

**DIVISION 315  
PERSONAL INCOME TAX CREDITS**

**150-315.204-(B)**

**Dependent Care Assistance Credit**

As used in this rule, references to the Internal Revenue Code mean the code as in effect on the date specified in ORS 316.012.

(1) *Qualifications.* To qualify for this credit, the following requirements must be met:

(a) The assistance must be provided to an employee pursuant to a program which meets the requirements of Internal Revenue Code (IRC) Section 129(d).

(b) In the case of an on-site facility, the credit shall be based upon the value of the services actually provided to the dependents of employees. The value of services provided to dependents of nonemployees shall not be included. In determining the value of services actually provided to dependents of employees, the employer shall use the actual direct and indirect costs, or a fair market value amount.

(c) The provider of the dependent care cannot be the spouse, a dependent, or a child under age 19 of the employee.

(d) Dependent care assistance funded by a salary reduction cannot be included in the computation of the credit. If assistance is provided by both a salary reduction and an employer contribution, only that portion of the assistance provided by the employer contribution shall qualify for the credit.

(e) Only amounts paid or incurred for dependent care assistance services performed in Oregon are eligible for the credit.

(f) The individual receiving the dependent care must meet the requirements of IRC 21(b)(1).

(2) *Computation of the Credit.* The credit is equal to 50% of the qualifying expenses paid or incurred by the employer. However, no more than \$5,000 paid or incurred for the care of the dependents of each employee can be included for the purpose of this computation.

*Example.* In 1988, Employer A reimburses three employees for the cost of dependent care services provided to the employees' qualifying dependents. The amount reimbursed is based upon the number of each employee's dependents receiving dependent care services. Assuming that Employer A otherwise qualifies for the credit, the allowable dependent care assistance credit is computed as follows:

<b>Employee:</b>	<b>X</b>	<b>Y</b>	<b>Z</b>	<b>TOTAL</b>
Reimbursement	\$5,000	\$2,000	\$6,000	\$13,000
Credit is lesser of:				
a. 50% of cost, or	\$2,500	\$1,000	\$3,000	
b. \$2,500	<u>\$2,500</u>	<u>\$2,500</u>	<u>\$2,500</u>	
Allowable credit	<u>\$2,500</u>	<u>\$1,000</u>	<u>\$2,500</u>	<u>\$6,000</u>

(3) An employer must reduce deductions claimed on the employer's tax return by the dollar amount of the dependent care assistance credit allowed. In the example above, Employer A must reduce deductions for Oregon tax purposes by \$6,000.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.204

Hist.: RD 5-1988, f. 5-25-88, cert. ef. 6-1-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.134-(B); RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

## **150-315.208**

### **Dependent Care Facility Credit**

#### (1) General Information.

As used in this rule, references to the Internal Revenue Code mean the code as in effect on the date specified in ORS 316.012.

(a) A credit is available to employers that acquire, construct, reconstruct, renovate or otherwise improve real property for use as a dependent care facility. If real property is acquired by lease for use as a dependent care facility, only the costs paid or incurred for leasehold improvements qualify for the dependent care facility tax credit.

(b) An employer may have more than one facility.

(c) More than one employer may join in acquiring, constructing, reconstructing, renovating or otherwise improving real property to be used as a dependent care facility.

(d) The employer may operate the facility or may contract with others to operate it.

(e) The credit is first available in tax years beginning on or after January 1, 1988 for facilities placed into operation on or after January 1, 1988 and prior to January 1, 2002.

(f) The credit shall be spread equally over a period of ten tax years beginning with the tax year the facility is first placed into operation.

(g) Any tax credit otherwise allowable which is not used by the taxpayer in a tax year may be carried forward and offset against the taxpayer's tax liability for up to five tax years.

(A) If a taxpayer fails to meet the credit qualifications for a tax year, the current year's credit is lost, and may not be carried forward to any other tax year. Only a credit which is allowable, but unused due to insufficient tax liability, may be carried forward.

Example: Employer A constructs a dependent care facility, receives certification from Children's Services Division to operate the facility, and provides dependent care assistance in the facility as defined in Internal Revenue Code Section 129. All of these events occur in tax year 1988. The total available credit is \$100,000, which may be claimed at a rate of \$10,000 per year, beginning with tax year 1988 and ending with tax year 1997. In tax years 1988, 1989 and 1990, the taxpayer meets the qualifications and claims a tax credit of \$10,000 for each of these years. In tax year 1991, the taxpayer fails to receive certification from Children's Services Division, thus the \$10,000 tax credit for 1991 is not allowable. The 1991 credit may not be carried forward to any other tax year: it is lost forever. However, any unused credit from tax years 1988, 1989 or 1990 is carried forward and used in 1991 if sufficient tax liability exists.

(B) If a credit carried forward from a prior year and a current year's credit are available, the taxpayer shall use the credit from the prior year first and then the current year's credit.

(C) If a credit carried forward from a prior year and a current year's credit are available, the two credits may be combined and taken up to the amount of tax liability for the year.

(h) If the employer is a shareholder of an S corporation established to own and/or operate the facility, each shareholder's share of the cost of the facility is subject to the limitations as provided under ORS 315.208. Each shareholder's share of the cost is determined by applying the shareholder's percentage of ownership interest to the facilities total cost.

(i) If the employer is a partnership or S corporation, the tax credit shall be attributable to the partnership or S corporation. The current tax year's credit shall be allocated to the current tax year's partners or shareholders based on the partners' or shareholders' percentages of ownership interest.

(j) If the employer is a partner in a partnership established to own and/or operate the facility, each partner's share of the cost of the facility is subject to the limitations as provided under ORS 315.208. The cost of purchasing a partnership interest by a new employer-partner shall qualify for the credit to the extent the cost is attributable to the dependent care facility. The purchase must be made in a tax year beginning on or after January 1, 1988 and must be purchased prior to January 1, 2002 for the partner to qualify for the credit.

(k) Depreciation deductions attributable to a dependent care facility must be reduced by the annual credit amount each year that the credit is available. If the annual credit amount exceeds the depreciation deduction allowable, such excess must be carried over to reduce the depreciation deduction in subsequent tax years.

(2) *Qualifications.* To qualify for this credit, the following requirements must be met:

(a) The dependent care facility must be located in Oregon.

(b) The dependent care facility must be able to accommodate six or more children.

(c) The operator of the facility must hold a certificate of approval (either permanent or temporary) issued by the Children's Services Division, Department of Human Resources, on the last day of each tax year in which the credit is claimed. Upon request by the department, a copy of the certificate of approval shall be provided for any tax year in which the credit is claimed.

(d) The employer must have a dependent care assistance plan as provided under IRC Section 129 and by the last day of each tax year for which the credit is claimed, the employer must either make payment for, or provide for, services defined as dependent care assistance in Internal Revenue Code Section 129.

(e) The facility must be in use as a dependent care facility on the last day of the tax year for which the credit is claimed. If the facility is in use up to the end of the normal operating year of the employer, or for the entire period in which seasonal employees are normally employed, this qualification will be met. This is true even though the employer's normal operating year, or period in which seasonal employees are employed, ends before the last day of their tax year. (Seasonal employees include but are not limited to agricultural, construction and cannery.)

*Example 1:* Employer A is a calendar-year taxpayer. The business is normally shut down for the last week of each year to allow employees time off during the holiday season. A dependent care facility was placed in service in April, 1988. Except for the last week, the facility was used for the rest of the 1988 business year. This facility would qualify for the credit because it was in use up to the end of the normal operating year for this business.

*Example 2:* Assume the same facts as in *Example 1*, except Employer A decides to shut down the dependent care facility at the end of October, 1988. In this case, the facility wouldn't qualify for the credit because it wasn't in use up to the end of the normal operating year.

*Example 3:* Employer B is a farmer and a calendar-year taxpayer. Employer B hires seasonal employees during the harvest period. A dependent care facility was placed in service in July, 1988 to provide care for the dependents of these employees. It was in operation through the end of the 1988 harvest period, at which time the facility was closed. The facility wasn't used again until it was reopened to care for the dependents of seasonal employees during the 1989 harvest period. This facility would qualify for the credit in 1988 because it was in use for the entire period in 1988 in which the seasonal employees were employed.

(f) The dependent care facility shall first provide dependent care services for dependents of employees. However, dependent care services may also be provided to dependents of nonemployees when the facility is not fully used by employee's dependents. If the facility is operating at full capacity and dependents of nonemployees are receiving services and an employee requests dependent care services at the employer's facility, dependent care services must be provided by the employer to the employee. The employee shall be given priority for the first available vacancy. The employer may in addition provide such services by providing assistance to the employee in finding other dependent care arrangements.

(g) The individuals receiving the dependent care must meet the requirements under IRC 21(b)(1).

(3) Computation of the Credit.

(a) The credit is equal to the lesser of:

(A) 50% of cost, or

(B) \$2,500 times the number of full-time equivalent employees (FTEs), or

(C) \$100,000.

(b) For the purpose of computing the credit limitation under 3(a)(B) above, the number of FTEs used is the number on any date selected by the taxpayer during the two-year period ending on the date the tax year ends in which the credit is first claimed. Only those employees working

in proximity to the facility are included in computing this limitation. All employees working within two miles of a facility are deemed to be in proximity to a facility. For employees working beyond two miles, the determination whether they are in proximity to a facility will be made on a case-by-case basis, i.e., all facts and circumstances will be considered.

(c) A single limitation under 3(a)(C) above, applies to all facilities located in proximity to a job site. All facilities located more than two miles from a job site are deemed not to be in proximity to a job site. For all facilities located within two miles of a job site, a single credit limitation applies unless the facts and circumstances indicate they are not in proximity to a job site.

(d) Where more than one employer shares a facility, each employer's share is subject to the limitations listed in (3)(a) above.

Example. Employers A, B, C and D have offices and manufacturing facilities in the same business park. In 1988, they join in constructing a dependent care facility costing \$575,000 within the park. Each employer's contributed cost in the facility and the computation of each employer's credit are as follows:

<b>Employer</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Cost	\$200,000	\$250,000	\$100,000	\$25,000
FTEs	20	50	30	6
Credit is lesser of:				
a. 50% of cost,	\$100,000	\$125,000	\$50,000	\$ 12,500
b. \$2,500 x No. of FTEs, or	\$50,000	\$125,000	\$75,000	\$ 15,000
c. \$100,000	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>
Total available credit	\$50,000	\$100,000	\$50,000	\$12,500
Annual credit amount	<u>\$5,000</u>	<u>\$10,000</u>	<u>\$5,000</u>	<u>\$1,250</u>

Employers A, B, C and D must reduce their Oregon depreciation deductions attributable to the facility each year by their respective annual credit amount.

(e) The adjusted basis of the dependent care facility must be adjusted each year by the amount of depreciation allowable using depreciation methods recognized by the Department of Revenue. The depreciation deduction is the depreciation allowable minus the amount of credit claimed.

*Example:*

<b>Employer</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Cost of facility	\$100,000	\$250,000	\$100,000	\$30,000
Total available credit	\$50,000	\$100,000	\$50,000	\$15,000
Annual credit amount	\$5,000	\$10,000	\$5,000	\$1,500
Life of facility	10	10	20	30
Depreciation allowable assuming straight-line \$10,000		\$25,000	\$5,000	\$1,000
Oregon depreciation deduction:				
Depreciation allowable \$10,000		\$25,000	\$5,000	\$1,000
Less annual credit <u>(5,000)</u>		<u>(10,000)</u>	<u>(5,000)</u>	<u>(1,500)</u>
Depreciation deduction <u>\$5,000</u>		<u>\$15,000</u>	<u>\$ 0</u>	<u>\$ 0*</u>
Adjusted basis:				
Cost	\$100,000	\$250,000	\$100,000	\$30,000
Less dep. allowable <u>(10,000)</u>		<u>(25,000)</u>	<u>(5,000)</u>	<u>(1,000)</u>
Adjusted basis <u>\$90,000</u>		<u>\$225,000</u>	<u>\$95,000</u>	<u>\$29,000</u>

\* The \$500 excess of the credit over the depreciation allowable shall be carried over to reduce the depreciation deduction in subsequent tax years.

**[Publications:** The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.208

Hist.: RD 5-1988, f. 5-25-88, cert. ef. 6-1-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.132; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

**150-315.304(2)**

**Pollution Control Facilities: Computation of Credit**

(1) *Definitions.* For purposes of ORS 315.304 and this rule:

(a) “Certified cost” means that portion of total costs that the Environment Quality Commission (EQC) determines is allocable to a pollution control facility.

(b) “Facility” refers to one or more facilities certified under one certificate, with one serial number and with the same allowable percentages used in determining the certified costs and the maximum allowable credit.

(c) “Applicable percentage” means the percentage indicated on the certification issued by the EQC for that facility.

(d) “Useful life” is the remaining years of expected useful life at the time the facility is certified, but not more than 10 years.

(e) “Tax liability” is the amount of tax that is due after any offsets or other tax credits are taken, such as those permitted under ORS 316.082, ORS 316.087, ORS 316.102, ORS 315.104, ORS 315.354, and ORS 315.324.

(2) The credit is equal to the lesser of:

(a) The applicable percentage multiplied by the certified cost and divided by the useful life of the property; or

(b) The taxpayer’s tax liability after other credits.

(3) If additional costs are incurred after a pollution control certificate is issued and a revised certificate including those additional costs is issued, the credit for the additional costs may not be claimed prior to the year in which the revised certificate is issued. The credit for those additional costs must be spread equally over the remaining years on the original certificate.

(4) A pollution control facility’s useful life is determined as of the date it is certified. If a facility becomes obsolete and is abandoned before the end of its expected useful life, no remaining unused credit is allowable. If the life of a pollution control facility is extended by repair, which is not eligible for additional tax credit, the taxpayer continues to claim the original credit over the original useful life. If an error in the actual amount spent prior to certification by the (EQC) is later discovered and the EQC issues a revised certificate, the taxpayer must amortize the correct certified cost over the original useful life, and amend returns for those years for which credits have been claimed that are still open. Any cost incurred and certified after the original certification may be amortized over the new remaining useful life to the extent that the total life of the facility over which credits are claimed does not exceed ten years. The additional credit may be claimed beginning in the year in which certification for the additional cost was obtained.

(5) If a pollution control facility’s certification is revoked by the EQC pursuant to ORS 468.185(1)(b), the allowable credit for the tax year must be prorated. The amount for the portion of the tax year before the certification is revoked is allowed. If no appeal is made, the certificate is considered revoked on the date the revocation is issued.

*Example 1.* A calendar year taxpayer has a pollution control facility certified January 1, 1996. The credit otherwise allowable for 2000 is \$500. On June 30, 2000, the facility’s certification was revoked by the EQC. The credit allowable for 2000 is computed as follows:

Credit allowable for full tax year	\$500
Portion of tax year certified (6/12)	x <u>          .50</u>
Allowable credit for 2000	\$250

(6) When a certification is reinstated by the EQC under ORS 468.185(5) because the facility has been brought into compliance with the EQC’s guidelines, the certificate is reinstated for the remaining period of certification, less the period of revocation. The period of revocation is from the date the revocation is issued to the date of reinstatement. The credit for the period of revocation is lost.

*Example 2.* Assume the same facts as in *Example 1*, except that the facility's certification was reinstated September 30, 2000. The credit allowable for 2000 is computed as follows:

Credit allowable for full tax year	\$500
Portion of tax year certified (9/12)	x <u>.75</u>
Allowable credit for 2000	\$375
Amount of credit lost	\$125

(7) If a pollution control facility's certificate is revoked by the EQC pursuant to ORS 468.185(1)(a), because the certification was obtained by fraud or misrepresentation, all tax relief allowed in prior years is forfeited. The credit forfeited will be added to any other excise or income tax due from the taxpayer who had claimed the credit, for the tax year in which the certification is revoked.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.304

Hist.: 1-77; 12-31-77; 12-31-81; 12-31-83; 12-31-84; 12-31-87; 12-31-88; 12-31-89, Renumbered from 150-316.097(2); 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01