

House Bill 2159

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Revenue)

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**.

Provides for transfer of portion of business energy tax credit. Provides that sale, exchange or other disposition of interest in partnership or of shares in S corporation is not basis for revocation of certificate for purposes of business energy tax credit.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to business energy tax credits; amending ORS 315.354 and 469.206; and prescribing an ef-
3 fective date.

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

5 **SECTION 1.** ORS 315.354 is amended to read:

6 315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if
7 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the
8 facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit
9 is allowed as follows:

10 (a) Except as provided in paragraph (b) or (c) of this subsection, the credit allowed in each of
11 the first two tax years in which the credit is claimed shall be 10 percent of the certified cost of the
12 facility, but may not exceed the tax liability of the taxpayer. The credit allowed in each of the
13 succeeding three years shall be five percent of the certified cost, but may not exceed the tax liability
14 of the taxpayer.

15 (b) If the certified cost of the facility does not exceed \$20,000, the total amount of the credit
16 allowable under subsection (4) of this section may be claimed in the first tax year for which the
17 credit may be claimed, but may not exceed the tax liability of the taxpayer.

18 (c) If the facility uses or produces renewable energy resources or is a renewable energy re-
19 source equipment manufacturing facility, the credit allowed in each of five succeeding tax years
20 shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the
21 taxpayer.

22 (2) Notwithstanding subsection (1) of this section:

23 (a) If the facility is one or more renewable energy resource systems installed in a single-family
24 dwelling, the amount of the credit for each system shall be determined as if the facility was con-
25 sidered a residential alternative energy device under ORS 316.116, but subject to the maximum
26 credit amount under subsection (4)(b) of this section;

27 (b) If the facility is a high-performance home, the amount of the credit shall equal the amount
28 determined under paragraph (a) of this subsection plus \$3,000; and

29 (c) If the facility is a high-performance home or a homebuilder-installed renewable energy sys-
30 tem, the total amount of the credit may be claimed in the first tax year for which the credit is

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 claimed, but may not exceed the tax liability of the taxpayer.

2 (3) In order for a tax credit to be allowable under this section:

3 (a) The facility must be located in Oregon;

4 (b) The facility must have received final certification from the Director of the State Department
5 of Energy under ORS 469.185 to 469.225; and

6 (c) The taxpayer must be an eligible applicant under ORS 469.205 (1)(c).

7 (4) The total amount of credit allowable to an eligible taxpayer under this section may not ex-
8 ceed:

9 (a) 50 percent of the certified cost of a renewable energy resources facility, a renewable energy
10 resource equipment manufacturing facility or a high-efficiency combined heat and power facility;

11 (b) \$9,000 per single-family dwelling for homebuilder-installed renewable energy systems;

12 (c) \$12,000 per single-family dwelling for homebuilder-installed renewable energy systems, if the
13 dwelling also constitutes a high-performance home; or

14 (d) 35 percent of the certified cost of any other facility.

15 (5)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the
16 facility, notice thereof shall be given to the Director of the State Department of Energy who shall
17 revoke the certificate covering the facility as of the date of such disposition. The new owner, or
18 upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 469.215,
19 but the tax credit available to the new owner shall be limited to the amount of credit not claimed
20 by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all
21 previous leases. **The sale, exchange or other disposition of a partner's interest in a partner-**
22 **ship, or of shares in an S corporation as that term is defined in section 1361 of the Internal**
23 **Revenue Code, is not deemed a sale, exchange or other disposition of a facility for purposes**
24 **of this paragraph.**

25 (b) The State Department of Energy may not revoke the certificate covering a facility under
26 paragraph (a) of this subsection if the tax credit associated with the facility has been transferred
27 to a taxpayer who is an eligible applicant under ORS 469.205 (1)(c)(A).

28 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
29 particular year may be carried forward and offset against the taxpayer's tax liability for the next
30 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
31 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
32 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,
33 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
34 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
35 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that
36 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and
37 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in
38 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax
39 year may be carried forward and used in the eighth succeeding tax year, but may not be carried
40 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-
41 yond the years specified in subsection (1) of this section only as provided in this subsection.

42 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
43 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter
44 316, 317 or 318 for such year.

45 (8) The taxpayer's adjusted basis for determining gain or loss may not be decreased by any tax

1 credits allowed under this section.

2 (9) If a homebuilder claims a credit under this section with respect to a homebuilder-installed
3 renewable energy system or a high-performance home:

4 (a) The homebuilder may not claim credits for both a homebuilder-installed renewable energy
5 system and a high-performance home with respect to the same dwelling;

6 (b) The homebuilder must inform the buyer of the dwelling that the homebuilder is claiming a
7 tax credit under this section with respect to the dwelling; and

8 (c) The buyer of the dwelling may not claim a credit under this section that is based on any
9 facility for which the homebuilder has already claimed a credit.

10 (10) The definitions in ORS 469.185 apply to this section.

11 **SECTION 2.** ORS 469.206 is amended to read:

12 469.206. (1) The owner of a facility may transfer **all or a portion of** a tax credit for the facility
13 in exchange for a cash payment equal to the present value of the tax credit.

14 (2) The State Department of Energy may establish by rule uniform discount rates to be used in
15 calculating the present value of a tax credit under this section.

16 (3) Notwithstanding any other provision of law, a tax credit transferred pursuant to this section
17 does not decrease the amount of taxes required to be reported by a public utility.

18 **SECTION 3. This 2009 Act takes effect on the 91st day after the date on which the reg-**
19 **ular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

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