

Enrolled Senate Bill 31

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CHAPTER

AN ACT

Relating to taxation; creating new provisions; amending ORS 305.230, 305.494, 305.690, 307.090, 307.130, 307.147, 310.140, 310.630, 310.800, 311.689, 314.011, 314.650, 314.665, 315.004, 315.262, 315.266, 316.012, 316.099, 316.116, 316.502, 317.010, 317.152, 317.154, 317.267, 469.160, 469.165, 469.170, 469.172, 469.176 and 469.180; repealing sections 2 and 6, chapter 739, Oregon Laws 2003; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 307.090 is amended to read:

307.090. (1) Except as provided by law, all property of the state and all public or corporate property used or intended for corporate purposes of the several counties, cities, towns, school districts, irrigation districts, drainage districts, ports, water districts, housing authorities and all other public or municipal corporations in this state, is exempt from taxation.

(2) Any city may agree with any school district to make payments in lieu of taxes on all property of the city located in any such school district, and which is exempt from taxation under subsection (1) of this section when such property is outside the boundaries of the city and owned, used or operated for the production, transmission, distribution or furnishing of electric power or energy or electric service for or to the public.

(3)(a) Notwithstanding ORS 308.505 to 308.665, the property described in paragraph (b) of this subsection is exempt from taxation if the owner of the property described in paragraph (b) of this subsection is a city or public entity of a state other than Oregon and the city or public entity does not own a fee title interest in any real property in Oregon.

(b) The property that is subject to exemption under paragraph (a) of this subsection is tangible or intangible property, property rights or property interests in or related to the Pacific Northwest AC Intertie, as referenced in a written capacity ownership agreement executed before the effective date of this 2005 Act between the United States Department of Energy and the city or public entity described in paragraph (a) of this subsection.

SECTION 2. (1) The amendments to ORS 307.090 by section 1 of this 2005 Act apply to:

(a) Any tax year beginning on or after the date a written capacity ownership agreement described in ORS 307.090 (3) is executed; and

(b) Any tax year beginning on or after July 1, 2005.

(2) Notwithstanding subsection (1) of this section, nothing in this section or the amendments to ORS 307.090 by section 1 of this 2005 Act shall be construed as entitling a person

to a refund of taxes paid prior to the effective date of this 2005 Act on any tangible or intangible property, property rights or property interests.

SECTION 3. ORS 314.665 is amended to read:

314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(2) Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and [(A)] the purchaser is the United States Government or [(B)] the taxpayer is not taxable in the state of the purchaser. **For purposes of this paragraph:**

(A) The sale of goods shipped from a public warehouse is not considered to take place in this state if:

(i) The taxpayer's only activity in Oregon is the storage of the goods in the public warehouse prior to shipment; or

(ii) The taxpayer's only activities in Oregon are the storage of the goods in the public warehouse prior to shipment and the presence of employees within this state solely for purposes of soliciting sales of the taxpayer's products; and

(B) "Taxpayer" means a taxpayer as defined in section 7701 of the Internal Revenue Code, an affiliate of the person storing goods in a public warehouse or a person that is related under section 267 of the Internal Revenue Code to the person storing goods in a public warehouse.

(3) Subsection (2)(b) of this section shall not apply to sales of tangible personal property if:

(a) The sales are included in the numerator of a formula used to apportion business income to another state of the United States, a foreign country or the District of Columbia; and

(b) The other state, a foreign country or the District of Columbia has imposed a tax on or measured by the apportioned business income.

(4) Sales, other than sales of tangible personal property, are in this state if (a) the income-producing activity is performed in this state; or (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(5) Where the sales apportionment factor is determined by administrative rule pursuant to ORS 314.682, 314.684, 317.660 or other law, the Department of Revenue shall adopt rules that are consistent with the determination of the sales factor under this section.

(6) For purposes of this section, "sales":

(a) Excludes gross receipts arising from the sale, exchange, redemption or holding of intangible assets, including but not limited to securities, unless those receipts are derived from the taxpayer's primary business activity.

(b) Includes net gain from the sale, exchange or redemption of intangible assets not derived from the primary business activity of the taxpayer but included in the taxpayer's business income.

(c) Excludes gross receipts arising from an incidental or occasional sale of a fixed asset or assets used in the regular course of the taxpayer's trade or business if a substantial amount of the gross receipts of the taxpayer arise from an incidental or occasional sale or sales of fixed assets used in the regular course of the taxpayer's trade or business. Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to this state.

(7) The department may determine that a warehouse that meets the definition of "public warehouse" under this section may not be treated as a public warehouse if the warehouse is being used primarily for tax avoidance purposes or if transactions related to the use of the warehouse are primarily for tax avoidance purposes.

(8) As used in this section, "public warehouse":

(a) Means a warehouse owned or operated by a person that does not own the goods stored in the warehouse; and

(b) Does not include a warehouse that is owned by a person that is related to the person that owns goods that are stored in the warehouse, as determined under section 267 of the Internal Revenue Code, or an affiliate of the person that owns goods that are stored in the warehouse.

SECTION 4. The amendments to ORS 314.665 by section 3 of this 2005 Act apply to tax years beginning on or after January 1, 2006.

SECTION 5. ORS 316.116 is amended to read:

316.116. (1)(a) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter for costs paid or incurred for construction or installation of an alternative energy device in a dwelling.

(b) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter for costs paid or incurred to modify or purchase an alternative fuel vehicle or related equipment.

(c) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter for costs paid or incurred for construction or installation of a solar electric system in a dwelling.

(2)(a) Except in the case of an alternative fuel device **or a solar electric system**, the credit shall be based upon the first year energy yield of the alternative energy device that qualifies under ORS 469.160 to 469.180. The amount of the credit shall be the same whether for collective or non-collective investment.

(b) The credit allowed under this section for each dwelling shall not exceed the lesser of:

(A) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1990, and before January 1, 1996.

(B) \$1,200 or the first year energy yield in kilowatt hours per year multiplied by 48 cents per dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1996, and before January 1, 1998.

(C) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1998.

(c) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed under this section shall be based upon 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to:

(A) \$1,500 for tax years beginning on or after January 1, 1990, and before January 1, 1996.

(B) \$1,200 for tax years beginning on or after January 1, 1996, and before January 1, 1998.

(C) \$1,500 for tax years beginning on or after January 1, 1998.

(d) For an alternative fuel device, the credit allowed under this section is 25 percent of the cost of the alternative fuel device but the total credit shall not exceed \$750 if the device is placed in service on or after January 1, 1998.

(e)(A) For a solar electric system, the credit allowed under this section shall equal \$3 per watt of installed output, but the installed output that is used to determine the amount of credit under this paragraph may not exceed 2,000 watts.

(B) Notwithstanding subparagraph (A) of this paragraph, the amount of the credit allowed in any one tax year may not exceed the tax liability of the taxpayer or \$1,500, whichever is less. Unused credit amounts may be carried forward as provided in subsection (7) of this section, but may not be carried forward to a tax year that is more than five tax years following the first tax year for which any credit was allowed with respect to the solar electric system that is the basis for the credit.

(C) Notwithstanding subparagraph (A) of this paragraph, the total amount of the credit allowed under this paragraph may not exceed 50 percent of the total installed cost of the solar electric system.

(3)(a) In the case of a credit for an alternative energy device that is an energy efficient appliance, the credit allowed to a resident individual under this section shall equal:

(A) 48 cents per first year kilowatt hour saved, or the equivalent for other fuel saved, not to exceed \$1,200 for each tax year beginning on or after January 1, 1998, and before January 1, 1999; and

(B) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved, not to exceed \$1,000 for each tax year beginning on or after January 1, 1999.

(b) Notwithstanding paragraph (a) of this subsection, the credit allowed for an energy efficient appliance shall not exceed 25 percent of the cost of the appliance.

(4) To qualify for a credit under this section, all of the following are required:

(a) The alternative energy device **or solar electric system** must be purchased, constructed, installed and operated in accordance with ORS 469.160 to 469.180 and a certificate issued thereunder.

(b) Except for credits claimed for alternative fuel devices, the taxpayer who is allowed the credit must be the owner or contract purchaser of the dwelling or dwellings served by the alternative energy device **or solar electric system** or the tenant of the owner or of the contract purchaser and must:

(A) Use the dwelling or dwellings served by the alternative energy device **or solar electric system** as a principal or secondary residence; or

(B) Rent or lease, under a residential rental agreement, the dwelling or dwellings to a tenant who uses the dwelling or dwellings as a principal or secondary residence, unless the basis for the credit is the installation of an energy efficient appliance. If the basis for the credit is the installation of an energy efficient appliance, the credit shall be allowed only to the taxpayer who actually occupies the dwelling as a principal or secondary residence.

(c) In the case of an alternative fuel device, if the device is a fueling station necessary to operate an alternative fuel vehicle, unless the verification form and certificate are transferred as authorized under ORS 469.170 (8), the taxpayer who is allowed the credit must be the contractor who constructs the dwelling that incorporates the fueling station into the dwelling or installs the fueling station in the dwelling. If the alternative energy device is an alternative fuel vehicle, the credit must be claimed by the owner as defined under ORS 801.375 or contract purchaser. If the alternative energy device is related equipment, the credit may be claimed by the owner or contract purchaser.

(d) The credit must be claimed for the tax year in which the alternative energy device **or solar electric system** was purchased if the **device or** system is operational by April 1 of the next following tax year.

(5) The credit provided by this section [shall] **does** not affect the computation of basis under this chapter.

(6) The credit allowed under this section in any one year [shall] **may** not exceed the tax liability of the taxpayer.

(7) Any tax credit otherwise allowable under this section [which] **that** 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] **the** 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.

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

(9) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue 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) 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. However, a husband or wife living in a separate principal residence may claim the tax credit in the same amount as permitted a single person.

(12) As used in this section, unless the context requires otherwise:

(a) "Collective investment" means an investment by two or more taxpayers for the acquisition, construction and installation of an alternative energy device for one or more dwellings.

(b) "First year energy yield" has the meaning given in ORS 469.160.

(c) "Noncollective investment" means an investment by an individual taxpayer for the acquisition, construction and installation of an alternative energy device for one or more dwellings.

(13) As used in this section, "taxpayer" includes a transferee of a verification form under ORS 469.170 (8).

(14) Notwithstanding any provision of subsection (1) or (2) of this section, the sum of the credit allowed under subsection (1) of this section plus any similar credit allowed for federal income tax purposes shall not exceed the cost to the taxpayer for the acquisition, construction and installation of the alternative energy device **or solar electric system**.

SECTION 5a. A taxpayer may not be allowed a credit under ORS 316.116 if the first tax year for which the credit would otherwise be allowed with respect to an alternative energy device, solar electric system or alternative fuel vehicle or related equipment is on or after January 1, 2016.

SECTION 6. ORS 469.160 is amended to read:

469.160. As used in ORS 316.116, 317.115 and 469.160 to 469.180:

(1) "Alternative energy device" means:

(a) Any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation or wind for space heating, cooling or electrical energy for one or more dwellings;

(b) Any system that uses solar radiation for:

(A) Domestic water heating; or

(B) Swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS 316.116;

(c) A ground water heat pump and ground loop system;

(d) A wind powered turbine that generates electricity;

(e) Any wind powered device used to offset or supplement the use of electricity by performing a specific task such as pumping water;

(f) Equipment used in the production of alternative fuels;

(g) A generator powered by alternative fuels and used to produce electricity;

(h) A fuel cell;

(i) An energy efficient appliance; or

(j) An alternative fuel device.

(2) "Alternative fuel device" means any of the following:

(a) An alternative fuel vehicle;

(b) Related equipment; or

(c) A fueling station necessary to operate an alternative fuel vehicle.

(3) "Alternative fuel vehicle" means a motor vehicle as defined in ORS 801.360 that is:

(a) Registered in this state; and

(b) Manufactured or modified to use an alternative fuel, including but not limited to electricity, natural gas, ethanol, methanol, propane and any other fuel approved in rules adopted by the Direc-

tor of the State Department of Energy that produces less exhaust emissions than vehicles fueled by gasoline or diesel. Determination that a vehicle is an alternative fuel vehicle shall be made without regard to energy consumption savings.

(4) "Coefficient of performance" means the ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(5) "Contractor" means a person whose trade or business consists of offering for sale an alternative energy device, construction service, installation service or design service.

(6)(a) "Cost" means the actual cost of the acquisition, construction and installation of the alternative energy device **or solar electric system** paid by the taxpayer for the alternative energy device **or solar electric system**.

(b) For an alternative fuel vehicle, "cost" means the difference between the cost of the alternative fuel vehicle and the same vehicle or functionally similar vehicle manufactured to use conventional gasoline or diesel fuel or, in the case of modification of an existing vehicle, the cost of the modification. "Cost" does not include any amounts paid for remodification of the same vehicle.

(c) For a fueling station necessary to operate an alternative fuel vehicle, "cost" means the cost to the contractor of constructing or installing the fueling station in a dwelling and of making the fuel station operational in accordance with the specifications issued under ORS 469.160 to 469.180 and any rules adopted by the Director of the State Department of Energy.

(d) For related equipment, "cost" means the cost of the related equipment and any modifications or additions to the related equipment necessary to prepare the related equipment for use in converting a vehicle to alternative fuel use.

(7) "Domestic water heating" means the heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(8) "Dwelling" means real or personal property ordinarily inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing.

(9) "Energy efficient appliance" means a clothes washer, clothes dryer, water heater, refrigerator, freezer, dishwasher, appliance designed to heat or cool a dwelling or other major household appliance that has been certified by the State Department of Energy to have premium energy efficiency characteristics.

(10) "First year energy yield" of an alternative energy device is the usable energy produced under average environmental conditions in one year.

(11) "Fueling station" includes but is not limited to a compressed natural gas compressor fueling system or an electric charging system for vehicle power battery charging.

(12) "Placed in service" means:

(a) The date an alternative energy device **or solar electric system** is ready and available to produce usable energy or save energy.

(b) For an alternative fuel vehicle:

(A) In the case of purchase, the date that the alternative fuel vehicle is first purchased as an alternative fuel vehicle ready and available for use.

(B) In the case of modification, the date that the modification is completed and the vehicle is ready and available for use as an alternative fuel vehicle.

(c) For a fueling station necessary to operate an alternative fuel vehicle, the date that the fueling station is first operational.

(d) For related equipment, the date that the equipment is first operational.

(13) "Related equipment" means equipment necessary to convert a vehicle to use an alternative fuel.

(14) "Solar electric system" means any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation to generate electrical energy for a dwelling.

SECTION 7. ORS 469.165 is amended to read:

469.165. (1) For the purposes of carrying out ORS 469.160 to 469.180, the State Department of Energy may adopt rules prescribing minimum performance criteria for alternative energy devices for dwellings **and solar electric systems**.

(2) The department, in adopting rules under this section for solar heating and cooling systems, shall take into consideration applicable standards of federal performance criteria prescribed pursuant to the provisions of section 5506, title 42, United States Code (Solar Heating and Cooling Act of 1974).

(3) The Director of the State Department of Energy shall adopt rules governing the determination of eligibility, verification and certification of an alternative fuel device for purposes of the tax credits granted under ORS 316.116 and 317.115, including but not limited to rules that further define an alternative fuel vehicle, related equipment or fueling station necessary to operate an alternative fuel vehicle, that govern the computation of costs eligible for credit and that require equitable allocation of the tax credit benefits between the lessor and the lessee of an alternative fuel vehicle as a condition of tax credit eligibility.

SECTION 8. ORS 469.170 is amended to read:

469.170. (1) Any person may claim a tax credit under ORS 316.116 (or ORS 317.115, if the person is a corporation) if the person:

(a) Meets the requirements of ORS 316.116 (or ORS 317.115, if applicable);

(b) Meets the requirements of ORS 469.160 to 469.180; and

(c) Pays, subject to subsection (9) of this section, all or a portion of the costs of an alternative energy device **or a solar electric system**.

(2) A credit under ORS 317.115 may be claimed only if the alternative energy device is a fueling station necessary to operate an alternative fuel vehicle.

(3)(a) In order to be eligible for a tax credit under ORS 316.116 or 317.115, a person claiming a tax credit for construction or installation of an alternative energy device (including a fueling station) **or a solar electric system** shall have the **device or system** certified by the State Department of Energy or constructed or installed by a contractor certified by the department under subsection (5) of this section. This [subsection] **paragraph** does not apply to an alternative fuel vehicle or to related equipment.

(b) Certification of an alternative fuel vehicle or related equipment shall be accomplished under rules that shall be adopted by the Director of the State Department of Energy.

(4) Verification of the purchase, construction or installation of an alternative energy device **or solar electric system** shall be made in writing on a form provided by the Department of Revenue and, if applicable, shall contain:

(a) The location of the alternative energy device **or solar electric system**;

(b) A description of the type of device **or system**;

(c) If the device **or system** was constructed or installed by a contractor, evidence that the contractor has any license, bond, insurance and permit required to sell and construct or install the alternative energy device **or solar electric system**;

(d) If the device **or system** was constructed or installed by a contractor, a statement signed by the contractor that the applicant has received:

(A) A statement of the reasonably expected energy savings of the device **or system**;

(B) A copy of consumer information published by the State Department of Energy;

(C) An operating manual for the alternative energy device **or solar electric system**; and

(D) A copy of the contractor's certification certificate or alternative energy device system certificate **for the alternative energy device or solar electric system**, as appropriate;

(e) If the device **or system** was not constructed or installed by a contractor, evidence that:

(A) The State Department of Energy has issued an alternative energy device system certificate for the **alternative energy device or solar electric system**; and

(B) The taxpayer has obtained all building permits required for construction or installation of the device **or system**;

(f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device **or system** was constructed or installed by a contractor, that the construction or installation meets all the requirements of ORS 469.160 to 469.180 or, if the device is a fueling station and the taxpayer is the contractor, a statement signed by the contractor that the construction or installation meets all of the requirements of ORS 469.160 to 469.180;

(g) The date the alternative energy device **or solar electric system** was purchased;

(h) The date the alternative energy device **or solar electric system** was placed in service; and

(i) Any other information that the Director of the State Department of Energy or the Department of Revenue determines is necessary.

(5)(a) When the State Department of Energy finds that an alternative energy device **or solar electric system** can meet the standards adopted under ORS 469.165, the Director of the State Department of Energy may issue a contractor system certification to the person selling and constructing or installing the alternative energy device **or solar electric system**.

(b) Any person who sells or installs more than 12 alternative energy devices **or solar electric systems** in one year shall apply for a contractor system certification. An application for a contractor system certification shall be made in writing on a form provided by the State Department of Energy and shall contain:

(A) A statement that the contractor has any license, bonding, insurance and permit that is required for the sale and construction or installation of the alternative energy device **or solar electric system**;

(B) A specific description of the alternative energy device **or solar electric system**, including, but not limited to, the material, equipment and mechanism used in the device **or system**, operating procedure, sizing and siting method and construction or installation procedure;

(C) The addresses of three installations of the **device or system** that are available for inspection by the State Department of Energy;

(D) The range of installed costs to purchasers of the device **or system**;

(E) Any important construction, installation or operating instructions; and

(F) Any other information that the State Department of Energy determines is necessary.

(c) A new application for contractor system approval shall be filed when there is a change in the information supplied under paragraph (b) of this subsection.

(d) The State Department of Energy may issue contractor system certificates to each contractor who on October 3, 1989, has a valid dealer system certification, which shall authorize the sale and installation of the same domestic water heating alternative energy devices authorized by the dealer certification.

(e) If the State Department of Energy finds that an alternative energy device **or solar electric system** can meet the standards adopted under ORS 469.165, the Director of the State Department of Energy may issue an alternative energy device system certificate to the taxpayer constructing or installing or having an alternative energy device **or solar electric system** constructed or installed.

(f) An application for an alternative energy device system certificate shall be made in writing on a form provided by the State Department of Energy and shall contain:

(A) A specific description of the alternative energy device **or solar electric system**, including, but not limited to, the material, equipment and mechanism used in the device **or system**, operating procedure, sizing, siting method and construction or installation procedure;

(B) The constructed or installed cost of the device **or system**; and

(C) A statement that the taxpayer has all permits required for construction or installation of the device **or system**.

(6) To claim the tax credit, the verification form described in subsection (4) of this section shall be submitted with the taxpayer's tax return for the year the alternative energy device **or solar electric system** is placed in service or the immediately succeeding tax year. A copy of the contractor's certification certificate, alternative energy device system certificate or alternative fuel vehicle or related equipment certificate also shall be submitted.

(7) The verification form and contractor's certificate, alternative energy device system certificate or alternative fuel vehicle or related equipment certificate described under this section shall be effective for purposes of tax relief allowed under ORS 316.116 or 317.115.

(8) The verification form and contractor's certificate described under this section may be transferred to the first purchaser of a dwelling or, in the case of construction or installation of a fueling station in an existing dwelling, the current owner, who intends to use or is using the dwelling as a principal or secondary residence.

(9) Any person that pays the present value of the tax credit for an alternative energy device **or solar electric system** provided under ORS 316.116 or 317.115 and 469.160 to 469.180 to the person who constructs or installs the alternative energy device **or solar electric system** shall be entitled to claim the credit in the manner and subject to rules adopted by the Department of Revenue to carry out the purposes of this subsection. The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this subsection.

SECTION 8a. The State Department of Energy may not issue a contractor's certification certificate, alternative energy device system certificate or alternative fuel vehicle or related equipment certificate under ORS 469.170 on or after January 1, 2016.

SECTION 9. ORS 469.172 is amended to read:

469.172. The following devices are not eligible for the [*alternative energy device*] tax credit under ORS 316.116:

- (1) Standard efficiency furnaces;
 - (2) Standard back-up heating systems;
 - (3) Woodstoves or wood furnaces, or any part of a heating system that burns wood;
 - (4) Heat pump water heaters that are part of a geothermal heat pump space heating system;
 - (5) Structures that cover or enclose a swimming pool;
 - (6) Swimming pools, hot tubs or spas used to store heat;
 - (7) Above ground, uninsulated swimming pools, hot tubs or spas;
 - (8) Photovoltaic systems installed on recreational vehicles;
 - (9) Conversion of an existing alternative energy device **or solar electric system** to another type of alternative energy device **or solar electric system**;
 - (10) Repair or replacement of an existing alternative energy device **or solar electric system**;
- [or]

(11) A solar electric system, if the equipment or other property that comprises the solar electric system is also the basis for an allowed credit for an alternative energy device under ORS 316.116;

(12) An alternative energy device, if the equipment or other property that comprises the alternative energy device is also the basis for an allowed credit for a solar electric system under ORS 316.116; or

[(11)] **(13) Any other device identified by the State Department of Energy. The department may adopt rules defining standards for eligible and ineligible devices under this section.**

SECTION 10. ORS 469.176 is amended to read:

469.176. (1) Except for alternative fuel vehicles or related equipment, in order to carry out ORS 469.160 to 469.180, the State Department of Energy shall develop performance assumptions and prescriptive measures to determine the eligibility and tax credit amount for alternative energy devices **and solar electric systems** constructed or installed in a dwelling.

(2) The department shall use the performance assumptions and prescriptive measures to develop information for the Department of Revenue to use to allow taxpayers to determine their eligibility and tax credit amount. The State Department of Energy may review this information on an annual basis to take into consideration new technology and performance assumption accuracy.

(3) For the purpose of determining the first year energy yield of an alternative energy device, the department shall use the following assumptions and test standards:

(a) Solar Rating and Certification Corporation standard SRCC 100, 200, American Society of Heating, Refrigerating and Air-Conditioning Engineers 93-77, or the American Refrigeration Institute standard 325-85 test at 50 degrees entering water temperature, as appropriate. The testing requirements under this paragraph shall not apply to an owner-built alternative energy device.

(b) For an alternative energy device used as a source for domestic water heating energy, a hot water use of 75 gallons per day at 120 degrees Fahrenheit. The load of 75 gallons per day at 120 degrees Fahrenheit shall be achieved by including conservation measures in the construction or installation of the alternative energy device.

(c) For an alternative energy device used as a source for space heating or cooling, the heating or cooling energy load as determined by a heat loss or gain calculation performed in accordance with the methods established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Except for an owner-built or site-built system, an alternative energy device used as a source for domestic hot water heating must meet the SRCC OG 300 systems test or comply with comparable requirements as determined by the department.

(d) For an alternative energy device used as a source for electrical energy, the first year energy yield shall be based upon the electrical energy load of the dwelling as determined according to the procedure established by the department.

(e) For an alternative energy device used as a source for swimming pool, spa or hot tub heating, the first year energy yield shall be based on the heating load of the swimming pool, spa or hot tub as determined according to the procedure established by the department.

SECTION 11. ORS 469.180 is amended to read:

469.180. (1) Upon the Department of Revenue's own motion, or upon request of the State Department of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax credit allowed under ORS 316.116 or 317.115 if:

(a) The verification was fraudulent because of a misrepresentation by the taxpayer or investor owned utility;

(b) The verification was fraudulent because of a misrepresentation by the contractor;

(c) In the case of **a solar electric system** or an alternative energy device other than an alternative fuel vehicle or related equipment, the **solar electric system** or alternative energy device has not been constructed, installed or operated in substantial compliance with the requirements of ORS 469.160 to 469.180; or

(d) The taxpayer or investor owned utility failed to consent to an inspection of the constructed or installed alternative energy device **or solar electric system** by the State Department of Energy after a reasonable, written request for such an inspection by the State Department of Energy. This paragraph does not apply to an alternative fuel vehicle or to related equipment.

(2) Pursuant to the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a contractor certificate issued under ORS 469.170 if the director finds that:

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

(b) The contractor's performance for the alternative energy device **or solar electric system** for which the contractor is issued a certificate under ORS 469.170 does not meet industry standards; or

(c) The contractor has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device **or solar electric system**.

(3) If the tax credit allowed under ORS 316.116 or 317.115 for the purchase, construction or installation of an alternative energy device **or solar electric system** is ordered forfeited due to an action of the taxpayer or investor owned utility under subsection (1)(a), (c) or (d) of this section, all prior tax relief provided to the taxpayer or investor owned utility shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer or utility as a result of the tax credit relief under ORS 316.116 or 317.115.

(4) If the tax credit for the construction or installation of an alternative energy device **or solar electric system** is ordered forfeited due to an action of the contractor under subsection (1)(b) of this section, the Department of Revenue shall proceed to collect, from the contractor, an amount equivalent to those taxes not paid by the taxpayer or investor owned utility as a result of the tax credit relief under ORS 316.116 or 317.115. [So] **As** long as the forfeiture is due to an action of the contractor and not to an action of the taxpayer or utility, the assessment of such taxes shall be levied on the contractor and not on the taxpayer or utility. Notwithstanding ORS 314.835, the Department of Revenue may disclose information from income tax returns or reports to the extent such disclosure is necessary to collect amounts from contractors under this subsection.

(5) In order to obtain information necessary to verify eligibility and amount of the tax credit, the State Department of Energy or its representative may inspect an alternative energy device **or solar electric system** that has been purchased, constructed or installed. The inspection shall be made only with the consent of the owner of the dwelling. Failure to consent to the inspection is grounds for the forfeiture of any tax credit relief under ORS 316.116 or 317.115. The Department of Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For electrical generating alternative energy devices **or solar electric systems**, the State Department of Energy may obtain energy consumption records for the dwelling the device **or system** serves, for a 12-month period, in order to verify eligibility and amount of the tax credit.

SECTION 12. The amendments to ORS 316.116, 469.160, 469.165, 469.170, 469.172, 469.176 and 469.180 by sections 5, 6 to 8 and 9 to 11 of this 2005 Act apply to alternative energy devices and solar electric systems certified by the State Department of Energy on or after January 1, 2006.

SECTION 13. ORS 305.230 is amended to read:

305.230. (1) Notwithstanding ORS 9.320:

(a) Any person who is qualified to practice law or public accountancy in this state, any person who has been granted active enrollment to practice before the Internal Revenue Service and who is qualified to prepare tax returns in this state or any person who is the authorized employee of a taxpayer and is regularly employed by the taxpayer in tax matters may represent the taxpayer before a tax court magistrate or the Department of Revenue in any conference or proceeding with respect to the administration of any tax.

(b) Any person who is licensed by the State Board of Tax Practitioners or who is exempt from such licensing requirement as provided for and limited by ORS 673.610 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(c) Any shareholder of an S corporation, as defined in section 1361 of the Internal Revenue Code, as amended and in effect on December 31, [2002] **2004**, may represent the corporation in any proceeding before a tax court magistrate or the department in the same manner as if the shareholder were a partner and the S corporation were a partnership. The S corporation must designate in writing a tax matters shareholder authorized to represent the S corporation.

(d) Any person who is licensed as a real estate broker or principal real estate broker under ORS 696.022 or is a state certified appraiser or state licensed appraiser under ORS 674.310 or is a registered appraiser under ORS 308.010 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any ad valorem property tax.

(e) A general partner who has been designated by members of a partnership as their tax matters partner under ORS 305.242 may represent those partners in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(f) In a small claims procedure, a taxpayer may be represented by any of the persons described in paragraphs (a) to (e) of this subsection or by any other person permitted by the tax court.

(g) Any person authorized under rules adopted by the department may represent a taxpayer before the department in any conference or proceeding with respect to any tax. Rules adopted under this paragraph, to the extent feasible, shall be consistent with federal law that

governs representation before the Internal Revenue Service, as federal law is amended and in effect on December 31, 2004.

(2) *[No person shall]* **A person may not** be recognized as representing a taxpayer pursuant to this section unless there is first filed with the magistrate or department a written authorization, or unless it appears to the satisfaction of the magistrate or department that the representative does in fact have authority to represent the taxpayer. A person recognized as an authorized representative under rules or procedures adopted by the tax court shall be considered an authorized representative by the department.

(3) A taxpayer represented by someone other than an attorney is bound by all things done by the authorized representative, and may not thereafter claim any proceeding was legally defective because the taxpayer was not represented by an attorney.

(4) Prior to the holding of a conference or proceeding before the tax court magistrate or department, written notice shall be given by the magistrate or department to the taxpayer of the provisions of subsections (1)(f) and (3) of this section.

SECTION 14. ORS 305.494 is amended to read:

305.494. Notwithstanding ORS 9.320, any shareholder of an S corporation as defined in section 1361 of the Internal Revenue Code, as amended and in effect on December 31, [2002] **2004**, may represent the corporation in any proceeding before the Oregon Tax Court in the same manner as if the shareholder were a partner and the S corporation were a partnership.

SECTION 15. ORS 305.690 is amended to read:

305.690. As used in ORS 305.690 to 305.753, unless the context otherwise requires:

(1) "Biennial years" means the two income tax years of individual taxpayers that begin in the two calendar years immediately following the calendar year in which a list is certified under ORS 305.715.

(2) "Commission" means the Oregon Charitable Checkoff Commission.

(3) "Department" means the Department of Revenue.

(4) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, [2002] **2004**.

SECTION 16. ORS 307.130 is amended to read:

307.130. (1) Upon compliance with ORS 307.162, the following property owned or being purchased by art museums, volunteer fire departments, or incorporated literary, benevolent, charitable and scientific institutions shall be exempt from taxation:

(a) Except as provided in ORS 748.414, only such real or personal property, or proportion thereof, as is actually and exclusively occupied or used in the literary, benevolent, charitable or scientific work carried on by such institutions.

(b) Parking lots used for parking or any other use as long as that parking or other use is permitted without charge for no fewer than 355 days during the tax year.

(c) All real or personal property of a rehabilitation facility or any retail outlet thereof, including inventory. As used in this subsection, "rehabilitation facility" means either those facilities defined in ORS 344.710 or facilities which provide physically, mentally or emotionally disabled individuals with occupational rehabilitation activities of an educational or therapeutic nature, even if remuneration is received by the individual.

(d) All real and personal property of a retail store dealing exclusively in donated inventory, where the inventory is distributed without cost as part of a welfare program or where the proceeds of the sale of any inventory sold to the general public are used to support a welfare program. As used in this subsection, "welfare program" means the providing of food, shelter, clothing or health care, including dental service, to needy persons without charge.

(e) All real and personal property of a retail store if:

(A) The retail store deals primarily and on a regular basis in donated and consigned inventory;

(B) The individuals who operate the retail store are all individuals who work as volunteers; and

(C) The inventory is either distributed without charge as part of a welfare program, or sold to the general public and the sales proceeds used exclusively to support a welfare program. As used in this paragraph, “primarily” means at least one-half of the inventory.

(f) The real and personal property of an art museum that is used in conjunction with the public display of works of art or used to educate the public about art, but not including any portion of the art museum’s real or personal property that is used to sell, or hold out for sale, works of art, reproductions of works of art or other items to be sold to the public.

(g) All real and personal property of a volunteer fire department that is used in conjunction with services and activities for providing fire protection to all residents within a fire response area.

(2) An art museum or institution shall not be deprived of an exemption under this section solely because its primary source of funding is from one or more governmental entities.

(3) An institution shall not be deprived of an exemption under this section because its purpose or the use of its property is not limited to relieving pain, alleviating disease or removing constraints.

(4) As used in this section:

(a) “Art museum” means a nonprofit corporation organized to display works of art to the public.

(b) “Internal Revenue Code” means the federal Internal Revenue Code as amended and in effect on December 31, [2002] **2004**.

(c) “Nonprofit corporation” means a corporation that:

(A) Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter 65; or

(B) Is organized and operated as described under section 501(c) of the Internal Revenue Code.

(d) “Volunteer fire department” means a nonprofit corporation organized to provide fire protection services in a specific response area.

SECTION 17. ORS 307.147 is amended to read:

307.147. (1) For purposes of this section:

(a) “Internal Revenue Code” means the federal Internal Revenue Code as amended and in effect on December 31, [2002] **2004**.

(b) “Nonprofit corporation” means a corporation that:

(A) Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter 65; or

(B) Is organized and operated as described under section 501(c) of the Internal Revenue Code.

(c) “Senior services center” means property that:

(A) Is owned or being purchased by a nonprofit corporation; and

(B) Is actually and exclusively used to provide services and activities (including parking) primarily to or for persons over 50 years of age; and

(C) Is open generally to all persons over 50 years of age; and

(D) Is not used primarily for fund-raising activities; and

(E) Is not a residential or dwelling place.

(2) Upon compliance with ORS 307.162, a senior services center is exempt from ad valorem property taxation.

SECTION 18. ORS 310.140 is amended to read:

310.140. The Legislative Assembly finds that section 11b, Article XI of the Oregon Constitution, was drafted by citizens and placed before the voters of the State of Oregon by initiative petition. Section 11b, Article XI of the Oregon Constitution, uses terms that do not have established legal meanings and require definition by the Legislative Assembly. Section 11b, Article XI of the Oregon Constitution, was amended by section 11 (11), Article XI of the Oregon Constitution. This section is intended to interpret the terms of section 11b, Article XI of the Oregon Constitution, as originally adopted and as amended by section 11 (11), Article XI of the Oregon Constitution, consistent with the intent of the people in adopting these provisions, so that the provisions of section 11b, Article XI of the Oregon Constitution, may be given effect uniformly throughout the State of Oregon, with minimal confusion and misunderstanding by citizens and affected units of government. As used in

the revenue and tax laws of this state, and for purposes of section 11b, Article XI of the Oregon Constitution:

(1) "Actual cost" means all direct or indirect costs incurred by a government unit in order to deliver goods or services or to undertake a capital construction project. The "actual cost" of providing goods or services to a property or property owner includes the average cost or an allocated portion of the total amount of the actual cost of making a good or service available to the property or property owner, whether stated as a minimum, fixed or variable amount. "Actual cost" includes, but is not limited to, the costs of labor, materials, supplies, equipment rental, property acquisition, permits, engineering, financing, reasonable program delinquencies, return on investment, required fees, insurance, administration, accounting, depreciation, amortization, operation, maintenance, repair or replacement and debt service, including debt service payments or payments into reserve accounts for debt service and payment of amounts necessary to meet debt service coverage requirements.

(2) "Assessment for local improvement" means any tax, fee, charge or assessment that does not exceed the actual cost incurred by a unit of government for design, construction and financing of a local improvement.

(3) "Bonded indebtedness" means any formally executed written agreement representing a promise by a unit of government to pay to another a specified sum of money, at a specified date or dates at least one year in the future.

(4) "Capital construction":

(a) For bonded indebtedness issued prior to December 5, 1996, and for the proceeds of any bonded indebtedness approved by electors prior to December 5, 1996, that were spent or contractually obligated to be spent prior to June 20, 1997, means the construction, modification, replacement, repair, remodeling or renovation of a structure, or addition to a structure, that is expected to have a useful life of more than one year, and includes, but is not limited to:

(A) Acquisition of land, or a legal interest in land, in conjunction with the capital construction of a structure.

(B) Acquisition, installation of machinery or equipment, furnishings or materials that will become an integral part of a structure.

(C) Activities related to the capital construction, including planning, design, authorizing, issuing, carrying or repaying interim or permanent financing, research, land use and environmental impact studies, acquisition of permits or licenses or other services connected with the construction.

(D) Acquisition of existing structures, or legal interests in structures, in conjunction with the capital construction.

(b) For bonded indebtedness issued on or after December 5, 1996, except for the proceeds of any bonded indebtedness approved by electors prior to December 5, 1996, that were spent or contractually obligated to be spent before June 20, 1997, has the meaning given that term in paragraph (a) of this subsection, except that "capital construction":

(A) Includes public safety and law enforcement vehicles with a projected useful life of five years or more; and

(B) Does not include:

(i) Maintenance and repairs, the need for which could be reasonably anticipated;

(ii) Supplies and equipment that are not intrinsic to the structure; or

(iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, construction, remodeling or renovation of a structure, or the repair of a structure that is required because of damage or destruction of the structure.

(5) "Capital improvements":

(a) For bonded indebtedness issued prior to December 5, 1996, and for the proceeds of any bonded indebtedness approved by electors before December 5, 1996, that were spent or contractually obligated to be spent before June 20, 1997, means land, structures, facilities, as that term is defined in ORS 288.805, machinery, equipment or furnishings having a useful life longer than one year.

(b) For bonded indebtedness issued on or after December 5, 1996, except for the proceeds of any bonded indebtedness approved by electors prior to December 5, 1996, that were spent or contractually obligated to be spent before June 20, 1997, has the meaning given that term in paragraph (a) of this subsection, except that “capital improvements”:

(A) Includes public safety and law enforcement vehicles with a projected useful life of five years or more; and

(B) Does not include:

(i) Maintenance and repairs, the need for which could be reasonably anticipated;

(ii) Supplies and equipment that are not intrinsic to the structure; or

(iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, construction, remodeling or renovation of a structure, or the repair of a structure that is required because of damage or destruction of the structure.

(6) “Direct consequence of ownership” means that the obligation of the owner of property to pay a tax arises solely because that person is the owner of the property, and the obligation to pay the tax arises as an immediate and necessary result of that ownership without respect to any other intervening transaction, condition or event.

(7)(a) “Exempt bonded indebtedness” means:

(A) Bonded indebtedness authorized by a specific provision of the Oregon Constitution;

(B) Bonded indebtedness incurred or to be incurred for capital construction or capital improvements that was issued as a general obligation of the issuing governmental unit on or before November 6, 1990;

(C) Bonded indebtedness incurred or to be incurred for capital construction or capital improvements that was issued as a general obligation of the issuing governmental unit after November 6, 1990, with the approval of the electors of the issuing governmental unit; or

(D) Bonded indebtedness incurred or to be incurred for capital construction or capital improvements, if the issuance of the bonds is approved by voters on or after December 5, 1996, in an election that is in compliance with the voter participation requirements of section 11 (8), Article XI of the Oregon Constitution.

(b) “Exempt bonded indebtedness” includes bonded indebtedness issued to refund or refinance any bonded indebtedness described in paragraph (a) of this subsection.

(8)(a) “Incurred charge” means a charge imposed by a unit of government on property or upon a property owner that does not exceed the actual cost of providing goods or services and that can be controlled or avoided by the property owner because:

(A) The charge is based on the quantity of the goods or services used, and the owner has direct control over the quantity;

(B) The goods or services are provided only on the specific request of the property owner; or

(C) The goods or services are provided by the government unit only after the individual property owner has failed to meet routine obligations of ownership of the affected property, and such action is deemed necessary by an appropriate government unit to enforce regulations pertaining to health or safety.

(b) For purposes of this subsection, an owner of property may control or avoid an incurred charge if the owner is capable of taking action to affect the amount of a charge that is or will be imposed or to avoid imposition of a charge even if the owner must incur expense in so doing.

(c) For purposes of paragraph (a)(A) of this subsection, an owner of property has direct control over the quantity of goods or services if the owner of property has the ability, whether or not that ability is exercised, to determine the quantity of goods or services provided or to be provided.

(9)(a) “Local improvement” means a capital construction project, or part thereof, undertaken by a local government, pursuant to ORS 223.387 to 223.399, or pursuant to a local ordinance or resolution prescribing the procedure to be followed in making local assessments for benefits from a local improvement upon the lots that have been benefited by all or a part of the improvement:

(A) That provides a special benefit only to specific properties or rectifies a problem caused by specific properties;

(B) The costs of which are assessed against those properties in a single assessment upon the completion of the project; and

(C) For which the property owner may elect to make payment of the assessment plus appropriate interest over a period of at least 10 years.

(b) For purposes of paragraph (a) of this subsection, the status of a capital construction project as a local improvement is not affected by the accrual of a general benefit to property other than the property receiving the special benefit.

(10) "Maintenance and repairs, the need for which could be reasonably anticipated":

(a) Means activities, the type of which may be deducted as an expense under the provisions of the federal Internal Revenue Code, as amended and in effect on December 31, [2002] **2004**, that keep the property in ordinarily efficient operating condition and that do not add materially to the value of the property nor appreciably prolong the life of the property;

(b) Does not include maintenance and repair of property that is required by damage, destruction or defect in design, or that was otherwise not reasonably expected at the time the property was constructed or acquired, or the addition of material that is in the nature of the replacement of property and that arrests the deterioration or appreciably prolongs the useful life of the property; and

(c) Does not include street and highway construction, overlay and reconstruction.

(11) "Projected useful life" means the useful life, as reasonably estimated by the unit of government undertaking the capital construction or capital improvement project, beginning with the date the property was acquired, constructed or reconstructed and based on the property's condition at the time the property was acquired, constructed or reconstructed.

(12) "Routine obligations of ownership" means a standard of operation, maintenance, use or care of property established by law, or if established by custom or common law, a standard that is reasonable for the type of property affected.

(13) "Single assessment" means the complete assessment process, including preassessment, assessment or reassessment, for any local improvement authorized by ORS 223.387 to 223.399, or a local ordinance or resolution that provides the procedure to be followed in making local assessments for benefits from a local improvement upon lots that have been benefited by all or part of the improvement.

(14) "Special benefit only to specific properties" shall have the same meaning as "special and peculiar benefit" as that term is used in ORS 223.389.

(15) "Specific request" means:

(a) An affirmative act by a property owner to seek or obtain delivery of goods or services;

(b) An affirmative act by a property owner, the legal consequence of which is to cause the delivery of goods or services to the property owner; or

(c) Failure of an owner of property to change a request for goods or services made by a prior owner of the property.

(16) "Structure" means any temporary or permanent building or improvement to real property of any kind that is constructed on or attached to real property, whether above, on or beneath the surface.

(17) "Supplies and equipment intrinsic to a structure" means the supplies and equipment that are necessary to permit a structure to perform the functions for which the structure was constructed, or that will, upon installation, constitute fixtures considered to be part of the real property that is comprised, in whole or part, of the structure and land supporting the structure.

(18) "Tax on property" means any tax, fee, charge or assessment imposed by any government unit upon property or upon a property owner as a direct consequence of ownership of that property, but does not include incurred charges or assessments for local improvements. As used in this subsection, "property" means real or tangible personal property, and intangible property that is part of a unit of real or tangible personal property to the extent that such intangible property is subject to a tax on property.

SECTION 19. ORS 310.630 is amended to read:

310.630. As used in ORS 310.630 to 310.706:

(1) "Contract rent" means rental paid to the landlord for the right to occupy a homestead, including the right to use the personal property located therein. "Contract rent" does not include rental paid for the right to occupy a homestead that is exempt from taxation, unless payments in lieu of taxes of 10 percent or more of the rental exclusive of fuel and utilities are made on behalf of the homestead. "Contract rent" does not include advanced rental payments for another period and rental deposits, whether or not expressly set out in the rental agreement, or payments made to a nonprofit home for the elderly described in ORS 307.375. If a landlord and tenant have not dealt with each other at arm's length, and the Department of Revenue is satisfied that the contract rent charged was excessive, it may adjust the contract rent to a reasonable amount for purposes of ORS 310.630 to 310.706.

(2) "Department" means the Department of Revenue.

(3) "Fuel and utility payments" includes payments for heat, lights, water, sewer and garbage made solely to secure those commodities or services for the homestead of the taxpayer. "Fuel and utility payments" does not include telephone service.

(4) "Gross rent" means contract rent paid plus the fuel and utility payments made for the homestead in addition to the contract rent, during the calendar year for which the claim is filed.

(5) "Homestead" means the taxable principal dwelling located in Oregon, either real or personal property, rented by the taxpayer, and the taxable land area of the tax lot upon which it is built.

(6) "Household" means the taxpayer, the spouse of the taxpayer and all other persons residing in the homestead during any part of the calendar year for which a claim is filed.

(7) "Household income" means the aggregate income of the taxpayer and the spouse of the taxpayer who reside in the household, that was received during the calendar year for which the claim is filed. "Household income" includes payments received by the taxpayer or the spouse of the taxpayer under the federal Social Security Act for the benefit of a minor child or minor children who are members of the household.

(8) "Income" means "adjusted gross income" as defined in the federal Internal Revenue Code, as amended and in effect on December 31, [2002] 2004, even when the amendments take effect or become operative after that date, relating to the measurement of taxable income of individuals, estates and trusts, with the following modifications:

(a) There shall be added to adjusted gross income the following items of otherwise exempt income:

(A) The gross amount of any otherwise exempt pension less return of investment, if any.

(B) Child support received by the taxpayer.

(C) Inheritances.

(D) Gifts and grants, the sum of which are in excess of \$500 per year.

(E) Amounts received by a taxpayer or spouse of a taxpayer for support from a parent who is not a member of the taxpayer's household.

(F) Life insurance proceeds.

(G) Accident and health insurance proceeds, except reimbursement of incurred medical expenses.

(H) Personal injury damages.

(I) Sick pay which is not included in federal adjusted gross income.

(J) Strike benefits excluded from federal gross income.

(K) Worker's compensation, except for reimbursement of medical expense.

(L) Military pay and benefits.

(M) Veteran's benefits.

(N) Payments received under the federal Social Security Act which are excluded from federal gross income.

(O) Welfare payments, except as follows:

(i) Payments for medical care, drugs and medical supplies, if the payments are not made directly to the welfare recipient;

(ii) In-home services authorized and approved by the Department of Human Services; and

(iii) Direct or indirect reimbursement of expenses paid or incurred for participation in work or training programs.

(P) Nontaxable dividends.

(Q) Nontaxable interest not included in federal adjusted gross income.

(R) Rental allowance paid to a minister that is excluded from federal gross income.

(S) Income from sources without the United States that is excluded from federal gross income.

(b) Adjusted gross income shall be increased due to the disallowance of the following deductions:

(A) The amount of the net loss, in excess of \$1,000, from all dispositions of tangible or intangible properties.

(B) The amount of the net loss, in excess of \$1,000, from the operation of a farm or farms.

(C) The amount of the net loss, in excess of \$1,000, from all operations of a trade or business, profession or other activity entered into for the production or collection of income.

(D) The amount of the net loss, in excess of \$1,000, from tangible or intangible property held for the production of rents, royalties or other income.

(E) The amount of any net operating loss carryovers or carrybacks included in federal adjusted gross income.

(F) The amount, in excess of \$5,000, of the combined deductions or other allowances for depreciation, amortization or depletion.

(G) The amount added or subtracted, as required within the context of this section, for adjustments made under ORS 316.680 (2)(d) and 316.707 to 316.737.

(c) "Income" does not include any of the following:

(A) Any governmental grant which must be used by the taxpayer for rehabilitation of the homestead of the taxpayer.

(B) The amount of any payments made pursuant to ORS 310.630 to 310.706.

(C) Any refund of Oregon personal income taxes that were imposed under ORS chapter 316.

(9) "Payments for heat" means those payments made to secure the commodities or services to be used as the principal source of heat for the homestead of the taxpayer and includes payments for natural gas, oil, firewood, coal, sawdust, electricity, steam or other materials that are capable of use as a primary source of heat for the homestead.

(10) "Statement of gross rent" means a declaration by the applicant, under penalties of false swearing, that the amount of contract rent and fuel and utility payments designated is the actual amount both incurred and paid during the year for which elderly rental assistance is claimed.

(11) "Taxpayer" means an individual who is a resident of this state on December 31 of the year for which elderly rental assistance is claimed and whose homestead, as of the same December 31 and during all or a portion of the year ending on the same December 31, is rented and while rented is the subject, directly or indirectly, of property tax levied by this state or a political subdivision or of payments made in lieu of taxes.

SECTION 20. ORS 310.800 is amended to read:

310.800. (1) As used in this section:

(a) "Authorized representative" means a senior citizen who is authorized by a tax-exempt entity to perform charitable or public service on behalf of a senior citizen who has entered into a contract under subsection (2) of this section.

(b) "Homestead" means an owner-occupied principal residence.

(c) "Senior citizen" means a person who is 60 years of age or older.

(d) "Tax-exempt entity" means an entity that is exempt from federal income taxes under section 501 (c) of the Internal Revenue Code, as amended and in effect on December 31, [2002] **2004**.

(e) "Taxing unit" means any county, city or common or union high school district, community college service district or community college district within this state with authority to impose ad valorem property taxes.

(2) A tax-exempt entity may establish a property tax work-off program pursuant to which a senior citizen may contract to perform charitable or public service in consideration of payment of property taxes extended against the homestead of the senior citizen and billed to the senior citizen.

For purposes of ORS chapters 316 and 656, and notwithstanding ORS 314.013 or 670.600 or other law, a senior citizen who enters into a contract under this subsection shall be considered an independent contractor and not a worker or employee with respect to the services performed pursuant to the contract. Nothing in this section precludes a taxing unit from being considered an employer, for purposes of unemployment compensation under ORS chapter 657, of a senior citizen who enters into a contract under this section.

(3) A taxing unit may enter into an agreement with a tax-exempt entity that has established a property tax work-off program. Pursuant to the agreement the taxing unit may accept, as volunteer and public service, the services of a senior citizen who has entered into a contract described in subsection (2) of this section or an authorized representative.

(4) A taxing unit may provide funds or make grants to any tax-exempt entity that has established a property tax work-off program for use to carry out the program.

SECTION 21. ORS 311.689 is amended to read:

311.689. (1) Notwithstanding ORS 311.668 or any other provision of ORS 311.666 to 311.701, if the individual or, in the case of two or more individuals electing to defer property taxes jointly, all of the individuals together, or the spouse who has filed a claim under ORS 311.688, has federal adjusted gross income that exceeds \$32,000 for the tax year that began in the previous calendar year, then for the tax year next beginning, the amount of taxes for which deferral is allowed shall be reduced by \$0.50 for each dollar of federal adjusted gross income in excess of \$32,000.

(2) Prior to June 1 of each year, and notwithstanding ORS 314.835, the Department of Revenue shall review returns filed under ORS chapter 314 and 316 to determine if subsection (1) of this section is applicable for a homestead for the tax year next beginning. If subsection (1) of this section is applicable, the department shall notify by mail the taxpayer or spouse electing deferral, and the taxes otherwise to be deferred for the tax year next beginning shall be reduced as provided in subsection (1) of this section or, if federal adjusted gross income in excess of \$32,000 exceeds the amount of property taxes by a factor of two, the property taxes shall not be deferred.

(3) If the taxpayer or spouse does not file a return for purposes of ORS chapters 314 and 316 and the department has reason to believe that the federal adjusted gross income of the taxpayer or spouse exceeds \$32,000 for the tax year that began in the previous calendar year, the department shall notify by mail the taxpayer or spouse electing deferral. If, within 30 days after the notice is mailed, the taxpayer or spouse does not file a return under ORS chapter 314 or 316 or otherwise satisfy the department that federal adjusted gross income does not exceed \$32,000, the department shall again notify the taxpayer or spouse, and the taxes otherwise to be deferred for the tax year next beginning shall not be deferred.

(4) For tax years beginning on or after July 1, 2002, the federal adjusted gross income limit set forth in subsections (1) to (3) of this section shall be recomputed by multiplying \$32,000 by the indexing factor described in ORS 311.668 (7)(a)(A), and rounding the amount so computed to the nearest multiple of \$500.

(5) Nothing in this section shall affect the continued deferral of taxes that have been deferred for tax years beginning prior to the tax year next beginning or the right to deferral of taxes for a tax year beginning after the tax year next beginning if subsection (1) is not applicable for that tax year for the homestead.

(6) As used in this section, "federal adjusted gross income" means federal adjusted gross income of the individual or, in the case of two or more individuals electing to defer property tax jointly, the combined federal adjusted gross income of the individuals, or the federal adjusted gross income of the spouse who has filed a claim under ORS 311.688, all as determined for the tax year beginning in the calendar year prior to which a determination is required under subsection (2) of this section. "Federal adjusted gross income" shall be determined under the Internal Revenue Code, as amended and in effect on December 31, [2002] 2004, without any of the additions, subtractions or other modifications or adjustments required under ORS chapter 314 or 316.

(7)(a) If, after an initial determination under this section has been made by the department, upon audit or examination or otherwise, it is discovered that the taxpayer or spouse had federal adjusted

gross income in excess of the limitation provided under subsection (1) of this section, the department shall determine the amount of taxes deferred that should not have been deferred and give notice to the taxpayer or spouse of the amount of taxes that should not have been deferred. The provisions of ORS chapters 305 and 314 shall apply to a determination of the department under this section in the same manner as those provisions are applicable to an income tax deficiency. The amount of deferred taxes that should not have been deferred shall bear interest from the date paid by the department until paid at the rate established under ORS 305.220 for deficiencies. A deficiency shall not be assessed under this section if notice required under this section is not given to the taxpayer or spouse within three years after the date that the department has paid the deferred taxes to the county. Upon payment of the amount assessed as deficiency, and interest, the department shall execute a release in the amount of the payment and the release shall be conclusive evidence of the removal and extinguishment of the lien under ORS 311.666 to 311.701 to the extent of the payment.

(b) If, after an initial determination under this section has been made by the department, upon claim for refund, audit or examination or otherwise, it is discovered that the taxpayer or spouse had federal adjusted gross income in the amount of or less than the limitation provided under subsection (1) of this section, the department shall determine the amount of taxes deferred that should have been deferred and give notice to the taxpayer or spouse of the amount of taxes that should have been deferred. The provisions of ORS chapters 305 and 314 shall apply to a determination of the department under this section in the same manner as those provisions are applicable to an income tax refund. The amount of the taxes that should have been deferred shall bear interest from the date paid by the taxpayer to the county at the rate established under ORS 305.220 for refunds until paid. Claim for refund under this paragraph must be filed within three years after the earliest date that the taxpayer or spouse is notified by the department that the taxes are not deferred.

(8) This section applies to all tax-deferred property, notwithstanding that election to defer taxes is made under ORS 311.666 to 311.701 before or after October 3, 1989.

SECTION 22. ORS 314.011 is amended to read:

314.011. (1) As used in this chapter, unless the context requires otherwise, "department" means the Department of Revenue.

(2)(a) As used 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 in this chapter.

(b) Except where the Legislative Assembly has provided otherwise, a reference to the laws of the United States or to the Internal Revenue Code refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect:

(A) On December 31, [2002] ~~2004~~; or

[(B) If related to the definition of taxable income and attributable to a change in the laws of the United States or in the Internal Revenue Code that is enacted after December 31, 2005, as applicable to the tax year of the taxpayer.]

[(c) A reference to the laws of the United States or to the Internal Revenue Code refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect and applicable for the tax year of the taxpayer, if the reference relates to:]

[(A) Pension, profit-sharing or stock bonus plans, deferred compensation plans, employee stock ownership plans, individual retirement accounts (including Roth individual retirement accounts), medical savings accounts, education IRAs, qualified tuition savings programs or other tax-deferred or tax-exempt savings programs benefiting individuals; or]

[(B) The allowance and amount of a deduction under section 167 or 168 or another provision of the Internal Revenue Code, to the allowance and amount of a deduction for expensing depreciable assets under section 179 of the Internal Revenue Code or to the adjusted basis of an asset that is depreciated or expensed for federal tax purposes.]

(B) If related to the definition of taxable income, as applicable to the tax year of the taxpayer.

[(d)] (c) With respect to ORS 314.105, 314.256 (relating to proxy tax on lobbying expenditures), 314.260 (1)(b), 314.265 (1)(b), 314.302, 314.306, 314.330, 314.360, 314.362, 314.385, 314.402, 314.410, 314.412, 314.525, 314.742 (7), 314.750 and 314.752 and other provisions of this chapter, except those described in [paragraphs (b) and (c)] **paragraph (b)** of this subsection, any reference in this chapter 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, [2002] **2004**, even when the amendments take effect or become operative after that date, except where the Legislative Assembly has specifically provided otherwise.

(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)(a) 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.

(b) As used in this subsection, "Act or Title" includes any subtitle, division or other part of an Act or Title.

SECTION 23. If House Bill 2933 becomes law, section 22 of this 2005 Act (amending ORS 314.011) is repealed and ORS 314.011, as amended by section 8, chapter 519, Oregon Laws 2005 (Enrolled House Bill 2933), is amended to read:

314.011. (1) As used in this chapter, unless the context requires otherwise, "department" means the Department of Revenue.

(2)(a) As used 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 in this chapter.

(b) Except where the Legislative Assembly has provided otherwise, a reference to the laws of the United States or to the Internal Revenue Code refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect:

(A) On December 31, [2002] **2004**; or

[(B) *If related to the definition of taxable income and attributable to a change in the laws of the United States or in the Internal Revenue Code that is enacted after December 31, 2005, as applicable to the tax year of the taxpayer.*]

[(c) *A reference to the laws of the United States or to the Internal Revenue Code refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect and applicable for the tax year of the taxpayer, if the reference relates to:*]

[(A) *Pension, profit-sharing or stock bonus plans, deferred compensation plans, employee stock ownership plans, individual retirement accounts (including Roth individual retirement accounts), med-*

ical savings accounts, education IRAs, qualified tuition savings programs or other tax-deferred or tax-exempt savings programs benefiting individuals;]

[(B) The allowance and amount of a deduction under section 167 or 168 or another provision of the Internal Revenue Code, to the allowance and amount of a deduction for expensing depreciable assets under section 179 of the Internal Revenue Code or to the adjusted basis of an asset that is depreciated or expensed for federal tax purposes; or]

[(C) The allowance of an exclusion for combat zone compensation received by a member of the armed forces and excluded from federal taxable income under section 112 of the Internal Revenue Code.]

(B) If related to the definition of taxable income, as applicable to the tax year of the taxpayer.

[(d)] (c) With respect to ORS 314.105, 314.256 (relating to proxy tax on lobbying expenditures), 314.260 (1)(b), 314.265 (1)(b), 314.302, 314.306, 314.330, 314.360, 314.362, 314.385, 314.402, 314.410, 314.412, 314.525, 314.742 (7), 314.750 and 314.752 and other provisions of this chapter, except those described in *[paragraphs (b) and (c)]* **paragraph (b)** of this subsection, any reference in this chapter 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, [2002] **2004**, even when the amendments take effect or become operative after that date, except where the Legislative Assembly has specifically provided otherwise.

(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)(a) 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.

(b) As used in this subsection, "Act or Title" includes any subtitle, division or other part of an Act or Title.

SECTION 24. ORS 315.004 is amended to read:

315.004. (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, [2002] 2004, even when the amendments take effect or become operative after that date.

(3) Insofar as is practicable in the administration of this chapter, the Department of Revenue 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)(a) 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.

(b) As used in this subsection, "Act or Title" includes any subtitle, division or other part of an Act or Title.

SECTION 25. ORS 315.262 is amended to read:

315.262. (1) As used in this section:

(a) "Child care" means care provided to a qualifying child of the taxpayer for the purpose of allowing the taxpayer to be gainfully employed, to seek employment or to attend school on a full-time or part-time basis, except that the term does not include care provided by:

(A) The child's parent or guardian, unless the care is provided [*by the parent*] in a certified or registered child care facility; or

(B) [*A child of the taxpayer*] **A person who has a relationship to the taxpayer that is described in section 152(a) of the Internal Revenue Code** who has not yet attained 19 years of age at the close of the tax year.

(b) "Child care expenses" means the costs associated with providing child care to a qualifying child of a qualified taxpayer.

(c) "Earned income" has the meaning given that term in section 32 of the Internal Revenue Code.

(d) "Qualified taxpayer" means a taxpayer:

(A) With at least \$6,000 of earned income for the tax year;

(B) With federal adjusted gross income for the tax year that does not exceed 250 percent of the federal poverty level; and

(C) Who does not have more than the maximum amount of disqualified income under section 32(i) of the Internal Revenue Code that is allowed to a taxpayer entitled to the earned income tax credit for federal tax purposes.

(e) "Qualifying child" [*means a child of the taxpayer*] **has the meaning given that term in section 152 of the Internal Revenue Code except that it is limited to an individual** who is under 13 years of age, or who is a disabled child, as that term is defined in ORS 316.099.

(2) A qualified taxpayer shall be allowed a credit against the taxes otherwise due under ORS chapter 316 equal to the applicable percentage of the qualified taxpayer's child care expenses (rounded to the nearest \$50).

(3) The applicable percentage to be used in calculating the amount of the credit provided in this section shall be determined in accordance with the following table:

Applicable Percentage	Federal Adjusted Gross Income as Percent of Federal Poverty Level
40	200 or less
36	Greater than 200 and less than or equal to 210
32	Greater than 210 and less than or equal to 220
24	Greater than 220 and less than or equal to 230
16	Greater than 230 and less than or equal to 240
8	Greater than 240 and less than or equal to 250
0	Greater than 250 percent of federal poverty level

(4) The credit shall be claimed on such form and containing such information as may be prescribed by the Department of Revenue.

(5) In the case of a credit allowed under this section:

(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) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue 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.

(d) In the case of a qualified taxpayer who is married, a credit shall be allowed under this section only if:

(A) The taxpayer files a joint return;

(B) The taxpayer files a separate return and is legally separated or subject to a separate maintenance agreement; or

(C) The taxpayer files a separate return and the taxpayer and the taxpayer's spouse reside in separate households on the last day of the tax year with the intent of remaining in separate households in the future.

(6) If the amount allowable as a credit under this section, when added to the sum of the amounts allowable as payment of tax under ORS 316.187 (withholding), ORS 316.583 (estimated tax), other tax prepayment amounts and other refundable credit amounts, exceeds the taxes imposed by ORS chapters 314 and 316 for the tax year (reduced by any nonrefundable credits allowable for purposes of ORS chapter 316 for the tax year), the amount of the excess shall be refunded to the taxpayer as provided in ORS 316.502.

(7)(a) The minimum amount of earned income a taxpayer must earn in order to be a qualified taxpayer shall be adjusted for tax years beginning in each calendar year by multiplying \$6,000 by the ratio of the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year over the monthly averaged index for the second quarter of the calendar year 1998.

(b) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(c) If any adjustment determined under paragraph (a) of this subsection is not a multiple of \$50, the adjustment shall be rounded to the nearest multiple of \$50.

(d) Notwithstanding paragraphs (a) to (c) of this subsection, the adjusted minimum amount of earned income a taxpayer must earn may not exceed the amount an individual would earn if the individual worked 1,040 hours at the minimum wage established under ORS 653.025 and in effect on January 1 of the calendar year in which begins the tax year of the taxpayer, rounded to the next lower multiple of \$50.

SECTION 26. ORS 316.012 is amended to read:

316.012. Any term used in this chapter 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 in this chapter. Except where the Legislative Assembly has provided otherwise, any reference in this chapter to the laws of the United States or to the Internal Revenue Code[:]

[*(1)*] refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect:

[*(a)*] **(1)** On December 31, [*2002*] **2004**; or

[*(b)*] *If related to the definition of taxable income and attributable to a change in the laws of the United States or in the Internal Revenue Code that is enacted after December 31, 2005, as applicable to the tax year of the taxpayer.*]

[*(2)*] *Refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect and applicable for the tax year of the taxpayer, if the reference relates to:*

[*(a)*] *Pension, profit-sharing or stock bonus plans, deferred compensation plans, employee stock ownership plans, individual retirement accounts (including Roth individual retirement accounts), medical savings accounts, education IRAs, qualified tuition savings programs or other tax-deferred or tax-exempt savings programs benefiting individuals; or*

[*(b)*] *The allowance and amount of a deduction under section 167 or 168 or another provision of the Internal Revenue Code, to the allowance and amount of a deduction for expensing depreciable assets under section 179 of the Internal Revenue Code or to the adjusted basis of an asset that is depreciated or expensed for federal tax purposes.*]

(2) If related to the definition of taxable income, as applicable to the tax year of the taxpayer.

SECTION 27. If House Bill 2933 becomes law, section 26 of this 2005 Act (amending ORS 316.012) is repealed and ORS 316.012, as amended by section 9, chapter 519, Oregon Laws 2005 (Enrolled House Bill 2933), is amended to read:

316.012. Any term used in this chapter 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 in this chapter. Except where the Legislative Assembly has provided otherwise, any reference in this chapter to the laws of the United States or to the Internal Revenue Code[:]

[*(1)*] refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect:

[*(a)*] **(1)** On December 31, [*2002*] **2004**; or

[(b) If related to the definition of taxable income and attributable to a change in the laws of the United States or in the Internal Revenue Code that is enacted after December 31, 2005, as applicable to the tax year of the taxpayer.]

[(2) Refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect and applicable for the tax year of the taxpayer, if the reference relates to:]

[(a) Pension, profit-sharing or stock bonus plans, deferred compensation plans, employee stock ownership plans, individual retirement accounts (including Roth individual retirement accounts), medical savings accounts, education IRAs, qualified tuition savings programs or other tax-deferred or tax-exempt savings programs benefiting individuals;]

[(b) The allowance and amount of a deduction under section 167 or 168 or another provision of the Internal Revenue Code, to the allowance and amount of a deduction for expensing depreciable assets under section 179 of the Internal Revenue Code or to the adjusted basis of an asset that is depreciated or expensed for federal tax purposes; or]

[(c) The allowance of an exclusion for combat zone compensation received by a member of the armed forces and excluded from federal taxable income under section 112 of the Internal Revenue Code.]

(2) If related to the definition of taxable income, as applicable to the tax year of the taxpayer.

SECTION 28. ORS 316.099 is amended to read:

316.099. (1) As used in this section, unless the context requires otherwise:

(a) “Early intervention services” means programs of treatment and habilitation designed to address a child’s developmental deficits in sensory, motor, communication, self-help and socialization areas.

(b) “Disabled child” means a **qualifying** child *[from the age of identification of the disability to the age of 18]* **under section 152 of the Internal Revenue Code** who has been determined eligible for early intervention services or is diagnosed for the purposes of special education as being mentally retarded, multidisabled, visually impaired, hearing impaired, deaf-blind, orthopedically impaired or other health impaired or as having autism, emotional disturbance or traumatic brain injury, in accordance with State Board of Education rules.

(c) “Special education” means specially designed instruction to meet the unique needs of a disabled child, including regular classroom instruction, instruction in physical education, home instruction and instruction in hospitals, institutions and special schools.

(2) The State Board of Education shall adopt rules further defining “disabled child” for purposes of this section. A diagnosis obtained for the purposes of entitlement to special education or early intervention services shall serve as the basis for a claim for the additional credit allowed under subsection (3) of this section.

(3) In addition to the personal exemption credit allowed by this chapter for state personal income tax purposes for a dependent *[child]* of the taxpayer, there shall be allowed an additional personal exemption credit for a disabled child if the child is a disabled child at the close of the tax year. The amount of the credit shall be equal to the amount allowed as the personal exemption credit for the dependent *[child]* for state personal income tax purposes for the tax year.

(4) Each taxpayer qualifying for the additional personal exemption credit allowed by this section may claim the credit on the personal income tax return. However, the claim shall be substantiated by any proof of entitlement to the credit as may be required by the state board by rule.

SECTION 29. Section 30 of this 2005 Act is added to and made a part of ORS chapter 316.

SECTION 30. (1) A taxpayer that elects to deduct state and local sales taxes under section 164(b)(5) of the Internal Revenue Code for federal tax purposes must make the same election for purposes of the tax imposed by this chapter.

(2) A taxpayer that elects to deduct state and local sales taxes under section 164(b)(5) of the Internal Revenue Code for federal tax purposes shall add the amount deducted to federal taxable income for purposes of the tax imposed by this chapter.

SECTION 31. ORS 317.010 is amended to read:

317.010. As used in this chapter, unless the context requires otherwise:

(1) "Centrally assessed corporation" means every corporation the property of which is assessed by the Department of Revenue under ORS 308.505 to 308.665.

(2) "Department" means the Department of Revenue.

(3)(a) "Consolidated federal return" means the return permitted or required to be filed by a group of affiliated corporations under section 1501 of the Internal Revenue Code.

(b) "Consolidated state return" means the return required to be filed under ORS 317.710 (5).

(4) "Doing business" means any transaction or transactions in the course of its activities conducted within the state by a national banking association, or any other corporation; provided, however, that a foreign corporation whose activities in this state are confined to purchases of personal property, and the storage thereof incident to shipment outside the state, shall not be deemed to be doing business unless such foreign corporation is an affiliate of another foreign or domestic corporation which is doing business in Oregon. Whether or not corporations are affiliated shall be determined as provided in section 1504 of the Internal Revenue Code.

(5) "Excise tax" means a tax measured by or according to net income imposed upon national banking associations, all other banks, and financial, centrally assessed, mercantile, manufacturing and business corporations for the privilege of carrying on or doing business in this state.

(6) "Financial institution" or "financial corporation" means a bank or trust company organized under ORS chapter 707, national banking association or production credit association organized under federal statute, building and loan association, savings and loan association, mutual savings bank, and any other corporation whose principal business is in direct competition with national and state banks.

[(7) "Internal Revenue Code," except where the Legislative Assembly has provided otherwise:]

[(a) Refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect:]

[(A) On December 31, 2002; or]

[(B) If related to the definition of taxable income and attributable to a change in the laws of the United States or in the Internal Revenue Code that is enacted after December 31, 2005, as applicable to the tax year of the taxpayer.]

[(b) Refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect and applicable for the tax year of the taxpayer, if the reference relates to:]

[(A) Pension, profit-sharing or stock bonus plans, deferred compensation plans, employee stock ownership plans, individual retirement accounts (including Roth individual retirement accounts), medical savings accounts, education IRAs, qualified tuition savings programs or other tax-deferred or tax-exempt savings programs benefiting individuals; or]

[(B) The allowance and amount of a deduction under section 167 or 168 or another provision of the Internal Revenue Code, to the allowance and amount of a deduction for expensing depreciable assets under section 179 of the Internal Revenue Code or to the adjusted basis of an asset that is depreciated or expensed for federal tax purposes.]

(7) "Internal Revenue Code," except where the Legislative Assembly has provided otherwise, refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect:

(a) On December 31, 2004; or

(b) If related to the definition of taxable income, as applicable to the tax year of the taxpayer.

(8) "Oregon taxable income" means taxable income, less the deduction allowed under ORS 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and ORS 317.650 to 317.665.

(9) "Oregon net loss" means taxable loss, except as otherwise provided with respect to insurers in subsection (11) of this section and ORS 317.650 to 317.665.

(10) "Taxable income or loss" means the taxable income or loss determined, or in the case of a corporation for which no federal taxable income or loss is determined, as would be determined, un-

der chapter 1, Subtitle A of the Internal Revenue Code and any other laws of the United States relating to the determination of taxable income or loss of corporate taxpayers, with the additions, subtractions, adjustments and other modifications as are specifically prescribed by this chapter except that in determining taxable income or loss for any year, no deduction under ORS 317.476 or 317.478 and section 45b, chapter 293, Oregon Laws 1987, shall be allowed. If the corporation is a corporation to which ORS 314.280 or 314.605 to 314.675 (requiring or permitting apportionment of income from transactions or activities carried on both within and without the state) applies, to derive taxable income or loss, the following shall occur:

(a) From the amount otherwise determined under this subsection, subtract nonbusiness income, or add nonbusiness loss, whichever is applicable.

(b) Multiply the amount determined under paragraph (a) of this subsection by the Oregon apportionment percentage defined under ORS 314.280, 314.650 or 314.670, whichever is applicable. The resulting product shall be Oregon apportioned income or loss.

(c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this subsection, add nonbusiness income allocable entirely to Oregon under ORS 314.280 or 314.625 to 314.645, or subtract nonbusiness loss allocable entirely to Oregon under ORS 314.280 or 314.625 to 314.645. The resulting figure is "taxable income or loss" for those corporations carrying on taxable transactions or activities both within and without Oregon.

(11) As used in ORS 317.122 and 317.650 to 317.665, "insurer" means any domestic, foreign or alien insurer as defined in ORS 731.082 and any interinsurance and reciprocal exchange and its attorney in fact with respect to its attorney in fact net income as a corporate attorney in fact acting as attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or interinsurance exchange. However, "insurer" does not include title insurers or health care service contractors operating pursuant to ORS 750.005 to 750.095.

SECTION 32. (1) Except as provided in subsections (2) and (3) of this section, the amendments to statutes by sections 13 to 28 and 31 of this 2005 Act and section 30 of this 2005 Act apply to transactions or activities occurring on or after January 1, 2005, in tax years beginning on or after January 1, 2005.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Veterans Benefits Act of 2002 (P.L. 107-330), the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27), the Military Family Tax Relief Act of 2003 (P.L. 108-121), the Working Families Tax Relief Act of 2004 (P.L. 108-311), the American Jobs Creation Act of 2004 (P.L. 108-357) and other federal law amending the Internal Revenue Code apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 2005, and the deficiency or any portion thereof is attributable to any retroactive treatment under the amendments to statutes by sections 13 to 28 and 31 of this 2005 Act and section 30 of this 2005 Act, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 2005, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under the amendments to statutes by sections 13 to 28 and 31 of this 2005 Act and section 30 of this 2005 Act, then notwithstanding ORS 305.270 or 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required because of the amendments to statutes by sections 13 to 28 and 31 of this 2005 Act and section 30 of this 2005 Act for a tax year beginning before January 1, 2005, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection

on the return to which the changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a return for a tax year beginning on or after January 1, 2005, and before January 1, 2006, is filed, whichever period expires later.

SECTION 33. ORS 317.267 is amended to read:

317.267. (1) To derive Oregon taxable income, there shall be added to federal taxable income amounts received as dividends from corporations deducted for federal purposes pursuant to section 243 or 245 of the Internal Revenue Code, except **section 245(c)** of the Internal Revenue Code, amounts paid as dividends by a public utility or telecommunications utility and deducted for federal purposes pursuant to section 247 of the Internal Revenue Code or dividends eliminated under Treasury Regulations adopted under section 1502 of the Internal Revenue Code that are paid by members of an affiliated group that are eliminated from a consolidated federal return pursuant to ORS 317.715 (2).

(2) To derive Oregon taxable income, after the modification prescribed under subsection (1) of this section, there shall be subtracted from federal taxable income an amount equal to 70 percent of dividends (determined without regard to section 78 of the Internal Revenue Code) received or deemed received from corporations if such dividends are included in federal taxable income. However:

(a) In the case of any dividend on debt-financed portfolio stock as described in section 246A of the Internal Revenue Code, the subtraction allowed under this subsection shall be reduced under the same conditions and in same amount as the dividends received deduction otherwise allowable for federal income tax purposes is reduced under section 246A of the Internal Revenue Code.

(b) No subtraction shall be allowed under this subsection if the dividends received or deemed received are from the Oregon Capital Corporation established pursuant to ORS 284.750 to 284.770.

(c) In the case of any dividend received from a 20 percent owned corporation, as defined in section 243(c) of the Internal Revenue Code, this subsection shall be applied by substituting "80 percent" for "70 percent."

(d) A dividend that is not treated as a dividend under section 243(d) or 965(c)(3) of the Internal Revenue Code may not be treated as a dividend for purposes of this subsection.

(e) If a dividends received deduction is not allowed for federal tax purposes because of section 246(a) or (c) of the Internal Revenue Code, a subtraction may not be made under this subsection for received dividends that are described in section 246(a) or (c) of the Internal Revenue Code.

(3) There shall be excluded from the sales factor of any apportionment formula employed to attribute income to this state any amount subtracted from federal taxable income under subsection (2) of this section.

SECTION 34. The amendments to ORS 317.267 by section 33 of this 2005 Act apply to tax years beginning on or after January 1, 2006.

SECTION 35. Notwithstanding ORS 317.267, a dividends received deduction allowed under section 965 of the Internal Revenue Code for federal tax purposes shall be allowed in determining taxable income under ORS chapter 317 for the same tax year as the deduction is allowed for federal tax purposes.

SECTION 35a. Section 35 of this 2005 Act applies only to tax years beginning before January 1, 2007.

SECTION 36. Section 35 of this 2005 Act is repealed on January 2, 2008.

SECTION 37. Nothing in the repeal of section 35 of this 2005 Act by section 36 of this 2005 Act affects the allowance of a deduction under section 35 of this 2005 Act for a tax year beginning before January 1, 2007.

SECTION 38. Section 39 of this 2005 Act is added to and made a part of ORS chapter 314.

SECTION 39. Public Law 109-1 applies for purposes of computing federal taxable income for Oregon tax purposes under ORS chapter 316, 317 or 318.

SECTION 40. Sections 41 and 42 of this 2005 Act are added to and made a part of ORS chapter 316.

SECTION 41. A taxpayer that is allowed a deduction for qualified production activities income under section 199 of the Internal Revenue Code for federal tax purposes shall add the amount deducted to federal taxable income for purposes of the tax imposed by this chapter.

SECTION 42. A taxpayer that is allowed an exclusion from gross income under section 139A of the Internal Revenue Code for federal tax purposes shall add the amount excluded to federal taxable income for purposes of the tax imposed by this chapter.

SECTION 43. Sections 44 and 45 of this 2005 Act are added to and made a part of ORS chapter 317.

SECTION 44. A taxpayer that is allowed a deduction for qualified production activities income under section 199 of the Internal Revenue Code for federal tax purposes shall add the amount deducted to federal taxable income for purposes of the tax imposed by this chapter.

SECTION 45. A taxpayer that is allowed an exclusion from gross income under section 139A of the Internal Revenue Code for federal tax purposes shall add the amount excluded to federal taxable income for purposes of the tax imposed by this chapter.

SECTION 46. Sections 41 and 44 of this 2005 Act apply to tax years beginning on or after January 1, 2005.

SECTION 47. Sections 42 and 45 of this 2005 Act apply to tax years beginning on or after January 1, 2008.

SECTION 48. ORS 314.650 is amended to read:

314.650. (1) All business income shall be apportioned to this state by multiplying the income by *[a multiplier equal to 80 percent of]* the sales factor *[plus 10 percent of the property factor plus 10 percent of the payroll factor]*.

(2)(a) Notwithstanding subsection (1) of this section, the business income of a taxpayer that is in the forest products industry, that owns and manages 300,000 or more acres in this state, but less than 400,000 acres, and that processes at least 20 percent of the taxpayer's total wood chip supply for papermaking from sawmill residue generated within this state, shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(b) If the denominator of the property factor, payroll factor or sales factor, as determined under ORS 314.650 to 314.665, is zero, then the denominator specified in paragraph (a) of this subsection shall be reduced by the number of factors with a denominator of zero.

SECTION 48a. The amendments to ORS 314.650 by section 48 of this 2005 Act apply to tax years beginning on or after July 1, 2005.

SECTION 49. ORS 314.650, as amended by section 1, chapter 739, Oregon Laws 2003, is amended to read:

314.650. (1) All business income shall be apportioned to this state by multiplying the income by *[a multiplier equal to 90 percent of]* the sales factor *[plus five percent of the property factor plus five percent of the payroll factor]*.

(2)(a) Notwithstanding subsection (1) of this section, the business income of a taxpayer that is in the forest products industry, that owns and manages 300,000 or more acres in this state, but less than 400,000 acres, and that processes at least 20 percent of the taxpayer's total wood chip supply for papermaking from sawmill residue generated within this state, shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(b) If the denominator of the property factor, payroll factor or sales factor, as determined under ORS 314.650 to 314.665, is zero, then the denominator specified in paragraph (a) of this subsection shall be reduced by the number of factors with a denominator of zero.

SECTION 50. Sections 2 and 6, chapter 739, Oregon Laws 2003, are repealed.

SECTION 51. ORS 317.152, as amended by section 12, chapter 739, Oregon Laws 2003, is amended to read:

317.152. (1) A credit against taxes otherwise due under this chapter shall be allowed to eligible taxpayers for increases in qualified research expenses and basic research payments. The credit shall be determined in accordance with section 41 of the Internal Revenue Code, except as follows:

(a) The applicable percentage specified in section 41(a) of the Internal Revenue Code shall be five percent.

(b) "Qualified research" and "basic research" shall consist only of research conducted in Oregon.

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

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

(B) Section 41(h) of the Internal Revenue Code (relating to termination of the federal credit).

(2) For purposes of this section, "eligible taxpayer" means a corporation, other than a corporation excluded under Internal Revenue Code section 41(e)(7)(E).

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

(4) The maximum credit under this section may not exceed [~~\$750,000~~] **\$2 million**.

(5) Any tax credit that is otherwise allowable under this section and that is not used by the taxpayer in that 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.

SECTION 52. ORS 317.154, as amended by section 13, chapter 739, Oregon Laws 2003, is amended to read:

317.154. (1) A credit against taxes otherwise due under this chapter shall be allowed for qualified research expenses that exceed 10 percent of Oregon sales.

(2) For purposes of this section:

(a) "Oregon sales" shall be computed using the laws and administrative rules for calculating the numerator of the Oregon sales factor under ORS 314.665.

(b) "Qualified research" has the meaning given the term under section 41(d) of the Internal Revenue Code and shall consist only of research conducted in Oregon.

(3) The credit under this section is equal to five percent of the amount by which the qualified research expenses exceed 10 percent of Oregon sales.

(4) The credit under this section shall not exceed \$10,000 times the number of percentage points by which the qualifying research expenses exceed 10 percent of Oregon sales.

(5) The maximum credit under this section may not exceed [~~\$750,000~~] **\$2 million**.

(6) Any tax credit that is otherwise allowable under this section and that is not used by the taxpayer in that 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.

SECTION 53. The amendments to ORS 317.152 and 317.154 by sections 51 and 52 of this 2005 Act apply to tax years beginning on or after January 1, 2006.

SECTION 54. ORS 315.266 is amended to read:

315.266. (1) In addition to any other credit available for purposes of ORS chapter 316, an eligible resident individual shall be allowed a credit against the tax otherwise due under ORS chapter 316 for the tax year in an amount equal to five percent of the earned income credit allowable to the individual for the same tax year under section 32 of the Internal Revenue Code.

(2) An eligible 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 subsection (1) of this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(3) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue 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.

(4) 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.

[(5) The credit allowed under this section may not exceed the tax liability of the taxpayer and may not be carried forward to a succeeding tax year.]

(5) If the amount allowable as a credit under this section, when added to the sum of the amounts allowable as payment of tax under ORS 316.187 or 316.583, other tax prepayment amounts and other refundable credit amounts, exceeds the taxes imposed by ORS chapters 314 and 316 for the tax year after application of any nonrefundable credits allowable for purposes of ORS chapter 316 for the tax year, the amount of the excess shall be refunded to the taxpayer as provided in ORS 316.502.

(6) The Department of Revenue may adopt rules for purposes of this section, including but not limited to rules relating to proof of eligibility and the furnishing of information regarding the federal earned income credit claimed by the taxpayer for the tax year.

(7) Refunds attributable to the earned income credit allowed under this section shall not bear interest.

SECTION 55. ORS 316.502 is amended to read:

316.502. (1) The net revenue from the tax imposed by this chapter, after deducting refunds, shall be paid over to the State Treasurer and held in the General Fund as miscellaneous receipts available generally to meet any expense or obligation of the State of Oregon lawfully incurred.

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

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

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

(b) The refund payments in excess of tax liability authorized under ORS 315.262 **and 315.266.**

SECTION 56. The amendments to ORS 315.266 and 316.502 by sections 54 and 55 of this 2005 Act apply to tax years beginning on or after January 1, 2006.

SECTION 57. ORS 315.266, as amended by section 54 of this 2005 Act, is amended to read:

315.266. (1) In addition to any other credit available for purposes of ORS chapter 316, an eligible resident individual shall be allowed a credit against the tax otherwise due under ORS chapter 316 for the tax year in an amount equal to *[five]* **six** percent of the earned income credit allowable to the individual for the same tax year under section 32 of the Internal Revenue Code.

(2) An eligible 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 subsection (1) of this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(3) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue 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.

(4) 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.

(5) If the amount allowable as a credit under this section, when added to the sum of the amounts allowable as payment of tax under ORS 316.187 or 316.583, other tax prepayment amounts and other refundable credit amounts, exceeds the taxes imposed by ORS chapters 314 and 316 for the tax year after application of any nonrefundable credits allowable for purposes of ORS chapter 316 for the tax year, the amount of the excess shall be refunded to the taxpayer as provided in ORS 316.502.

(6) The Department of Revenue may adopt rules for purposes of this section, including but not limited to rules relating to proof of eligibility and the furnishing of information regarding the federal earned income credit claimed by the taxpayer for the tax year.

(7) Refunds attributable to the earned income credit allowed under this section shall not bear interest.

SECTION 58. The amendments to ORS 315.266 by section 57 of this 2005 Act apply to tax years beginning on or after January 1, 2008.

SECTION 59. ORS 315.266, as amended by sections 54 and 57 of this 2005 Act, is amended to read:

315.266. (1) In addition to any other credit available for purposes of ORS chapter 316, an eligible resident individual shall be allowed a credit against the tax otherwise due under ORS chapter 316 for the tax year in an amount equal to six percent of the earned income credit allowable to the individual for the same tax year under section 32 of the Internal Revenue Code.

(2) An eligible 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 subsection (1) of this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(3) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue 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.

(4) 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.

[(5) If the amount allowable as a credit under this section, when added to the sum of the amounts allowable as payment of tax under ORS 316.187 or 316.583, other tax prepayment amounts and other refundable credit amounts, exceeds the taxes imposed by ORS chapters 314 and 316 for the tax year after application of any nonrefundable credits allowable for purposes of ORS chapter 316 for the tax year, the amount of the excess shall be refunded to the taxpayer as provided in ORS 316.502.]

(5) The credit allowed under this section may not exceed the tax liability of the taxpayer and may not be carried forward to a succeeding tax year.

(6) The Department of Revenue may adopt rules for purposes of this section, including but not limited to rules relating to proof of eligibility and the furnishing of information regarding the federal earned income credit claimed by the taxpayer for the tax year.

(7) Refunds attributable to the earned income credit allowed under this section shall not bear interest.

SECTION 60. ORS 316.502, as amended by section 55 of this 2005 Act, is amended to read:

316.502. (1) The net revenue from the tax imposed by this chapter, after deducting refunds, shall be paid over to the State Treasurer and held in the General Fund as miscellaneous receipts available generally to meet any expense or obligation of the State of Oregon lawfully incurred.

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

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

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

(b) The refund payments in excess of tax liability authorized under ORS 315.262 *[and 315.266]*.

SECTION 61. The amendments to ORS 315.266 and 316.502 by sections 59 and 60 of this 2005 Act apply to tax years beginning on or after January 1, 2011.

SECTION 62. (1) Section 63 of this 2005 Act is added to and made a part of ORS 316.143 to 316.146.

(2) ORS 316.143 to 316.146 are added to and made a part of ORS chapter 315.

SECTION 63. (1) A resident or nonresident individual who is certified as eligible under ORS 442.550 to 442.570 and who is certified as an emergency medical technician under ORS chapter 682 shall be allowed a credit against the taxes that are otherwise due under ORS chapter 316 if the Office of Rural Health certifies that the individual provides volunteer emergency medical technician services in a rural area that comprise at least 20 percent of the total emergency medical technician services provided by the individual in the tax year.

(2) The amount of the credit shall equal \$250.

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

(4) As used in this section, "rural area" means a geographic area that is located at least 25 miles from any city with a population of 30,000 or more.

SECTION 64. Section 65 of this 2005 Act is added to and made a part of ORS 442.550 to 442.570.

SECTION 65. The Office of Rural Health shall establish criteria for certifying individuals who are certified as emergency medical technicians under ORS chapter 682 as eligible for the tax credit authorized by section 63 of this 2005 Act. Upon application for the credit and upon a finding that the applicant will be providing emergency medical technician services in one or more rural areas and otherwise meets the eligibility criteria established by the office, the office shall certify the individual as eligible for the tax credit authorized by section 63 of this 2005 Act.

SECTION 66. Section 63 of this 2005 Act applies to tax credit certifications issued by the Office of Rural Health on or after January 1, 2006, and before January 1, 2011.

SECTION 67. This 2005 Act takes effect on the 91st day after the date on which the regular session of the Seventy-third Legislative Assembly adjourns sine die.

Passed by Senate February 9, 2005

Repassed by Senate August 5, 2005

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Secretary of Senate

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President of Senate

Passed by House July 10, 2005

Repassed by House August 5, 2005

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Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State