

Senate Bill 938

Sponsored by Senator WESTLUND; Senator FERRIOLI, Representatives DALLUM, ROBLAN, P SMITH

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**.

- Creates income tax credit for production or collection of biomass used to produce biofuel.
- Applies to tax credits for tax years beginning on or after January 1, 2007, and before January 1, 2013.
- Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits for biomass producers; creating new provisions; amending ORS 314.752 and
3 318.031; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 and 3 of this 2007 Act are added to and made a part of ORS**
6 **chapter 315.**

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

8 (a) **"Agricultural producer" means a person that produces biomass that is used in Oregon**
9 **as biofuel or to produce biofuel.**

10 (b) **"Biofuel" means liquid, gaseous or solid fuels derived from biomass.**

11 (c) **"Biomass" means organic matter that is available on a renewable or recurring basis**
12 **and that is derived from:**

13 (A) **Forest or rangeland woody debris from harvesting or thinning conducted to improve**
14 **forest or rangeland ecological health and reduce uncharacteristic stand replacing wildfire**
15 **risk;**

16 (B) **Wood material from hardwood timber described in ORS 321.267 (3);**

17 (C) **Agricultural residues;**

18 (D) **Offal and tallow from animal rendering;**

19 (E) **Food wastes collected as provided under ORS chapter 459 or 459A;**

20 (F) **Yard or wood debris collected as provided under ORS chapter 459 or 459A;**

21 (G) **Wastewater solids; or**

22 (H) **Crops grown solely to be used for energy.**

23 (d) **"Biomass" does not mean wood that has been treated with creosote,**
24 **pentachlorophenol, inorganic arsenic or other inorganic chemical compounds.**

25 (e) **"Biomass collector" means a person that collects biomass to be used in Oregon as**
26 **biofuel or to produce biofuel.**

27 (2)(a) **An agricultural producer or biomass collector shall be allowed a credit against the**
28 **taxes that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation,**
29 **under ORS chapter 317 or 318 for:**

30 (A) **The production of biomass that is used in Oregon as biofuel or to produce biofuel;**

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 or

2 (B) The collection of biomass that is used in Oregon as biofuel or to produce biofuel.

3 (b) A credit under this section may be claimed in the tax year in which the agricultural
4 producer or biomass collector transfers biomass to a biofuel producer.

5 (3) The amount of the credit shall be calculated as follows:

6 (a) Determine the quantity of biomass transferred to a biofuel producer during the tax
7 year;

8 (b) Categorize the biomass into appropriate categories; and

9 (c) Multiply the quantity of biomass in a particular category by the appropriate credit
10 rate for that category, expressed in dollars and cents, that is prescribed in section 5 of this
11 2007 Act.

12 (4) The amount of the credit claimed under this section for any tax year may not exceed
13 the tax liability of the taxpayer.

14 (5)(a) A biofuel producer shall provide a written receipt to an agricultural producer or
15 biomass collector at the time biomass is transferred from the agricultural producer or
16 biomass collector to the biofuel producer. The receipt must state the quantity and type of
17 biomass being transferred and that the biomass is to be used to produce biofuel.

18 (b) Each agricultural producer or biomass collector shall maintain the receipts described
19 in this subsection in their records for a period of at least five years after the tax year in
20 which the credit is claimed or for a longer period of time prescribed by the Department of
21 Revenue.

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

24 (7) Any tax credit otherwise allowable under this section that is not used by the taxpayer
25 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
26 for the next succeeding tax year. Any credit remaining unused in the next succeeding tax
27 year may be carried forward and used in the second succeeding tax year, and likewise any
28 credit not used in that second succeeding tax year may be carried forward and used in the
29 third succeeding tax year, and any credit not used in that third succeeding tax year may be
30 carried forward and used in the fourth succeeding tax year, but may not be carried forward
31 for any tax year thereafter.

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

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

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

38 (c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,
39 or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit
40 allowed under this section shall be prorated or computed in a manner consistent with ORS
41 314.085.

42 **SECTION 3.** (1) A person that has obtained a tax credit under section 2 of this 2007 Act
43 may transfer the credit for consideration to a taxpayer subject to tax under ORS chapter 316,
44 317 or 318.

45 (2) To transfer the tax credit, the taxpayer earning the credit and the taxpayer that will

1 claim the credit shall jointly file a notice of tax credit transfer with the Department of Re-
 2 venue. The notice shall be given on a form prescribed by the department that contains all
 3 of the following:

4 (a) The name, address and taxpayer identification number of the transferor and
 5 transferee;

6 (b) The amount of the tax credit; and

7 (c) Any other information required by the department.

8 (3) Notwithstanding subsection (1) of this section, a tax credit may not be transferred
 9 under this section:

10 (a) From an agricultural producer to a biomass collector claiming a credit for collecting
 11 the biomass; or

12 (b) From a biomass collector to an agricultural producer claiming a credit for producing
 13 the biomass.

14 **SECTION 4.** Section 5 of this 2007 Act is added to and made a part of ORS chapter 469.

15 **SECTION 5.** To be eligible for the tax credit under section 2 of this 2007 Act, the biomass
 16 must be produced or collected in Oregon as a feedstock for bioenergy or biofuel production
 17 in Oregon. The credit rates for biomass are:

18 (1) For oil seed crops, \$0.05 per pound.

19 (2) For grain crops, including but not limited to wheat, barley and triticale, \$0.90 per
 20 bushel.

21 (3) For virgin oil or alcohol delivered for production in Oregon from Oregon-based
 22 feedstock, \$0.10 per gallon.

23 (4) For used cooking oil or waste grease, \$0.10 per gallon.

24 (5) For wastewater biosolids, \$10.00 per wet ton.

25 (6) For woody biomass collected from nursery, orchard, agricultural, forest or rangeland
 26 property in Oregon, including but not limited to prunings, thinning, plantation rotations, log
 27 landing or slash resulting from harvest or forest health stewardship, \$10.00 per green ton.

28 (7) For grass, wheat, straw or other vegetative biomass from agricultural crops, \$10.00
 29 per green ton.

30 (8) For yard debris and municipally generated food waste, \$5.00 per wet ton.

31 (9) For animal manure or rendering offal, \$5.00 per wet ton.

32 **SECTION 6.** Sections 2, 3 and 5 of this 2007 Act apply to tax credits for tax years begin-
 33 ning on or after January 1, 2007, and before January 1, 2013.

34 **SECTION 7.** ORS 314.752 is amended to read:

35 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
 36 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 37 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 38 allowable to the shareholders of the S corporation.

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

45 (3) The character of any item included in a shareholder's pro rata share under subsection (2)

1 of this section shall be determined as if such item were realized directly from the source from which
2 realized by the corporation, or incurred in the same manner as incurred by the corporation.

3 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
4 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
5 316.117, then that provision shall apply to the nonresident shareholder.

6 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
7 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
8 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
9 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
10 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
11 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS
12 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS
13 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care
14 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS
15 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324
16 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507
17 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone
18 marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative
19 fuel vehicle) **and section 2 of this 2007 Act (biomass production for biofuel).**

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

21 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
22 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
23 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
24 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.156, 315.204,
25 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 **and section 2 of this 2007 Act** (all
26 only to the extent applicable [*for*] to a corporation) and ORS chapter 317.

27 **SECTION 9.** **This 2007 Act takes effect on the 91st day after the date on which the reg-**
28 **ular session of the Seventy-fourth Legislative Assembly adjourns sine die.**

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