

# House Bill 2426

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of former Representative Jeff Kropf)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes credit against income taxes and corporate excise taxes for agricultural producers of plant or animal matter used for biodiesel or ethanol production in this state.

Applies to tax years beginning on or after January 1, 2007.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to tax credits for the production of agricultural products used in fuel; creating new pro-  
3 visions; amending ORS 314.752 and 318.031; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 315.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Agricultural producer" means a person engaged in farming or livestock operations**  
8 **that produce the plant or animal matter that, after sale, is used by a biodiesel or ethanol**  
9 **producer to produce biodiesel or ethanol.**

10 (b) **"Biodiesel" means the monoalkyl esters of long-chain fatty acids derived from plant**  
11 **or animal matter that meet the registration requirements for fuels and fuel additives es-**  
12 **tablished under 42 U.S.C. 7545, as amended and in effect on the effective date of this 2007**  
13 **Act.**

14 (c) **"Ethanol" has the meaning given that term in ORS 646.905.**

15 (2) **An agricultural producer shall be allowed a credit against the taxes that would oth-**  
16 **erwise be due under ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter**  
17 **317 or 318) for the production in this state of plant or animal matter that is used to produce**  
18 **biodiesel or ethanol in this state.**

19 (3) **The amount of the credit shall equal:**

20 (a) **Five cents per gallon of biodiesel produced in this state from plant or animal matter**  
21 **produced in this state by the agricultural producer; and**

22 (b) **Four cents per gallon of ethanol produced in this state from plant or animal matter**  
23 **produced in this state by the agricultural producer.**

24 (4) **Each biodiesel producer or ethanol producer shall report to an agricultural producer**  
25 **the quantity, in gallons, of biodiesel or ethanol produced from plant or animal matter sold**  
26 **to the biodiesel or ethanol producer by the agricultural producer. The report shall be made**  
27 **in writing within 30 days of the date of sale of the plant or animal matter to the biodiesel**  
28 **or ethanol producer.**

29 (5) **Except as provided in subsection (7) of this section, the amount of the credit may not**  
30 **exceed the tax liability of the taxpayer.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1       **(6) The credit shall be claimed on a form prescribed by the Department of Revenue that**  
 2       **contains the information required by the department.**

3       **(7) Any tax credit otherwise allowable under this section that is not used by the taxpayer**  
 4       **in a particular tax year may be carried forward and offset against the taxpayer’s tax liability**  
 5       **for the next succeeding tax year. Any credit remaining unused in the next succeeding tax**  
 6       **year may be carried forward and used in the second succeeding tax year, and likewise any**  
 7       **credit not used in that second succeeding tax year may be carried forward and used in the**  
 8       **third succeeding tax year, and any credit not used in that third succeeding tax year may be**  
 9       **carried forward and used in the fourth succeeding tax year, but may not be carried forward**  
 10       **for any tax year thereafter.**

11       **(8) In the case of a credit allowed under this section:**

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

14       **(b) If a change in the status of the taxpayer from resident to nonresident or from non-**  
 15       **resident to resident occurs, the credit allowed by this section shall be determined in a man-**  
 16       **ner consistent with ORS 316.117.**

17       **(c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,**  
 18       **or if the Department of Revenue terminates the taxpayer’s taxable year under ORS 314.440,**  
 19       **the credit allowed under this section shall be prorated or computed in a manner consistent**  
 20       **with ORS 314.085.**

21       **SECTION 3.** ORS 314.752 is amended to read:

22       314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a  
 23       C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
 24       business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
 25       allowable to the shareholders of the S corporation.

26       (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on  
 27       income of the shareholder of an S corporation, there shall be taken into account the shareholder’s  
 28       pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but  
 29       for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-  
 30       capture or recovery shall be passed through to shareholders in pro rata shares as determined in the  
 31       manner prescribed under section 1377(a) of the Internal Revenue Code.

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

35       (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
 36       credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
 37       316.117, then that provision shall apply to the nonresident shareholder.

38       (5) As used in this section, “business tax credit” means a tax credit granted to personal income  
 39       taxpayers to encourage certain investment, to create employment, economic opportunity or incentive  
 40       or for charitable, educational, scientific, literary or public purposes that is listed under this sub-  
 41       section as a business tax credit or is designated as a business tax credit by law or by the Depart-  
 42       ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309  
 43       (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS  
 44       315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS  
 45       315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care

1 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS  
 2 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324  
 3 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507  
 4 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone  
 5 marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative  
 6 fuel vehicle) **and section 2 of this 2007 Act (agricultural production for biodiesel and**  
 7 **ethanol).**

8 **SECTION 4.** ORS 318.031 is amended to read:

9 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
 10 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
 11 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
 12 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.156, 315.204,  
 13 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 **and section 2 of this 2007 Act** (all  
 14 only to the extent applicable [*for*] to a corporation) and ORS chapter 317.

15 **SECTION 5.** **Section 2 of this 2007 Act and the amendments to ORS 314.752 and 318.031**  
 16 **by sections 3 and 4 of this 2007 Act apply to tax years beginning on or after January 1, 2007.**

17 **SECTION 6.** **This 2007 Act takes effect on the 91st day after the date on which the reg-**  
 18 **ular session of the Seventy-fourth Legislative Assembly adjourns sine die.**

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