

Background

Oregon's tax credits for qualified research and development activities expired after tax year 2017. Unused credits were allowed to be carried forward up to five subsequent tax years.

Reinstatement of Tax Credits

SB 1084 reinstates the tax credits for qualified research activities, expands the credit to personal income taxpayers, increases the maximum credit amount, limits the amount of total credits available in a biennium, allows the tax credit to be transferred to another taxpayer, and makes the credit partially refundable to taxpayers with fewer than 150 employees anywhere.

Technical Issues

- There is no certification requirement for claiming the credit. Certification is necessary to ensure the credit amount is applied to each tax year correctly. With refundable credits, there is an increased risk of fraud that could be prevented with certification by an agency with experience or program responsibility for business incentives. Certification could also track the amount of credit eligibility to ensure no credits are authorized beyond the allowed limit(s).
- The certifying agency should have responsibility for ordering suspension, revocation, or forfeiture of the tax credit.
- Section 2 makes the credit refundable for taxpayers with fewer than 150 employees anywhere (not just Oregon). It appears the intention is to refund up to 80-percent of the tax credit, however it is not clear whether the remaining 20-percent of the tax credit is to be applied to the tax liability before the refundable credit is calculated or how the remaining credit is to be used if tax liability is less than 20-percent of the credit.
- New language being added to ORS 317.152 and 317.154 by Sections 3 and 4 allows for the credit to be transferred and requires DOR to approve the transfer and notify the transferor and transferee of the approval. DOR does not currently "approve" credit transfers – transfers are reported to the department and matched to taxpayer returns. Sections 3 and 4 also include personal income taxpayers as eligible taxpayers to claim the tax credit. Section 3 (2) also needs to be updated to modify the definition of "eligible taxpayer" to include persons other than a corporation.
- The bill prescribes two limits to the amount of tax credits that may be claimed. First, there is a limit of \$100 million on the amount of the tax credit that can be claimed by transferees each tax year. Second, there is a limit of \$200 million total combined amount of tax credits that can be certified per biennium. Because tax years and biennia do not align, the amount of tax credits may be disproportionately allocated in a tax year.
- To ensure S Corporations can pass the tax credit to shareholders, ORS 314.772 will also need to be amended to include ORS 317.152 and 317.154, as amended by this bill.
- The tax credit is not applicable to a taxpayer filing under ORS chapter 318 because they are not doing business in the state. All references to ORS Chapter 318 should be deleted from the bill.

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