

# Chapter 315

1993 EDITION

## Personal and Corporate Income or Excise Tax Credits

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**REVENUE AND TAXATION**

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**GENERAL PROVISIONS**

315.001 [Enacted as 1953 c.308 §1; repealed by 1965 c.26 §6]

315.002 [Enacted as 1953 c.308 §2; repealed by 1965 c.26 §6]

315.003 [Enacted as 1953 c.308 §3; repealed by 1965 c.26 §6]

**315.004 Definitions; adoption of parts of Internal Revenue Code and application of federal laws and regulations; technical corrections.** (1) Except when the context requires otherwise, the definitions contained in ORS chapters 314, 316, 317 and 318 are applicable in the construction, interpretation and application of the personal and corporate income and excise tax credits contained in this chapter.

(2)(a) For purposes of the tax credits contained in this chapter, any term has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or the term is specifically defined for purposes of construing, interpreting and applying the credit.

(b) With respect to the tax credits contained in this chapter, any reference to the laws of the United States or to the Internal Revenue Code means the laws of the United States relating to income taxes or the Internal Revenue Code as they are amended on or before December 31, 1992, even where the amendments take effect or become operative after that date.

(3) Insofar as is practicable in the administration of this chapter, the department shall apply and follow the administrative and judicial interpretations of the federal income tax law. When a provision of the federal income tax law is the subject of conflicting opinions by two or more federal courts, the department shall follow the rule observed by the United States Commissioner of Internal Revenue until the conflict is resolved. Nothing contained in this section limits the right or duty of the department to audit the return of any taxpayer or to determine any fact relating to the tax liability of any taxpayer.

(4) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section refer to rules or regulations prescribed by the Secretary of the Treasury, then such rules or regulations shall be regarded as rules adopted by the department under and in accordance with the provisions of this chapter, whenever they are prescribed or amended.

(5) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section are later corrected by an Act or a Title within

an Act of the United States Congress designated as an Act or Title making technical corrections, then notwithstanding the date that the Act or Title becomes law, those portions of the Internal Revenue Code, as so corrected, shall be the portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section and shall take effect, unless otherwise indicated by the Act or Title (in which case the provisions shall take effect as indicated in the Act or Title), as if originally included in the provisions of the Act being technically corrected. If, on account of this subsection, any adjustment is required to an Oregon return that would otherwise be prevented by operation of law or rule, the adjustment shall be made, notwithstanding any law or rule to the contrary, in the manner provided under ORS 314.135. [1993 c.730 §2]

315.005 [Repealed by 1965 c.26 §6]

315.010 [Amended by 1953 c.325 §3; repealed by 1965 c.26 §6]

315.015 [Repealed by 1965 c.26 §6]

315.020 [Repealed by 1965 c.26 §6]

315.025 [Repealed by 1965 c.26 §6]

315.030 [Repealed by 1965 c.26 §6]

315.035 [Repealed by 1965 c.26 §6]

315.040 [Repealed by 1965 c.26 §6]

315.045 [Repealed by 1965 c.26 §6]

**315.054 Federal tax credits allowable only as specified.** No credits applied directly to the income tax calculated for federal purposes pursuant to the Internal Revenue Code shall be applied in calculating the tax due under ORS chapter 314, 316, 317 or 318 except those prescribed in this chapter or ORS chapter 314, 316, 317 or 318. [1993 c.730 §4 (enacted in lieu of 316.107)]

315.055 [Repealed by 1965 c.26 §6]

315.060 [Repealed by 1965 c.26 §6]

315.065 [Repealed by 1965 c.26 §6]

315.070 [Repealed by 1965 c.26 §6]

315.075 [Repealed by 1965 c.26 §6]

315.080 [Repealed by 1965 c.26 §6]

315.085 [Repealed by 1965 c.26 §6]

315.090 [Repealed by 1965 c.26 §6]

315.095 [Repealed by 1965 c.26 §6]

**AGRICULTURE; FISHING; FORESTRY**

**315.104 Reforestation.** (1) A credit against the taxes otherwise due under ORS chapter 316 (or if the taxpayer is a corporation, under ORS chapter 317 or 318) shall be allowed in an amount equal to 30 percent of reforestation project costs actually paid or incurred to reforest underproductive Oregon forestlands. Such costs include, but are not limited to site preparation, tree planting and other silviculture treatments considered necessary by the State Forester to establish

commercial, hardwood or softwood stands on appropriate sites. Subject to subsection (5) of this section:

(a) One-half of the credit shall be taken in the tax year for which the State Forester, after physical inspection of the forestland, issues a preliminary certificate certifying that the land qualifies as underproductive Oregon forestland and that the reforestation project undertaken meets the requirements of this section and the specifications established by the State Forester and the costs appear to be reasonable; and

(b) One-half of the credit shall be taken in the tax year for which the State Forester, after further physical inspection of the land and project, certifies that the new forest is established in accordance with the specifications of the State Forester.

(2) No credit shall be allowed under either subsection (1)(a) or (b) of this section unless written certification containing the following statements accompanies the claim for the credit or is otherwise filed with the department:

(a) A statement by the State Forester that the land and project meet the preliminary specifications established by the State Forester or that the new forest is established, whichever is applicable at the time.

(b) A statement by the landowner or person in possession of the land that the land within the project area will be used for the primary purpose of growing and harvesting trees of an acceptable species.

(c) A statement that the landowner or person in possession of the land is aware that maintenance practices, including release, may be needed to insure that a new forest is established and will remain established.

(3) For purposes of this section, reforestation project costs shall not include:

(a) Costs paid or incurred to reforest any forestland that has been commercially logged to the extent that reforestation is required under the Oregon Forest Practices Act, except costs paid or incurred to reforest forestland following a hardwood harvest, conducted for the purposes of converting underproductive forestlands, as determined by administrative rule.

(b) That portion of costs or expenses paid through a federal or state cost share program.

(c) Those costs paid or incurred to grow Christmas trees, ornamental trees, shrubs or plants, or, except as provided under ORS 321.274 or 321.426, those costs paid or incurred to grow hardwood timber described under ORS 321.267 (1)(e) or 321.415 (5).

(d) Any costs paid or incurred to purchase or otherwise acquire the land.

(e) The cost of purchase or other acquisition of tools and equipment with a useful life of more than one year.

(4) To qualify for the credit:

(a) The project must be completed to specifications approved by the State Forester.

(b) The taxpayer's portion of the project costs must be \$500 or more.

(c) The taxpayer must be a private individual, corporation, group, Indian tribe or other native group, association or other non-public legal entity owning, purchasing under recorded contract of sale or leasing at least five acres of Oregon commercial forestland.

(5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, but may not be carried forward for any tax year thereafter. In all cases the taxpayer must be the person who made the investment into the project.

(6) The credit provided by this section shall be in addition to and not in lieu of any depreciation or amortization deduction to which the taxpayer otherwise may be entitled with respect to the reforestation project and the credit shall not affect the computation of basis for the property.

(7) In compliance with ORS 183.310 to 183.550, the Department of Revenue and the State Forestry Department may adopt rules consistent with law for carrying out the provisions of this section.

(8) As used in this section, "underproductive Oregon forestlands" means Oregon commercial forestlands not meeting the minimum stocking standards of the Oregon Forest Practices Act.

(9) If, for any reason other than those specified in subsection (10) of this section, a new forest is not established by the last day of the second taxable year following the taxable year for which the preliminary certificate was issued, the State Forester shall so report to the Department of Revenue. The report filed under this subsection shall be the basis for the department to recover any credit granted under subsection (1)(a) of this section. If, however, the new forest is not established within the time required by this subsection on account of the reasons speci-

fied in subsection (10) of this section, any credit allowed under subsections (1)(a) and (5) of this section shall not be recovered but no further credit as provided under subsections (1)(b) and (5) of this section shall be allowed.

(10) Subject to requalification under this section in the manner applicable for the original claim, a taxpayer may claim an additional credit or credits for reestablishing a new planting in the event that the new forest is destroyed by a natural disaster or is not established for reasons beyond the control of the taxpayer, if the measures taken in completing the original or earlier project would normally have resulted in establishing the minimum number of trees per acre anticipated by the project.

(11) Any owner affected by a determination, regarding the reforestation tax credit made by:

(a) The State Forester, may appeal that determination in the manner provided for in ORS 526.475 (1).

(b) The Department of Revenue, may appeal that determination in the manner provided for in ORS 526.475 (2). [1993 c.730 §8 (enacted in lieu of 316.094, 317.102 and 318.110)]

Note: Section 5, chapter 605, Oregon Laws 1987, provides:

Sec. 5. No tax credit shall be allowed under ORS 316.094 or 317.102 [315.104 was enacted in lieu of 316.094, 317.102 and 318.110 in 1993] based upon reforestation project costs if the preliminary certificate is not issued prior to July 1, 1996. [1987 c.605 §5; 1989 c.887 §4]

Note: Section 9, chapter 714, Oregon Laws 1991, provides:

Sec. 9. The amendments to ORS 316.094 and 317.102 [315.104 was enacted in lieu of 316.094, 317.102 and 318.110 in 1993] by sections 6 and 7 of this Act apply to all reforestation project costs paid or incurred in connection with a reforestation project for which a preliminary certificate is issued for a tax year beginning on or after January 1, 1992. [1991 c.714 §9]

315.105 [Repealed by 1965 c.26 §6]

315.110 [Amended by 1953 c.665 §2; repealed by 1965 c.26 §6]

315.115 [Repealed by 1965 c.26 §6]

315.120 [Amended by 1953 c.132 §3; repealed by 1965 c.26 §6]

315.125 [Enacted as 1953 c.197 §2; repealed by 1965 c.26 §6]

### 315.134 Fish habitat improvement. (1)

A resident individual shall be allowed a credit against the taxes otherwise due under ORS chapter 316 (or if the taxpayer is a corporation, the corporation shall be allowed a credit against the taxes otherwise due under ORS chapter 317 or 318), based upon the cost of a fish habitat improvement project certified under ORS 496.260. The amount of the credit shall be 25 percent of the amount certified.

(2) To qualify for the credit under this section:

(a) The fish habitat improvement project must have been given final certification by the State Department of Fish and Wildlife as provided in ORS 496.260.

(b) The credit must be claimed for the year in which final certification for the project is granted.

(c) The taxpayer who is allowed the credit must be the person or entity who actually expended funds for construction or installation of the project.

(d) The fish habitat improvement project must not be required by existing federal or state statute.

(3) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(5) In the case of a credit allowed under this section for purposes of ORS chapter 316:

(a) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(b) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(c) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each.

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

(6) The tax claim for tax credit shall be substantiated by submission, with the tax return, of the State Department of Fish and Wildlife notice of final project certification. [1993 c.730 §10 (enacted in lieu of 316.084, 317.133 and 318.080)]

**315.138 Fish screening devices, by-pass devices or fishways.** (1) There shall be allowed a credit against tax due under ORS chapter 316, or if the taxpayer is a corporation, under ORS chapter 317, for taxpayers that install fish screening devices, by-pass devices or fishways, when required to do so by ORS 498.248 (1), 498.268 (1), 509.605 (1), 509.615 (1) or section 2, chapter 858, Oregon Laws 1991, and the diversion is not part of a hydroelectric project required to be licensed under the Federal Energy Regulatory Commission. Except as allowed in subsection (4) of this section, the credit shall be taken in the tax year in which the final certification is issued under subsection (10) of this section.

(2) The credit shall be equal to 50 percent of the taxpayer's net certified costs of installing a fish screening device, by-pass device or fishway. The total credit allowed shall not exceed \$5,000 per device installed.

(3) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year. Any credit remaining unused in such second succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit remaining unused in such third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in such fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter.

(5) The credit provided by this section shall be in addition to and not in lieu of any depreciation or amortization deduction to which the taxpayer otherwise may be entitled with respect to the installation of a fish screening device, by-pass device or fishway. The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section.

(6) In the case of a credit allowed under this section for purposes of ORS chapter 316:

(a) A nonresident shall be allowed the credit in the same manner and subject to the same limitations as a resident. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(7) To qualify for the credit the taxpayer must be issued a certificate by the State Department of Fish and Wildlife.

(8) To obtain credit under subsection (1) of this section, any person proposing to apply for certification of a fish screening device, by-pass device or fishway, before installing the fish screening device, by-pass device or fishway, shall file a request for preliminary certification with the State Department of Fish and Wildlife. The request shall be in a form prescribed by the State Department of Fish and Wildlife. The following conditions shall apply:

(a) Within 30 days of the receipt of a request for preliminary certification, the State Department of Fish and Wildlife may require, as a condition precedent to issuance of a preliminary certificate of approval, the submission of plans and specifications. After examination thereof, the State Department of Fish and Wildlife may request corrections and revisions to the plans and specifications. The State Department of Fish and Wildlife may also require any pertinent information necessary to determine whether the proposed fish screening device, by-pass device or fishway is in accordance with State Department of Fish and Wildlife requirements.

(b) If the State Department of Fish and Wildlife determines that the proposed fish screening device, by-pass device or fishway is in accordance with State Department of Fish and Wildlife requirements, it shall issue a preliminary certificate approving the fish screening device, by-pass device or fishway. If the State Department of Fish and Wildlife determines that the fish screening device, by-pass device or fishway does not comply with State Department of Fish and Wildlife requirements, the State Department of Fish and Wildlife shall issue an order denying certification.

(c) If within 90 days of the receipt of plans, specifications or any subsequently re-

requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the State Department of Fish and Wildlife fails to issue a preliminary certificate of approval and the State Department of Fish and Wildlife fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The capital investment must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted.

(d) Within 30 days from the date of mailing of the order, any person against whom an order is directed pursuant to paragraph (b) of this subsection may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the State Fish and Wildlife Director. The hearing shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550.

(9) Any fish screening device, by-pass device or fishway that is installed pursuant to ORS 498.248 (2) or alterations made pursuant to ORS 498.268 (2) to (6) shall not be eligible for the credit provided in subsection (1) of this section.

(10) Upon completion and pursuant to application for final certification, final certification shall be issued by the State Department of Fish and Wildlife if the fish screening device, by-pass device or fishway was constructed and installed in accordance with State Department of Fish and Wildlife requirements. Final certification shall include a statement of the costs of installation as verified by the State Department of Fish and Wildlife. The credit allowed under this section shall be claimed first for the tax year of the taxpayer in which final certification is issued.

(11) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the State Department of Fish and Wildlife may order the revocation of the certificate issued under this section of any taxpayer, if it finds that:

(a) The certificate was obtained by fraud or misrepresentation; or

(b) The holder of the certificate fails to meet State Department of Fish and Wildlife requirements.

(12) As soon as the order of revocation under this section has become final the State Department of Fish and Wildlife shall notify the Department of Revenue of such order.

(13) If the certificate of a fish screening device, by-pass device or fishway is ordered revoked pursuant to subsection (11) of this section, all prior tax relief provided to the holder of the certificate by virtue of the cer-

tificate shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder.

(14) If the certificate of a fish screening device, by-pass device or fishway is ordered revoked pursuant to subsection (11) of this section, the certificate holder shall be denied any further relief provided under this section in connection with the fish screening device, by-pass device or fishway, as the case may be, from and after the date that the order of revocation becomes final.

(15) In the event that the fish screening device, by-pass device or fishway is destroyed by flood, natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place.

(16) Fish screening devices, by-pass devices or fishways which are financed by funds obtained from the Water Development Fund, pursuant to ORS 541.700 to 541.855, shall not be eligible for the credit under any circumstances.

(17) The State Department of Fish and Wildlife shall adopt rules for carrying out the provisions of this section and report to the interim committee created under ORS 171.605 to 171.640 to make studies of and inquiries into state revenue matters. [1993 c.730 §12 (enacted in lieu of 316.139 and 317.145)]

**315.148 Fish gleaning.** (1) As used in this section:

(a) "Commercial fisherman" means a person licensed to take fish commercially under the laws of this or another state.

(b) "Fair market value" means the purchase price actually paid for fish of the same species on the date the weigh-backs are landed.

(c) "Fish" means fish or shellfish for use for human consumption.

(d) "Weigh-backs" means fish taken by a commercial fisherman that are too small or uneconomical to process or are cosmetically imperfect so as to be unacceptable for purchase by a wholesaler, canner or other fish processor.

(2) A credit is allowed against the taxes otherwise due under ORS chapter 316, or if the taxpayer is a corporation, under ORS chapter 317 or 318, to:

(a) A commercial fisherman who contributes or aids, assists or causes to be contributed through a person described in paragraph (b) of this subsection, weigh-backs to a gleaning cooperative, as defined in ORS 315.154, or to an officially designated recipient member of Oregon Food Share, a private nonprofit corporation.

(b) A wholesaler, canner or other fish processor who accepts weigh-backs from a commercial fisherman or agent of a commercial fisherman and delivers or causes the weigh-backs to be delivered to a gleaning cooperative, as defined in ORS 315.154, or to an officially designated recipient member of Oregon Food Share, a private nonprofit corporation.

(3) The amount of the credit allowed to each taxpayer described under subsection (2) of this section is five percent of the fair market value of the weigh-backs contributed during the tax year of the taxpayer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused on such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(5) At the time of a contribution made as described under subsection (2) of this section, the director, supervisor or other appropriate official of the gleaning cooperative or Oregon Food Share to which the contribution is made shall supply to the commercial fisherman or wholesaler, canner or other fish processor, two copies of a form prescribed by the Department of Revenue. The form shall:

(a) Contain the name and address of the commercial fisherman, wholesaler, canner or other fish processor.

(b) Describe the species of the weigh-backs contributed and specify the amount or quantity contributed.

(c) Specify the purchase price actually paid for fish of the same species as the weigh-backs on the date the weigh-backs were landed.

(d) Contain any other information required by the Department of Revenue by rule.

(e) Be signed by the director, supervisor or other appropriate official of the gleaning cooperative or Oregon Food Share.

(6) Tax claim for tax credit under this section shall be substantiated by submission with the tax return, of the form described in

subsection (5) of this section, a statement verified by the taxpayer that the contribution was made as described in subsection (2) of this section and a copy of a receipt or other statement identifying the price paid for fish of the same species as the weigh-backs on the date the weigh-backs were landed. [1993 c.730 §14 (enacted in lieu of 316.098, 317.150 and 318.102)]

Note: Section 7, chapter 438, Oregon Laws 1985, provides:

Sec. 7. This Act [316.098 and 318.102 (315.148 was enacted in lieu of 316.098, 317.150 and 318.102 in 1993)] applies to tax years beginning on or after January 1, 1985, and prior to January 1, 1994. [1985 c.438 §7]

**315.154 Definitions for ORS 315.156.** As used in ORS 315.156:

(1) "Gleaning" means the harvesting in Oregon of an agricultural crop or a portion of a crop grown primarily to be sold for cash that is donated by the grower of the crop to a gleaning cooperative at such a time that the crop is still usable as food for human beings and:

(a) The grower of the crop has supplied any crop contract quota with the wholesale or retail buyer; or

(b) If the grower of the crop is a party to a contingent supply contract, the wholesale or retail buyer reduces the crop quota that was reasonably anticipated to be supplied by the grower; or

(c) Harvesting the crop for sale in the normal course of business is no longer economically feasible; and

(d) The crop would otherwise go to waste.

(2) "Gleaning cooperative" means a nonprofit federally tax exempt organization that is organized to provide and distribute produce to individuals who meet the low-income eligibility guidelines of the federal State Community Services Program established pursuant to the federal Community Services Act of 1974 (Public Law 93-744).

(3) "Wholesale market price" means the market price for the produce determined either by:

(a) The amount paid to the grower by the last previous cash buyer of the particular crop; or

(b) In the event there is no previous cash buyer, a market price determined by the gleaning cooperative based upon the market price of the nearest regional wholesale buyer or the regional u-pick market price. [1993 c.730 §16 (enacted in lieu of 316.089)]

315.155 [Repealed by 1965 c.26 §6]

**315.156 Crop gleaning.** (1) A taxpaying individual or corporation who is a grower of a crop and who permits the gleaning of the crop shall be allowed a credit against the

taxes otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, as follows:

(a) In the case of a donation made under circumstances described in ORS 315.154 (1)(a) and (b), the amount of the credit shall be 10 percent of the value of the quantity of the crop donated computed at the wholesale market price.

(b) In the case of a donation made under circumstances described in ORS 315.154 (1)(c) and (d), the amount of the credit shall be 10 percent of the value of the quantity of the crop donated computed at the wholesale market price that the grower would have received had the quantity of the crop donated been salable.

(2) At the time of donation, the director, supervisor or other appropriate official of the gleaning cooperative to which a donation is made shall supply to the grower of the crop donated two copies of a form prescribed by the Department of Revenue. The forms shall contain:

(a) The name and address of the grower;

(b) The description and quantity of the donated crop;

(c) The signature of the director, supervisor or other appropriate official of the gleaning cooperative verifying that the produce was or will be distributed to low-income individuals meeting the guidelines described in ORS 315.154 (2);

(d) The wholesale market price determined by the gleaning cooperative, in the event there is no previous cash buyer of the crop; and

(e) Other information required by the Department of Revenue by rule.

(3) Tax claim for tax credit shall be substantiated by submission with the tax return, of the form described in subsection (2) of this section, a statement verified by the taxpayer that the donation was made under circumstances described in ORS 315.154 (1) and a copy of an invoice or other statement identifying the price received by the grower for the crops of comparable grade or quality if there is a previous cash buyer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third

succeeding tax year, but may not be carried forward for any tax year thereafter. [1993 c.730 §18 (enacted in lieu of 316.091, 317.148 and 318.104)]

315.160 [Repealed by 1965 c.26 §6]

**315.164 Farm-worker housing construction or rehabilitation.** (1) As used in this section:

(a) "Condition of habitability" means a condition that is in compliance with:

(A) The applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder; or

(B) If determined on or before December 31, 1995, sections 12 and 13, chapter 964, Oregon Laws 1989.

(b) "Eligible costs" includes finance costs, construction costs, excavation costs and permit costs and excludes land costs.

(c) "Rehabilitation" means to restore and reinstate a building to a condition of habitability.

(d) "Seasonal farm worker" means any person who, for an agreed remuneration or rate of pay, performs temporary labor for another in the production of farm products or in the planting, cultivating or harvesting of seasonal agricultural crops or in the forestation or reforestation of lands, including but not limited to the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.

(e) "Seasonal farm-worker housing" means housing limited to occupancy by seasonal farm workers and their immediate families which is occupied no more than nine months of the year.

(f) "Seasonal farm-worker housing project" means construction or rehabilitation of seasonal farm-worker housing.

(g) "Year-round farm-worker housing" means housing limited to occupancy by farm workers and their immediate families.

(h) "Year-round farm-worker housing project" means construction or rehabilitation of farm-worker housing.

(2) A resident individual is allowed a credit against the taxes otherwise due under chapter 316 or, if the taxpayer is a corporation, the credit shall be allowed against taxes otherwise due under ORS chapter 317. The amount of the credit shall be equal to 50 percent of the eligible costs actually paid or incurred to complete a seasonal or year-round farm-worker housing project.

(3) The credit allowed under subsection (2) of this section shall be taken in five equal installments over a period of five consecutive tax years beginning in the tax year of the

taxpayer during which the project is completed.

(4) The credit shall apply only to a seasonal or a year-round farm-worker housing project that is physically begun on or after January 1, 1990.

(5) Except as provided under subsection (6) of this section, the credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(6) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(7)(a) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the project to which the taxpayer otherwise may be entitled under ORS chapter 316 or 317 for such year.

(b) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section.

(8)(a) If the taxpayer is a person who is not, and will not be, the owner or operator of the seasonal or year-round farm-worker housing, the taxpayer is entitled to the credit allowed under this section only if, upon completion of the seasonal or year-round farm-worker housing project and first occupation by farm workers, the housing complies with all safety or health laws, rules, regulations and standards applicable for farm-worker housing.

(b) If the taxpayer is a person who is, or will be, the owner or operator of the seasonal or year-round farm-worker housing at any time during the period for which the credit is claimed, the housing must:

(A) Be inspected by the Department of Consumer and Business Services prior to occupancy and must comply with all occupational safety or health laws, rules, regulations and standards;

(B) If registration is required, be registered as a farm-worker camp with the Bu-

reau of Labor and Industries under ORS 658.750; and

(C) Upon occupancy and if an indorsement is required, be operated by a person who holds a valid indorsement as a farm-worker camp operator under ORS 658.730.

(c) For purposes of this section, "owner" does not include a person whose only interest in the housing is as holder of a security interest.

(9)(a) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the department may order the disallowance of the credit allowed under this section if it finds, by order, that:

(A) The credit was obtained by fraud or misrepresentation; or

(B) In the event that an owner or operator claims or claimed the credit:

(i) The taxpayer has failed substantially to comply with the occupational safety or health laws, rules, regulations or standards; or

(ii) After occupancy and if registration is required, the seasonal or year-round farm-worker housing is not registered as a farm-worker camp with the Bureau of Labor and Industries under ORS 658.750; or

(iii) After occupancy and if an indorsement is required, the seasonal or year-round farm-worker housing is not operated by a person who holds a valid indorsement as a farm-worker camp operator under ORS 658.730.

(b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or other law, all prior tax relief provided to the taxpayer shall be forfeited and the department shall proceed to collect those taxes not paid by the taxpayer as a result of the prior granting of the credit.

(c) If the tax credit is disallowed pursuant to this subsection, the taxpayer shall be denied any further credit provided under this section, in connection with the seasonal or year-round farm-worker housing project, as the case may be, from and after the date that the order of disallowance becomes final.

(10) In the event that the farm-worker housing is destroyed by fire, flood, natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place. In the event of fire, if the fire chief of the fire protection district or unit determines that the fire was caused by arson, as defined in ORS 164.315 and 164.325, by the taxpayer or by another at the taxpayer's direction, then the fire chief shall notify the department. Upon conviction of arson, the

department shall disallow the credit in accordance with subsection (9) of this section.

(11)(a) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(12) The department may adopt rules for carrying out the provisions of this section. [1993 c.730 §20 (enacted in lieu of 316.154 and 317.146); 1993 c.730 §20a]

Note: Section 6 (1), chapter 963, Oregon Laws 1989, provides:

Sec. 6. (1) Sections 2 and 4 of this Act [316.154 and 317.146 (316.164 was enacted in lieu of 316.154 and 317.146 in 1993)] shall apply to seasonal or year-round farm-worker housing projects completed in tax years that begin on or after the January 1 immediately following the date that both chapter 962, Oregon Laws 1989, and chapter 964, Oregon Laws 1989, have become both effective and operative [August 2, 1989] and which are completed before January 1, 1996. [1989 c.963 §6 (1)]

Note: Section 5, chapter 766, Oregon Laws 1991, provides:

Sec. 5. The amendments to sections 2 and 4, chapter 963, Oregon Laws 1989 [316.154 and 317.146 (316.164 was enacted in lieu of 316.154 and 317.146 in 1993)], by sections 3 and 4 of this Act shall apply to seasonal or year-round farm-worker housing projects completed in tax years that begin on or after January 1, 1991, and that are completed before January 1, 1996. [1991 c.766 §5]

315.165 [Repealed by 1965 c.26 §6]

315.170 [Repealed by 1965 c.26 §6]

315.175 [Repealed by 1965 c.26 §6]

315.180 [Repealed by 1965 c.26 §6]

315.185 [Repealed by 1965 c.26 §6]

315.190 [Repealed by 1965 c.26 §6]

315.195 [Repealed by 1965 c.26 §6]

315.200 [Repealed by 1965 c.26 §6]

## CHILDREN; YOUTH; DEPENDENTS

### 315.204 Dependent care assistance. (1)

A credit against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318) shall be allowed to a resident employer or to a corporation that is an employer for amounts paid or incurred during the taxable year by the employer for dependent care as-

sistance actually provided to an employee if the assistance is furnished pursuant to a program which meets the requirements of section 129(d) of the Internal Revenue Code.

(2) The amount of the credit allowed under subsection (1) of this section shall be 50 percent of the amount so paid or incurred by the employer during the taxable year but shall not exceed \$2,500 of day care assistance actually provided to the employee.

(3)(a) A credit against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318) shall be allowed to a resident employer, or to a corporation that is an employer, based upon amounts paid or incurred by the employer during the taxable year to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care.

(b) The amount of the credit allowed under this subsection shall be 50 percent of the amounts paid or incurred during the taxable year.

(4) No amount paid or incurred during the taxable year of an employer in providing dependent care assistance to any employee shall qualify for the credit allowed under subsection (1) of this section if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code.

(5) No amount paid or incurred by an employer to provide dependent care assistance to an employee shall qualify for the credit allowed under subsection (1) of this section if the amount paid or incurred is paid or incurred pursuant to a salary reduction plan or is not paid or incurred for services performed within this state.

(6) If the credit allowed under subsection (1) or (3) of this section is claimed, the amount of any deduction allowed or allowable under ORS chapter 316, 317 or 318 for the amount that qualifies for the credit (or upon which the credit is based) shall be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section shall be made at the time of filing the tax return in accordance with any rules adopted by the department.

(7) The amount upon which the credit allowed under subsection (1) of this section is based shall not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section shall not exceed the limitations provided in section 129(b) of the Internal Revenue Code. For purposes of ORS 316.162, with respect to an employee to whom dependent care assistance

is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection shall not qualify as expenses for which a credit is allowed to the employee under ORS 316.078.

(8) A nonresident shall be allowed the credit allowed under subsection (1) or (3) of this section. The credit shall be computed in the same manner and be subject to the same limitations as the credit granted to a resident.

(9) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(10) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(11) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(12) For purposes of the credit allowed under subsection (1) or (3) of this section:

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code shall apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation or profession in this state.

(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, 1992.

(13) In the case of an onsite facility, in accordance with any rules adopted by the department, the amount upon which the credit allowed under subsection (1) of this section is based, with respect to any dependent, shall be based upon utilization and the

value of the services provided. [1993 c.730 §22 (enacted in lieu of 316.134, 317.135 and 318.175)]

**Note:** Section 10, chapter 682, Oregon Laws 1987, provides:

**Sec. 10.** Sections 2, 5 and 8, chapter 682, Oregon Laws 1987 [316.134, 317.135 and 318.175 (315.204 was enacted in lieu of 316.134, 317.135 and 318.175 in 1993)], apply to tax years beginning on or after January 1, 1988, and prior to January 1, 2002. For all prior taxable years, the law in effect and applicable for those years shall continue to apply. [1987 c.682 §10; 1991 c.929 §3]

**Note:** Section 29, chapter 457, Oregon Laws 1991, provides:

**Sec. 29.** The amendments to ORS 316.134 and 317.135 [315.204 was enacted in lieu of 316.134, 317.135 and 318.175 in 1993] by sections 6 and 11, chapter 457, Oregon Laws 1991, apply to tax years beginning on or after January 1, 1989. [1991 c.457 §2a; 1993 c.18 §179]

**Note:** Section 53, chapter 877, Oregon Laws 1991, provides:

**Sec. 53.** (1) Except as provided in subsections (2) and (3) of this section, the amendments to ORS 316.134 and 317.135 [315.204 was enacted in lieu of 316.134, 317.135 and 318.175 in 1993] by sections 13 and 31, chapter 877, Oregon Laws 1991, (credit for dependent care assistance) apply to tax years beginning on or after January 1, 1989.

(2) The amendments to ORS 316.134 (6) and 317.135 (6) [315.204 was enacted in lieu of 316.134, 317.135 and 318.175 in 1993] by sections 13 and 31, chapter 877, Oregon Laws 1991, apply to tax years beginning on or after January 1, 1991.

(3) ORS 314.752 and the amendments to ORS 316.134 and 317.135 [315.204 was enacted in lieu of 316.134, 317.135 and 318.175 in 1993] by sections 13 and 31, chapter 877, Oregon Laws 1991, relating to S corporations apply to tax years beginning on or after January 1, 1991. [1991 c.877 §53; 1993 c.18 §180]

**Note:** Section 87, chapter 625, Oregon Laws 1989, provides:

**Sec. 87.** The amendments to ORS 316.134 and section 5, chapter 682, Oregon Laws 1987 [317.135 (315.204 was enacted in lieu of 316.134, 317.135 and 318.175 in 1993)], by sections 10 and 20, chapter 625, Oregon Laws 1989, (relating to dependent care assistance credit) apply to tax years beginning on or after January 1, 1988, and prior to January 1, 2002. [1989 c.625 §87; 1991 c.929 §4]

**Note:** Section 181, chapter 18, Oregon Laws 1993, provides:

**Sec. 181.** The amendments to section 29, chapter 457, Oregon Laws 1991, and to section 53, chapter 877, Oregon Laws 1991, by sections 179 and 180 of this Act apply to tax years beginning on or after January 1, 1992. [1993 c.18 §181]

315.205 [Repealed by 1965 c.26 §6]

**315.208 Dependent care facilities.** (1) A credit against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation that is an employer, under ORS chapter 317 or 318) is allowed to an employer, based upon costs actually paid or incurred by the employer, to acquire, construct, reconstruct, renovate or otherwise improve real property so that the property may be used primarily as a dependent care facility.

(2) The credit allowed under this section shall be the lesser of:

(a) \$2,500, multiplied by the number of full-time equivalent employees employed by the employer (on the property or within such proximity to the property that any dependents of the employees may be cared for in the facility) on any date within the two years immediately preceding the end of the first tax year for which credit is first claimed; or

(b) Fifty percent of the cost of the acquisition, construction, reconstruction, renovation or other improvement; or

(c) \$100,000.

(3) To qualify for the credit allowed under subsection (1) of this section:

(a) The amounts paid or incurred by the employer for the acquisition, construction, reconstruction, renovation or other improvement to real property may be paid or incurred either:

(A) To another to be used to acquire, construct, reconstruct, renovate or otherwise improve real property to the end that it may be used as a dependent care facility with which the employer contracts to make dependent care assistance payments which payments are wholly or partially entitled to exclusion from income of the employee for federal tax purposes under section 129 of the Internal Revenue Code; or

(B) To acquire, construct, reconstruct, renovate or otherwise improve real property to the end that it may be operated by the employer, or a combination of employers, to provide dependent care assistance to the employees of the employer under a program or programs under which the assistance is, under section 129 of the Internal Revenue Code, wholly or partially excluded from the income of the employee.

(b) The property must be in actual use as a dependent care facility on the last day of the tax year for which credit is claimed and dependent care services assisted by the employer must take place on the acquired, constructed, reconstructed, renovated or improved property and must be entitled to an exclusion (whole or partial) from the income of the employee for federal tax purposes under section 129 of the Internal Revenue Code on the last day of the tax year for which credit is claimed.

(c) The person or persons operating the dependent care facility on the property acquired, constructed, reconstructed, renovated or improved must hold a certificate of approval (temporary or not) issued under ORS 657A.250 to 657A.450 by the Children's Services Division to operate the facility on the property on the last day of the tax year of any tax year in which credit under this section is claimed.

(d) The dependent care facility acquired, constructed, reconstructed, renovated or otherwise improved must be located in Oregon. No credit shall be allowed under this section if the dependent care facility is not acquired, constructed, reconstructed, renovated or improved to accommodate six or more children.

(e) The employer must meet any other requirements or furnish any information, including information furnished by the employees or person operating the dependent care facility, to the department that the department requires under its rules to carry out the purposes of this section.

(f) The dependent care facility, the costs of the acquisition, construction, reconstruction, renovation or improvement upon which the credit granted under this section is based, must be placed in operation before January 1, 2002.

(4) The total amount of the costs upon which the credit allowable under this section is based, and the total amount of the credit, shall be determined by the employer, subject to any rules adopted by the department, during the tax year in which the property acquired, constructed, reconstructed, renovated or otherwise improved is first placed in operation as a dependent care facility certified by the Children's Services Division under ORS 657A.250 to 657A.450. One-tenth of the total credit is allowable in that tax year and one-tenth of the total credit is allowable in each succeeding tax year, not to exceed nine tax years, thereafter. No credit shall be allowed under this section for any tax year at the end of which the dependent care facility is not in actual operation under a current certificate of approval (temporary or not) issued by the Children's Services Division nor shall any credit be allowed for any tax year at the end of which the employer is not providing dependent care assistance entitled to exclusion (whole or partial) from employee income for federal tax purposes under section 129 of the Internal Revenue Code for dependent care on the property. Any tax credit allowable under this section in a tax year may be carried forward in the same manner and to the same tax years as if it were a tax credit described in ORS 315.204.

(5) Nothing in this section shall affect the computation of depreciation or basis of a dependent care facility. If a deduction is allowed for purposes of ORS chapter 316, 317 or 318 for the amounts paid or incurred upon which the credit under this section is based, the deduction shall be reduced by the dollar amount of the credit granted under this section.

(6) For purposes of the credit allowed under this section:

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code shall apply to the extent applicable.

(b) "Employer" means a resident, part-year resident or full-year nonresident employer carrying on a business, trade, occupation or profession in this state.

(c) "Internal Revenue Code" has the meaning given the term in ORS 315.204.

(7) The department shall require that evidence that the person operating the dependent care facility on the date that the taxpayer's tax year ends holds a current certificate of approval (temporary or otherwise) to operate the facility accompany the tax return on which any amount of tax credit granted under this section is claimed, or that such evidence be separately furnished. If the evidence is not so furnished, no credit shall be allowed for the tax year for which the evidence is not furnished. The Children's Services Division shall cooperate by making such evidence, in an appropriate form, available to the person operating the facility, if the person is currently entitled to a certificate of approval (temporary or not) so that, if necessary, it may be made available to the taxpayer. [1993 c.730 §24 (enacted in lieu of 316.132, 317.114 and 318.160)]

315.210 [Repealed by 1965 c.26 §6]

315.215 [Repealed by 1965 c.26 §6]

**315.234 Child development program contributions.** (1) A tax credit against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318) is allowed for contributions actually made during the tax year to:

(a) A school district child development program that has been approved by the Department of Education under ORS 329.385; or

(b) A school district student-parent program that has been approved by the Department of Education under ORS 329.385.

(2) The amount of the credit is 50 percent of the sum of the contributions made by the taxpayer during the tax year to both programs. The amount of the credit shall not exceed \$5,000 for each program location. In the case of personal income tax, the credit is allowed to either a resident or a nonresident taxpayer, without proration. If separate returns are filed, each spouse may claim a share of the credit, determined as if a joint return were made, in proportion to the contribution of each.

(3) The credit is allowable only if the contributions are made exclusively for use by a program approved under ORS 329.385.

(4) The credit is allowable only for contributions made after the date the Department of Education approves the program.

(5) If, for the tax year, a deduction is allowable under ORS chapter 316, 317 or 318 for the same contributions that are used to determine the amount of the credit, the deduction shall be reduced by the amount of the credit allowed.

(6) The department, with the assistance of the Department of Education, shall adopt rules to carry out the purposes of this section, including but not limited to rules setting forth requirements for substantiation of contributions and use of contributions. [1993 c.730 §26 (enacted in lieu of 316.133 and 317.134)]

Note: Section 6, chapter 928, Oregon Laws 1991, provides:

Sec. 6. Sections 2 and 4 of this Act [316.133 and 317.134 (315.234 was enacted in lieu of 316.133 and 317.134 in 1993)] and the amendments to ORS 318.031 by section 5 of this Act apply to tax years beginning on or after January 1, 1991, and before January 1, 1996. [1991 c.928 §6]

**315.254 Youth apprenticeship sponsorship.** (1) A business tax credit against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318) shall be allowed to an eligible taxpayer who sponsors eligible students who began participation in the youth apprenticeship program established under ORS 344.745 and 344.750 prior to November 4, 1993. The amount of the credit shall be the wages paid to participating students by the sponsoring employer taxpayer during the tax year, excluding wages paid after the first year of participation, and in an amount not to exceed \$2,500 in any one tax year.

(2)(a) A nonresident employer shall be allowed the credit provided under this section computed in the same manner and subject to the same limitations as the credit allowed to a resident of this state. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(3) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax

liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, but may not be carried forward for any tax year thereafter.

(4)(a) The credit allowed under this section is in addition to any deduction otherwise allowable under ORS chapter 316, 317 or 318.

(b) No other credit allowed under this chapter or ORS chapter 316, 317 or 318 shall be based upon all or any portion of amounts upon which the credit allowed under this section is based. [1993 c.730 §28 (enacted in lieu of 316.151, 317.141 and 318.085)]

Note: Section 9, chapter 859, Oregon Laws 1991, provides:

Sec. 9. Sections 4 and 6, chapter 859, Oregon Laws 1991 [316.151 and 317.141 (315.254 was enacted in lieu of 316.151, 317.141 and 318.085 in 1993)], apply to tax years beginning on or after January 1, 1991. [1991 c.859 §9; 1993 c.730 §28a]

315.255 [Repealed by 1965 c.26 §6]

315.260 [Repealed by 1965 c.26 §6]

315.265 [Repealed by 1965 c.26 §6]

315.270 [Repealed by 1965 c.26 §6]

315.275 [Repealed by 1965 c.26 §6]

315.280 [Amended by 1953 c.148 §3; repealed by 1965 c.26 §6]

315.285 [Repealed by 1965 c.26 §6]

315.290 [Repealed by 1965 c.26 §6]

315.295 [Repealed by 1965 c.26 §6]

## ENVIRONMENT AND ENERGY

**315.304 Pollution control facilities.** (1) A credit against taxes imposed by this chapter for a pollution control facility or facilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4) of this section.

(2) For a facility certified under ORS 468.170, the maximum credit allowed in any one tax year shall be the lesser of the tax liability of the taxpayer or one-half of the certified cost of the facility multiplied by the certified percentage allocable to pollution control, divided by the number of years of the facility's useful life. The number of years of the facility's useful life used in this calculation shall be the remaining number of years of useful life at the time the facility is certified but not less than one year nor more than 10 years.

(3) To qualify for the credit the pollution control facility must be erected, constructed or installed in accordance with the provisions of ORS 468.165 (1) and must be issued certification under ORS 468.170 prior to December 31, 1995.

(4)(a) The taxpayer who is allowed the credit must be:

(A) The owner of the trade or business that utilizes Oregon property requiring a pollution control facility to prevent or minimize pollution;

(B) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or

(C) A person who, as an owner or lessee owns or leases a pollution control facility used for recycling, material recovery or energy recovery as defined in ORS 459.005. Such person may, but need not, operate such facility or conduct a trade or business that utilizes property requiring such a facility. If more than one person has an interest under this subparagraph in a recycling, material recovery or energy recovery facility, only one may claim the credit allowed under this section. The person claiming the credit as between an owner and lessee under this subparagraph shall be designated in a written statement signed by both the lessor and lessee of the facility; this statement shall be filed with the Department of Revenue not later than the final day of the first tax year for which a tax credit is claimed. As used in this paragraph, "owner" includes a contract purchaser; and

(b) The facility must be owned or leased during the tax year by the taxpayer claiming the credit and must have been in use and operation during the tax year for which the credit is claimed.

(5) Regardless of when the facility is erected, constructed or installed, a credit under this section may be claimed by a taxpayer:

(a) For a facility qualifying under ORS 468.165 (1)(a) or (b), only in those tax years which begin on or after January 1, 1967.

(b) For a facility qualifying under ORS 468.165 (1)(c), in those tax years which begin on or after January 1, 1973.

(c) For a facility qualifying under ORS 468.165 (1)(d), in those tax years which begin on or after January 1, 1984.

(6) For a facility certified under ORS 468.170, the maximum total credit allowable shall not exceed one-half of the certified cost of the facility multiplied by the certified percentage allocable to pollution control.

(7) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the facility to which the taxpayer otherwise may be entitled under ORS chapter 316, 317 or 318 for such year.

(8) Upon any sale, exchange or other disposition of a facility, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification

covering such facility as of the date of such disposition. The transferee may apply for a new certificate under ORS 468.170, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of shares in an S corporation as defined in section 1361 of the Internal Revenue Code or of a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a facility for purposes of this subsection.

(9) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in ORS 468.170.

(10) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section. [1993 c.730 §30 (enacted in lieu of 316.097 and 317.116); 1993 c.560 §110a]

315.305 [Repealed by 1965 c.26 §6]

315.310 [Repealed by 1965 c.26 §6]

315.315 [Repealed by 1965 c.26 §6]

315.320 [Repealed by 1965 c.26 §6]

**315.324 Plastics recycling.** (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317) for the investments certified under ORS 468.466 shall be allowed if the taxpayer qualifies under subsection (4) of this section.

(2) A taxpayer shall be allowed a tax credit under this section each year for five years beginning in the year the investment receives final certification under ORS 468.466. The maximum credit allowed in any one tax year shall be the lesser of the tax liability of the taxpayer or 10 percent of the certified cost of the taxpayer's investment.

(3) To qualify for the credit the investment must be made in accordance with the provisions of ORS 468.461.

(4)(a) The taxpayer who is allowed the credit must be:

(A) The owner of the business that collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product;

(B) A person who, as a lessee or pursuant to an agreement, conducts the business that collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product; or

(C) A person who, as an owner, lessee or pursuant to an agreement, owns, leases or has a beneficial interest in a business that collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product. Such person may, but need not, operate or conduct such a business that collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product. If more than one person has an interest under this subparagraph in a qualifying business and one or more persons receive a certificate, such person or persons may allocate all or any part of the certified investment cost among any persons and their successors or assigns having an interest under this subparagraph. Such allocation shall be evidenced by a written statement signed by the person or persons receiving the certificate and designating the persons to whom the certified investment costs have been allocated and the amount of certified investment cost allocated to each. This statement shall be filed with the Department of Revenue not later than the final day of the first tax year for which a tax credit is claimed pursuant to such agreement. In no event shall the aggregate certified investment costs allocated between or among more than one person exceed the amount of the total certified cost of the investment. As used in this paragraph, "owner" includes a contract purchaser;

(b) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subparagraph (C) of paragraph (a) of this subsection, and must have been collecting, transporting or processing reclaimed plastic or manufacturing a reclaimed plastic product during the tax year for which the credit is claimed; and

(c) The reclaimed plastic collected, transported, processed or used to manufacture the reclaimed plastic product must not be an industrial waste generated by the person claiming the tax credit, but must be purchased from a plastic recycler other than the person claiming the tax credit.

(5) A credit under this section may be claimed by a taxpayer for a business receiving final certification of an investment under ORS 468.466 only if the investment is made on or after January 1, 1986, but before July 1, 1995.

(6) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment to which

the taxpayer otherwise may be entitled under ORS chapter 316 or 317 for such year.

(7) Upon any sale, exchange, or other disposition of a qualifying business, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification covering the investment of such business as of the date of such disposition. The transferee may apply for a new certificate under ORS 468.466, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of shares in an S corporation as defined in section 1361 of the Internal Revenue Code or of a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a business for purposes of this subsection.

(8) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in ORS 468.461.

(9) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section.

(10) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(11) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

(13) No credit shall be allowed under this section and under ORS 468.451 to 468.491 for any portion of a facility for which the tax-

payer claims a tax credit or ad valorem tax relief under ORS 307.405, 315.304, 315.354, 315.356 and 469.185 to 469.225 or 316.116. [1993 c.730 §32 (enacted in lieu of 316.103 and 317.106)]

315.325 [Repealed by 1965 c.26 §6]

315.330 [Repealed by 1965 c.26 §6]

315.335 [Repealed by 1965 c.26 §6]

315.340 [Repealed by 1965 c.26 §6]

315.345 [Repealed by 1965 c.26 §6]

315.350 [Repealed by 1965 c.26 §6]

### 315.354 Energy conservation facilities.

(1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit allowed in each of the first two tax years in which the credit is claimed shall be 10 percent of the certified cost of the facility, but shall not exceed the tax liability of the taxpayer. The credit allowed in each of the succeeding three years shall be five percent of the certified cost, but shall not exceed the tax liability of the taxpayer.

(2) The facility must be in Oregon, and:

(a) Owned during the tax year by the taxpayer claiming the credit; or

(b) If the taxpayer is a corporation, financed by a public utility described in ORS 469.205 (1)(c)(B), that has been issued a certificate under ORS 469.215.

(3) A credit under this section may be claimed by a taxpayer for a facility only in those tax years which begin on and after January 1, 1980.

(4) The maximum total credit or credits allowed for a facility under this section to eligible taxpayers shall not exceed 35 percent of the certified cost of such facility.

(5) Upon any sale, termination of the lease, exchange or other disposition of the facility, notice thereof shall be given to the Director of the Department of Energy who shall revoke the certificate covering the facility as of the date of such disposition. The transferee, or upon re-leasing of the facility, the lessor, may apply for a new certificate under ORS 469.215, but the tax credit available to that transferee shall be limited to the amount of credit not claimed by the transferor or, for a lessor, the amount of credit not claimed by the lessor under all previous leases.

(6) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in that next

succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in subsection (1) of this section only as provided in this subsection.

(7) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter 316, 317 or 318 for such year.

(8) The taxpayer's adjusted basis for determining gain or loss shall not be decreased by any tax credits allowed under this section.

(9) Except as provided in subsection (2)(b) of this section, a credit under the provisions of this section shall not be allowed to any of the following:

(a) A public utility, as defined in ORS 757.005, that retails electricity or natural gas to more than 100 customers or, if the taxpayer is a corporation, a public utility, as defined in ORS 757.005, that retails electricity or natural gas to more than 100 customers unless the credit is for a facility for commercial or residential property owned and managed by the utility;

(b) A people's utility district, as defined in ORS 261.010, a municipal utility or a cooperative utility that retails electricity or natural gas to more than 100 customers; or

(c) A subsidiary or an affiliated interest, as defined in ORS 757.015, of a public utility described in paragraph (a) of this subsection, or if the taxpayer is a corporation, a subsidiary or an affiliated interest, as defined in ORS 757.015, of a public utility described in paragraph (a) of this subsection unless the credit is for a facility for commercial or residential property owned and managed by the subsidiary or affiliated interest. [1993 c.730 §34 (enacted in lieu of 316.140 and 317.104)]

**315.355** [Repealed by 1965 c.26 §6]

**315.356 Other grants or credits as offset to cost of energy conservation facility.** (1) If a taxpayer obtains a grant or tax credit from the Federal Government other than an investment credit granted under section 46 of the Internal Revenue Code of 1986 as it reads on December 31, 1992, or a low income housing tax credit granted under section 42 of the Internal Revenue Code as it reads on December 31, 1992, in connection with a facility which has been certified by the Director of the Department of Energy, the certified cost of the facility shall be re-

duced on a dollar for dollar basis. Any income or excise tax credits which such taxpayer would be entitled to under ORS 315.354 and 469.185 to 469.225 after any such reduction shall not be reduced by such federal grants or tax credits. A taxpayer applying for a federal grant or credit shall notify the department by certified mail within 30 days after each application, and after the receipt of any grant.

(2) If a facility eligible for a credit under ORS 315.354 is financed in part by any governmental or quasi-governmental body or municipal corporation, as defined in ORS 297.405, a tax credit may be claimed only on the portion of the cost that is privately financed.

(3) A taxpayer is eligible to participate in both this tax credit program and low interest, government-sponsored loans.

(4) A taxpayer who receives a tax credit or ad valorem tax relief on a pollution control facility or an alternate energy device under ORS 307.405, 315.304 or 316.116 is not eligible for a tax credit on the same facility or device under ORS 315.354 and 469.185 to 469.225.

(5) No credit shall be allowed under ORS 315.354 if the taxpayer has received a tax credit on the same facility or device under ORS 315.324. [1993 c.730 §36 (enacted in lieu of 316.141, 316.142 and 317.103)]

**315.360** [Amended by 1953 c.132 §3; repealed by 1965 c.26 §6]

**315.365** [Repealed by 1965 c.26 §6]

**315.455** [Repealed by 1965 c.26 §6]

**315.460** [Repealed by 1965 c.26 §6]

## ECONOMIC DEVELOPMENT

**315.504 Oregon Capital Corporation investments.** (1) A resident individual shall be allowed a credit against the taxes otherwise due under ORS chapter 316 (or if the taxpayer is a corporation, the taxpayer shall be allowed a credit against the taxes otherwise due under ORS chapter 317 or 318) for the tax year, based upon the amount of the taxpayer's direct cash investment in the certified capitalization of the Oregon Capital Corporation. The amount of the credit shall be 20 percent of the amount of the cash investment.

(2) To qualify for the credit under this section:

(a) The Oregon Capital Corporation must have been certified by the Financial Institutions Division under section 7, chapter 911, Oregon Laws 1987.

(b) Not more than 50 percent of the tax credit provided for in this section may be claimed in the tax year in which the invest-

ment is made in the Oregon Capital Corporation.

(c) No taxpayer shall claim more than 50 percent of the tax credit provided for in this section:

(A) Before July 1, 1989; and

(B) Before the Oregon Capital Corporation is certified by the division as having met the investment requirements of ORS 284.775 (1)(a).

(3) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(5) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(6) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(7) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each.

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

(9) The amount of any tax credit allowed under this section shall be used to reduce the basis of the taxpayer's investment in the Oregon Capital Corporation. Federal taxable income shall be modified to the extent necessary to carry out the provisions of this subsection. [1993 c.730 §38 (enacted in lieu of 316.104 and 317.140)]

315.505 [Repealed by 1965 c.26 §6]

315.510 [Repealed by 1965 c.26 §6]

315.515 [Repealed by 1965 c.26 §6]

315.520 [Repealed by 1965 c.26 §6]

315.525 [Repealed by 1965 c.26 §6]

315.530 [Repealed by 1965 c.26 §6]

315.535 [Repealed by 1965 c.26 §6]

315.540 [Repealed by 1965 c.26 §6]

315.545 [Repealed by 1965 c.26 §6]

315.550 [Repealed by 1965 c.26 §6]

315.555 [Repealed by 1965 c.26 §6]

315.560 [Repealed by 1965 c.26 §6]

315.570 [Repealed by 1965 c.26 §6]

315.575 [Repealed by 1965 c.26 §6]

315.580 [Repealed by 1965 c.26 §6]

315.585 [Repealed by 1965 c.26 §6]

315.590 [Repealed by 1965 c.26 §6]

## HEALTH

**315.604 Bone marrow transplant expense.** (1) As used in this section:

(a) "Bone marrow donor expense" means the sum of the amounts paid or incurred during the tax year by an employer for the following:

(A) Development of an employee bone marrow donation program.

(B) Employee education related to bone marrow donation, including but not limited to the need for donors and an explanation of the procedures used to determine tissue type and donate bone marrow.

(C) Payments to a health care provider for determining the tissue type of an employee who agrees to register or registers as a bone marrow donor.

(D) Wages paid to an employee for time reasonably related to tissue typing and bone marrow donation.

(E) Transportation of an employee to the site of a donation or any other service which is determined by the Health Division by rule as essential for a successful bone marrow donation.

(b) "Employee" means an individual who:

(A) Is regularly employed by the taxpayer for more than 20 hours per week;

(B) Who is not a temporary or seasonal employee; and

(C) Whose wages are subject to withholding under ORS 316.162 to 316.212.

(c) "Wages" has the meaning given the term for purposes of ORS 316.162 to 316.212.

(2) A business tax credit against the taxes otherwise due under ORS chapter 316 for the tax year is allowed to a resident employer, or if the employer is a corporation, to the employer against the taxes otherwise due under ORS chapter 317. The amount of

the credit is equal to 25 percent of the bone marrow donor expense paid or incurred during the tax year by an employer to provide a program for employees who are potential bone marrow donors or who actually become bone marrow donors.

(3)(a) Except as provided under paragraph (b) of this subsection, the allowance of a credit under this section shall not affect the computation of taxable income for purposes of ORS chapter 316 or 317.

(b) If in determining the amount of the credit for any tax year an amount allowed as a deduction under section 170 of the Internal Revenue Code is included in bone marrow donation expense, the amount allowed as a deduction shall be added to federal taxable income.

(4) The credit allowed under this section shall be allowed to a nonresident employer in the same manner as the credit is allowed to a resident employer.

(5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year. Any credit remaining unused in such second succeeding tax year

may be carried forward and used in the third succeeding tax year. Any credit remaining unused in such third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in such fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter. [1993 c.730 §40 (enacted in lieu of 316.155 and 317.149)]

**Note:** Section 12, chapter 652, Oregon Laws 1991, provides:

**Sec. 12.** Sections 8 and 10 of this Act [316.155 and 317.149 (315.604 was enacted in lieu of 316.155 and 317.149 in 1993)] and the amendments to ORS 318.031 by section 11 of this Act apply to bone marrow donation expense incurred in tax years beginning on or after January 1, 1991, and before January 1, 1995. [1991 c.652 §12]

**Note:** 315.605, 315.610 (amended by 1953 c.366 §3), 315.615 (amended by 1953 c.366 §3), 315.620, 315.625, 315.630, 315.635 (repealed by 1961 c.573 §2), 315.640, 315.645, 315.650, 315.655, 315.660, 315.665 (amended by 1953 c.212 §2), 315.670, 315.675 (amended by 1953 c.341 §2), 315.705, 315.710, 315.715, 315.720, 315.725, 315.730, 315.735, 315.740, 315.745, 315.750, 315.755, 315.760, 315.790, 315.805, 315.810, 315.815, 315.820, 315.825, 315.830, 315.835, 315.845, 315.855, 315.860, 315.865, 315.870, 315.875, 315.880, 315.885 and 315.990 were suspended and superseded in 1953 by ORS chapter 316 and were repealed by 1965 c.26 §6. However, this repeal does not affect or impair the assessment, imposition and collection of the taxes, and all interest, penalty or forfeiture in relation to such taxes, for tax years prior to the repeal. See 1965 c.26 §7.