HOUSE BILL 2009**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and delete lines 3 through 5 and insert “314.772, 316.502 and 317.850; and
3 prescribing an effective date.”.

4 Delete lines 7 through 21 and delete pages 2 through 24 and insert:
5

6 **“RESEARCH AND DEVELOPMENT TAX CREDIT**
7 **FOR SEMICONDUCTORS**
8

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

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

18 **“(2) A credit against taxes otherwise due under ORS chapter 316 or,**
19 **if the taxpayer is a corporation, under ORS chapter 317 shall be al-**
20 **lowed to eligible taxpayers for increases in qualified research expenses**
21 **and basic research payments. The credit shall be determined in ac-**

1 **cordance with section 41 of the Internal Revenue Code, except as fol-**
2 **lows:**

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

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

8 **“(c) Section 41(c)(4) of the Internal Revenue Code (relating to the**
9 **alternative incremental credit) does not apply to the credit allowable**
10 **under this section.**

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

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

18 **“(5) Prior to claiming a credit under this section, a taxpayer must**
19 **obtain from the Oregon Business Development Department:**

20 **“(a) If applicable, approval from the Oregon Business Development**
21 **Department as provided in section 5 of this 2023 Act.**

22 **“(b) Certification as provided in section 4 of this 2023 Act.**

23 **“(6) The Oregon Business Development Department shall provide**
24 **information to the Department of Revenue about all certifications is-**
25 **ssued under section 4 of this 2023 Act, if required by ORS 315.058.**

26 **“(7) The Director of the Oregon Business Development Department**
27 **may order the suspension or revocation of a credit allowed under this**
28 **section, as provided in ORS 315.061.**

29 **“(8) A deduction may not be taken for the portion of expenses or**
30 **payments, otherwise allowable as a deduction, that is equal to the**

1 amount of the credit claimed under this section.

2 “(9) Notwithstanding ORS 317.090 (3), a credit under this section is
3 allowed against the tax imposed under ORS 317.090.

4 “(10) Any tax credit that is otherwise allowable under this section
5 and that is not used by the taxpayer in that year may be carried for-
6 ward and offset against the taxpayer’s tax liability for the next suc-
7 ceeding tax year. Any credit remaining unused in such next succeeding
8 tax year may be carried forward and used in the second succeeding tax
9 year, and likewise any credit not used in that second succeeding tax
10 year may be carried forward and used in the third succeeding tax year,
11 and any credit not used in that third succeeding tax year may be car-
12 ried forward and used in the fourth succeeding tax year, and any
13 credit not used in that fourth succeeding tax year may be carried
14 forward and used in the fifth succeeding tax year, but may not be
15 carried forward for any tax year thereafter.

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

25 **“(b) If the amount allowable as a credit under section 2 of this 2023**
26 **Act, after any reduction applicable under subsection (2) of this section,**
27 **when added to the sum of the amounts allowable as payment of tax**
28 **under ORS 316.187 or 316.583, other tax prepayment amounts and other**
29 **refundable credit amounts, exceeds the taxes imposed by ORS chapters**
30 **314 and 316 for the tax year after application of any nonrefundable**

1 credits allowable for purposes of ORS chapter 316 for the tax year, the
2 amount of the excess shall be refunded to the taxpayer as provided in
3 ORS 316.502.

4 “(2) If the taxpayer employs, in Oregon:

5 “(a) At least 150 employees but fewer than 500 employees at the
6 close of the tax year, the amount of credit used in the calculation in
7 subsection (1) of this section shall be reduced by 50 percent.

8 “(b) At least 500 employees but fewer than 3,000 employees at the
9 close of the tax year, the amount of credit used in the calculation in
10 subsection (1) of this section shall be reduced by 75 percent.

11 “(3) Any amount not available for refund due to subsection (2) of
12 this section may be carried forward as provided in section 2 (10) of this
13 2023 Act.

14 “(4) This section applies only to taxpayers with fewer than 3,000
15 employees who are employed in Oregon at the close of the tax year.

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

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

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

26 “(c) Any other information that is required by the department by
27 rule.

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

1 **“(3) The department shall consider applications for certification**
2 **under this section in the chronological order in which the applications**
3 **are filed with the department. If the department determines that an**
4 **applicant taxpayer is a qualified semiconductor company as that term**
5 **is defined under section 2 of this 2023 Act, and that the proposed re-**
6 **search and development activities of the taxpayer for which the tax-**
7 **payer seeks the credit under section 2 of this 2023 Act will support the**
8 **taxpayer in conducting a trade or business directly related to semi-**
9 **conductors, the department shall issue a certification to the taxpayer.**

10 **“(4) The department shall establish by rule a fee for filing a written**
11 **application for certification under this section. The fee shall be ade-**
12 **quate to recover the costs incurred by the department in reviewing the**
13 **applications under this section.**

14 **“SECTION 5. (1) In order to be allowed a credit under section 2 of**
15 **this 2023 Act for a tax year beginning in calendar year 2024, a taxpayer**
16 **that intends to claim the credit for that tax year shall file with the**
17 **Oregon Business Development Department an application, not later**
18 **than December 1, 2023.**

19 **“(2) The application required under this section shall be submitted**
20 **in a form and manner prescribed by the department by rule and shall**
21 **include:**

22 **“(a) Documentation of the taxpayer’s qualified research expenses**
23 **and basic research expenses under section 2 of this 2023 Act, averaged**
24 **over the three preceding calendar years; and**

25 **“(b) A projection, for the tax year beginning in calendar year 2024,**
26 **of the taxpayer’s qualified research expenses and basic research ex-**
27 **penses under section 2 of this 2023 Act.**

28 **“(3) Not later than December 31, 2023, the department shall provide**
29 **taxpayers that have timely submitted applications under this section**
30 **with acknowledgment of receipt of an application and shall provide**

1 preliminary confirmation that the taxpayer appears eligible for the
2 credit allowed under section 2 of this 2023 Act.

3 “(4) Any taxpayer that does not submit an application as required
4 under this section is not eligible to claim a credit under section 2 of
5 this 2023 Act for a tax year beginning in calendar year 2024.

6 “SECTION 6. The Legislative Revenue Officer shall prepare a report
7 detailing the information submitted by applicants under section 5 of
8 this 2023 Act. Not later than March 1, 2024, the officer shall submit the
9 report, in the manner provided by ORS 192.245, to the interim com-
10 mittees of the Legislative Assembly related to revenue.

11 “SECTION 7. Section 6 of this 2023 Act is repealed on January 2,
12 2025.

13 “SECTION 8. The total amount of potential tax credits for all
14 qualified semiconductor companies in this state may not, at the time
15 of certification under section 4 of this 2023 Act, exceed \$ _____ million
16 for any biennium.

17 “SECTION 9. ORS 316.502, as amended by section 13, chapter 115, Oregon
18 Laws 2022, is amended to read:

19 “316.502. (1) The net revenue from the tax imposed by this chapter, after
20 deducting refunds and amounts described in ORS 285B.630 and 285C.635, shall
21 be paid over to the State Treasurer and held in the General Fund as mis-
22 cellaneous receipts available generally to meet any expense or obligation of
23 the State of Oregon lawfully incurred.

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

27 “(3) Moneys are continuously appropriated to the Department of Revenue
28 to make:

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

30 “(b) The refund payments in excess of tax liability authorized under ORS

1 315.174, 315.262, 315.264, 315.266 and 316.090 and section 3, chapter 589,
2 Oregon Laws 2021, and section 8, chapter 115, Oregon Laws 2022, **and sec-**
3 **tion 3 of this 2023 Act.**

4 **“SECTION 10.** ORS 317.850, as amended by section 14, chapter 115,
5 Oregon Laws 2022, 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*] **may** not at the close of any fiscal year exceed the sum of
13 \$500,000.

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

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

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

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

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

24 “314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits al-
25 lowed or allowable to a C corporation for purposes of ORS chapter 317 or
26 318 shall not be allowed to an S corporation. The business tax credits al-
27 lowed or allowable for purposes of ORS chapter 316 shall be allowed or are
28 allowable to the shareholders of the S corporation.

29 “(2) In determining the tax imposed under ORS chapter 316, as provided
30 under ORS 314.763, on income of the shareholder of an S corporation, there

1 shall be taken into account the shareholder's pro rata share of business tax
2 credit (or item thereof) that would be allowed to the corporation (but for
3 subsection (1) of this section) or recapture or recovery thereof. The credit (or
4 item thereof), recapture or recovery shall be passed through to shareholders
5 in pro rata shares as determined in the manner prescribed under section
6 1377(a) of the Internal Revenue Code.

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

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

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

1 (short line railroads), ORS 315.640 (university venture development funds),
2 ORS 315.643 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for
3 Cultural Development Account contributions), ORS 317.097 (loans for af-
4 fordable housing), ORS 317.124 (long term enterprise zone facilities), ORS
5 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-
6 search expenses) and ORS 317.154 (alternative qualified research expenses)
7 and section 9, chapter 774, Oregon Laws 2013 (alternative fuel vehicle con-
8 tributions), section 2, chapter 34, Oregon Laws 2022 (small forest option), and
9 section 8, chapter 115, Oregon Laws 2022 (agricultural overtime pay), **and**
10 **section 2 of this 2023 Act (semiconductors).**

11

12

“APPLICABILITY CLAUSE

13

14 **“SECTION 12. Sections 2 to 5 of this 2023 Act apply to tax years**
15 **beginning on or after January 1, 2024, and before January 1, 2030.**

16

17

“CAPTIONS

18

19 **“SECTION 13. The unit captions used in this 2023 Act are provided**
20 **only for the convenience of the reader and do not become part of the**
21 **statutory law of this state or express any legislative intent in the**
22 **enactment of this 2023 Act.**

23

24

“EFFECTIVE DATE

25

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

29