

**B-Engrossed**  
**House Bill 2180**

Ordered by the House June 8  
Including House Amendments dated April 16 and June 8

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

**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.

*[Modifies business energy tax credit to include industrial process energy facilities. Allows taxpayer to claim residential energy tax credit for hydroelectric generating system. Creates specific tax credit for purchasers of plug-in hybrid electric vehicles and related equipment. Directs Director of State Department of Energy to adopt rules relating to tax credits for certain energy saving devices.]*

**Limits tax credits for gasoline-electric hybrid vehicles that are not designed for electric plug-in charging to vehicles purchased before January 1, 2010.**

**Modifies definition of "renewable energy resource equipment manufacturing facility" for purposes related to receipt of tax credit.**

Modifies provisions for claiming biomass tax credit. Limits eligibility to biofuels that have been converted into fuels ready for use as energy in Oregon. Revises biomass credit transfer provisions. Allows credit where biofuel producer is also agricultural producer or biomass collector. Authorizes State Department of Energy to adopt rules relating to tax credits for production of biomass.

Applies to tax years beginning on or after January 1, 2010.

**A BILL FOR AN ACT**

1  
2 Relating to energy; creating new provisions; and amending ORS 315.141, 315.144, 315.354, 316.116 and  
3 469.185.

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

5 **SECTION 1.** ORS 316.116 is amended to read:

6 316.116. (1)(a) A resident individual shall be allowed a credit against the taxes otherwise due  
7 under this chapter for costs paid or incurred for construction or installation of each of one or more  
8 alternative energy devices in a dwelling.

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

12 (2)(a) In the case of a category one alternative energy device that is not an alternative fuel  
13 device, the credit shall be based upon the first year energy yield of the alternative energy device  
14 that qualifies under ORS 469.160 to 469.180. The amount of the credit shall be the same whether for  
15 collective or noncollective investment.

16 (b) The credit allowed under this section for each category one alternative energy device for  
17 each dwelling may not exceed the lesser of:

18 (A) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per  
19 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or  
20 domestic water heating for tax years beginning on or after January 1, 1990, and before January 1,  
21 1996.

**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 (B) \$1,200 or the first year energy yield in kilowatt hours per year multiplied by 48 cents per  
2 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or  
3 domestic water heating for tax years beginning on or after January 1, 1996, and before January 1,  
4 1998.

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

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

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

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

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

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

18 (e)(A) For each category two alternative energy device that is a solar electric system or fuel  
19 cell system, the credit allowed under this section shall equal \$3 per watt of installed output, but the  
20 installed output that is used to determine the amount of credit under this paragraph may not exceed  
21 2,000 watts.

22 (B) For each category two alternative energy device that is a wind electric system, the credit  
23 allowed under this section may not exceed the lesser of \$6,000 or the first year energy yield in  
24 kilowatt hours per year multiplied by \$2.

25 (C) Notwithstanding subparagraph (A) or (B) of this paragraph, the total amount of the credits  
26 allowed in any one tax year may not exceed the tax liability of the taxpayer or \$1,500 for each al-  
27 ternative energy device, whichever is less. Unused credit amounts may be carried forward as pro-  
28 vided in subsection (7) of this section, but may not be carried forward to a tax year that is more  
29 than five tax years following the first tax year for which any credit was allowed with respect to the  
30 category two alternative energy device that is the basis for the credit.

31 (D) Notwithstanding subparagraph (A) or (B) of this paragraph, the total amount of the credit  
32 for each device allowed under this paragraph may not exceed 50 percent of the total installed cost  
33 of the category two alternative energy device.

34 (3)(a) In the case of a credit for a category one alternative energy device that is an energy ef-  
35 ficient appliance, the credit allowed for each appliance to a resident individual under this section  
36 shall equal:

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

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

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

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

45 (a) The alternative energy device must be purchased, constructed, installed and operated in ac-

1 cordance with ORS 469.160 to 469.180 and a certificate issued thereunder.

2 (b) Except for credits claimed for alternative fuel devices, the taxpayer who is allowed the credit  
3 must be the owner or contract purchaser of the dwelling or dwellings served by the alternative en-  
4 ergy device or the tenant of the owner or of the contract purchaser and must:

5 (A) Use the dwelling or dwellings served by the alternative energy device as a principal or  
6 secondary residence; or

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

12 (c) In the case of an alternative fuel device, if the device is a fueling station necessary to op-  
13 erate an alternative fuel vehicle, unless the verification form and certificate are transferred as au-  
14 thorized under ORS 469.170 (8), the taxpayer who is allowed the credit must be the contractor who  
15 constructs the dwelling that incorporates the fueling station into the dwelling or installs the fueling  
16 station in the dwelling. If the category one alternative energy device is an alternative fuel vehicle,  
17 the credit must be claimed by the owner as defined under ORS 801.375 or contract purchaser. If the  
18 category one alternative energy device is related equipment for an alternative fuel vehicle, the  
19 credit may be claimed by the owner or contract purchaser.

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

22 **(e) If the alternative fuel vehicle is a gasoline-electric hybrid vehicle not designed for**  
23 **electric plug-in charging, it must be purchased before January 1, 2010.**

24 (5) The credit provided by this section does not affect the computation of basis under this  
25 chapter.

26 (6) The total credits allowed under this section in any one year may not exceed the tax liability  
27 of the taxpayer.

28 (7) 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 the 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 any  
33 credit not used in that third succeeding tax year may be carried forward and used in the fourth  
34 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried  
35 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year  
36 thereafter.

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

39 (9) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the  
40 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-  
41 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

42 (10) If a change in the status of a taxpayer from resident to nonresident or from nonresident to  
43 resident occurs, the credit allowed by this section shall be determined in a manner consistent with  
44 ORS 316.117.

45 (11) A husband and wife who file separate returns for a taxable year may each claim a share

1 of the tax credit that would have been allowed on a joint return in proportion to the contribution  
2 of each. However, a husband or wife living in a separate principal residence may claim the tax  
3 credit in the same amount as permitted a single person.

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

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

7 (b) "Noncollective investment" means an investment by an individual taxpayer for the acquisi-  
8 tion, construction and installation of an alternative energy device for one or more dwellings.

9 (c) "Taxpayer" includes a transferee of a verification form under ORS 469.170 (8).

10 (13) Notwithstanding any provision of subsection (1) or (2) of this section, the sum of the credit  
11 allowed under subsection (1) of this section plus any similar credit allowed for federal income tax  
12 purposes may not exceed the cost to the taxpayer for the acquisition, construction and installation  
13 of the alternative energy device.

14 **SECTION 2.** ORS 315.354 is amended to read:

15 315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if  
16 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the  
17 facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit  
18 is allowed as follows:

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

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

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

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

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

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

38 (c) If the facility is a high-performance home or a homebuilder-installed renewable energy sys-  
39 tem, the total amount of the credit may be claimed in the first tax year for which the credit is  
40 claimed, but may not exceed the tax liability of the taxpayer.

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

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

43 (b) The facility must have received final certification from the Director of the State Department  
44 of Energy under ORS 469.185 to 469.225; *[and]*

45 (c) The taxpayer must be an eligible applicant under ORS 469.205 (1)(c)[.]; **and**

1       **(d) If the alternative fuel vehicle is a gasoline-electric hybrid vehicle not designed for**  
2       **electric plug-in charging, it must be purchased before January 1, 2010.**

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

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

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

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

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

11       (5)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the  
12       facility, notice thereof shall be given to the Director of the State Department of Energy who shall  
13       revoke the certificate covering the facility as of the date of such disposition. The new owner, or  
14       upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 469.215,  
15       but the tax credit available to the new owner shall be limited to the amount of credit not claimed  
16       by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all  
17       previous leases.

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

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

35       (7) The credit provided by this section is not in lieu of any depreciation or amortization de-  
36       duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter  
37       316, 317 or 318 for such year.

38       (8) The taxpayer's adjusted basis for determining gain or loss may not be decreased by any tax  
39       credits allowed under this section.

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

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

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

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

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

4 **SECTION 3.** ORS 469.185 is amended to read:

5 469.185. As used in ORS 469.185 to 469.225 and 469.878:

6 (1) "Alternative fuel vehicle" means a vehicle as defined by the Director of the State Depart-  
7 ment of Energy by rule that is used primarily in connection with the conduct of a trade or business  
8 and that is manufactured or modified to use an alternative fuel, including but not limited to elec-  
9 tricity, ethanol, methanol, gasohol and propane or natural gas, regardless of energy consumption  
10 savings.

11 (2) "Car sharing facility" means the expenses of operating a car sharing program, including but  
12 not limited to the fair market value of parking spaces used to store the fleet of cars available for  
13 a car sharing program, but does not include the costs of the fleet of cars.

14 (3) "Car sharing program" means a program in which drivers pay to become members in order  
15 to have joint access to a fleet of cars from a common parking area on an hourly basis. "Car sharing  
16 program" does not include operations conducted by car rental agencies.

17 (4) "Cost" means the capital costs and expenses necessarily incurred in the acquisition, erection,  
18 construction and installation of a facility, including site development costs and expenses for a  
19 sustainable building practices facility.

20 (5) "Energy facility" means any capital investment for which the first year energy savings yields  
21 a simple payback period of greater than one year. An energy facility includes:

22 (a) Any land, structure, building, installation, excavation, machinery, equipment or device, or  
23 any addition to, reconstruction of or improvement of, land or an existing structure, building, instal-  
24 lation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or in-  
25 stalled by any person in connection with the conduct of a trade or business and actually used in the  
26 processing or utilization of renewable energy resources to:

27 (A) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

28 (B) Provide the initial use of energy where electricity, petroleum or natural gas would have been  
29 used;

30 (C) Generate electricity to replace an existing source of electricity or to provide a new source  
31 of electricity for sale by or use in the trade or business;

32 (D) Perform a process that obtains energy resources from material that would otherwise be solid  
33 waste as defined in ORS 459.005; or

34 (E) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol,  
35 methanol, gasohol or biodiesel.

36 (b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing  
37 structure, building, installation, excavation, machinery, equipment or device necessarily acquired,  
38 erected, constructed or installed by any person in connection with the conduct of a trade or business  
39 in order to substantially reduce the consumption of purchased energy.

40 (c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is  
41 defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance  
42 standard in the state building code.

43 (d) The replacement of an electric motor with another electric motor that substantially reduces  
44 the consumption of electricity.

45 (6) "Facility" means an energy facility, recycling facility, transportation facility, car sharing

1 facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to op-  
2 erate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling  
3 station, a high-efficiency combined heat and power facility, a high-performance home, a  
4 homebuilder-installed renewable energy system, or a renewable energy resource equipment manu-  
5 facturing facility.

6 (7) “High-efficiency combined heat and power facility” means a device or equipment that simul-  
7 taneously produces heat and electricity from a single source of fuel and that meets the criteria es-  
8 tablished for a high-efficiency combined heat and power facility under ORS 469.197.

9 (8) “High-performance home” means a new single-family dwelling that:

10 (a) Is designed and constructed to reduce net purchased energy through use of both energy ef-  
11 ficiency and on-site renewable energy resources; and

12 (b) Meets the criteria established for a high-performance home under ORS 469.197.

13 (9) “Homebuilder-installed renewable energy system” means a renewable energy resource system  
14 that:

15 (a) Meets the criteria established for a renewable energy resource system under ORS 469.197;  
16 and

17 (b) Is installed in a new single-family dwelling by, or at the direction of, the homebuilder con-  
18 structing the dwelling.

19 (10) “Qualified transit pass contract” means a purchase agreement entered into between a  
20 transportation provider and a person, the terms of which obligate the person to purchase transit  
21 passes on behalf or for the benefit of employees, students, patients or other individuals over a  
22 specified period of time.

23 (11) “Recycling facility” means equipment used by a trade or business solely for recycling:

24 (a) Including:

25 (A) Equipment used solely for hauling and refining used oil;

26 (B) New vehicles or modifications to existing vehicles used solely to transport used recyclable  
27 materials that cannot be used further in their present form or location such as glass, metal, paper,  
28 aluminum, rubber and plastic;

29 (C) Trailers, racks or bins that are used for hauling used recyclable materials and are added to  
30 or attached to existing waste collection vehicles; and

31 (D) Any equipment used solely for processing recyclable materials such as balers, flatteners,  
32 crushers, separators and scales.

33 (b) But not including equipment used for transporting or processing scrap materials that are  
34 recycled as a part of the normal operation of a trade or business as defined by the director.

35 (12)(a) “Renewable energy resource” includes, but is not limited to:

36 (A) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant  
37 or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal  
38 energy; or

39 (B) A hydroelectric generating facility that obtains all applicable permits and complies with all  
40 state and federal statutory requirements for the protection of fish and wildlife and:

41 (i) That does not exceed 10 megawatts of installed capacity; or

42 (ii) Qualifies as a research, development or demonstration facility.

43 (b) “Renewable energy resource” does not include a hydroelectric generating facility that is not  
44 described in paragraph (a) of this subsection.

45 (13) “Renewable energy resource equipment manufacturing facility” means any structure, build-

1 ing, installation, excavation, machinery, equipment or device, or an addition, reconstruction or im-  
2 provement to land or an existing structure, building, installation, excavation, machinery, equipment  
3 or device, that is necessarily acquired, constructed or installed by a person in connection with the  
4 conduct of a trade or business, that is used primarily to manufacture:

5 (a) Equipment, machinery or other products designed to use a renewable energy resource and  
6 that meets the criteria established under ORS 469.197[.]; or

7 (b) **Electric vehicles designed for use as modes of transportation on public roads and**  
8 **highways or component parts of electric vehicles, but not including component parts that**  
9 **may be used in both electric and conventional vehicles.**

10 (14) “Sustainable building practices facility” means a commercial building in which building  
11 practices that reduce the amount of energy, water or other resources needed for construction and  
12 operation of the building are used. “Sustainable building practices facility” may be further defined  
13 by the State Department of Energy by rule, including rules that establish traditional building prac-  
14 tice baselines in energy, water or other resource usage for comparative purposes for use in deter-  
15 mining whether a facility is a sustainable building practices facility.

16 (15) “Transportation facility” means a transportation project that reduces energy use during  
17 commuting to and from work or school, during work-related travel, or during travel to obtain med-  
18 ical or other services, and may be further defined by the department by rule. “Transportation facil-  
19 ity” includes, but is not limited to, a qualified transit pass contract or a transportation services  
20 contract.

21 (16) “Transportation provider” means a public, private or nonprofit entity that provides trans-  
22 portation services to members of the public.

23 (17) “Transportation services contract” means a contract that is related to a transportation fa-  
24 cility, and may be further defined by the department by rule.

25 **SECTION 4.** ORS 315.141 is amended to read:

26 315.141. (1) As used in this section:

27 (a) “Agricultural producer” means a person that produces biomass **in Oregon** that is used, in  
28 Oregon, as biofuel or to produce biofuel.

29 (b) “Biofuel” means liquid, gaseous or solid fuels, derived from biomass, **that have been con-**  
30 **verted into a processed fuel ready for use as energy by a biofuel producer’s customers or for**  
31 **direct biomass energy use at the biofuel producer’s site.**

32 (c) “Biofuel producer” means a person that through activities in Oregon:

33 (A) Alters the physical makeup of biomass to convert it into biofuel;

34 (B) Changes one biofuel into another type of biofuel; or

35 (C) Uses biomass in Oregon to produce energy.

36 [(c)] (d) “Biomass” means organic matter that is available on a renewable or recurring basis and  
37 that is derived from:

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

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

41 (C) Agricultural residues;

42 (D) Offal and tallow from animal rendering;

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

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

45 (G) Wastewater solids; or



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

2 [(d)] (e) "Biomass" does not mean wood that has been treated with creosote, pentachlorophenol,  
3 inorganic arsenic or other inorganic chemical compounds **or waste, other than matter described**  
4 **in paragraph (d) of this subsection.**

5 [(e)] (f) "Biomass collector" means a person that collects biomass **in Oregon** to be used, in  
6 Oregon, as biofuel or to produce biofuel.

7 **(2) The Director of the State Department of Energy may adopt rules to define criteria,**  
8 **only as the criteria apply to organic biomass, to determine additional characteristics of**  
9 **biomass for purposes of this section.**

10 [(2)(a)] **(3)(a)** An agricultural producer or biomass collector shall be allowed a credit against the  
11 taxes that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under  
12 ORS chapter 317 or 318 for:

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

15 (B) The collection of biomass **in Oregon** that is used, in Oregon, as biofuel or to produce  
16 biofuel.

17 (b) A credit under this section may be claimed in the tax year in which the [*agricultural pro-*  
18 *ducer or biomass collector transfers biomass to a biofuel producer*] **credit is certified under sub-**  
19 **section (5) of this section.**

20 **(c) A taxpayer may be allowed a credit under this section for more than one of the roles**  
21 **defined in subsection (1) of this section, but a biofuel producer that is not also an agricul-**  
22 **tural producer or a biomass collector may not claim a credit under this section.**

23 [(c)] (d) Notwithstanding paragraph (a) of this subsection, a tax credit is not allowed for grain  
24 corn, but a tax credit shall be allowed for other corn material.

25 [(3) *The amount of the credit shall be calculated as follows:*]

26 [(a) *Determine the quantity of biomass transferred to a biofuel producer during the tax year;*]

27 [(b) *Categorize the biomass into appropriate categories; and*]

28 [(c) *Multiply the quantity of biomass in a particular category by the appropriate credit rate for that*  
29 *category, expressed in dollars and cents, that is prescribed in ORS 469.790.*]

30 **(4) The amount of the credit shall equal the amount certified under subsection (5) of this**  
31 **section.**

32 **(5)(a) The State Department of Energy may establish by rule procedures and criteria for**  
33 **determining the amount of the tax credit to be certified under this section, consistent with**  
34 **ORS 469.790. The department shall provide written certification to taxpayers that are eligible**  
35 **to claim the credit under this section.**

36 **(b) The State Department of Energy may charge and collect a fee from taxpayers for**  
37 **certification of credits under this section. The fee may not exceed the cost to the department**  
38 **of determining the amount of certified cost.**

39 **(c) The State Department of Energy shall provide to the Department of Revenue a list,**  
40 **by tax year, of taxpayers for which a credit is certified under this section, upon request of**  
41 **the Department of Revenue.**

42 [(4)] (6) The amount of the credit claimed under this section for any tax year may not exceed  
43 the tax liability of the taxpayer.

44 [(5)(a) *A biofuel producer shall provide a written receipt to an agricultural producer or biomass*  
45 *collector at the time biomass is transferred from the agricultural producer or biomass collector to the*

1 *biofuel producer. The receipt must state the quantity and type of biomass being transferred and that*  
2 *the biomass is to be used to produce biofuel.]*

3 [(b)] (7) Each agricultural producer or biomass collector shall maintain the [*receipts described*  
4 *in this subsection*] **written documentation of the amount certified for tax credit under this**  
5 **section** in [*their*] **its** records for a period of at least five years after the tax year in which the credit  
6 is claimed [*or for a longer period of time prescribed by the Department of Revenue*] **and provide the**  
7 **written documentation to the Department of Revenue upon request.**

8 [(6)] (8) The credit shall be claimed on a form prescribed by the Department of Revenue that  
9 contains the information required by the department.

10 [(7)] (9) Any tax credit otherwise allowable under this section that is not used by the taxpayer  
11 in a particular tax year may be carried forward and offset against the taxpayer's tax liability for  
12 the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be  
13 carried forward and used in the second succeeding tax year, and likewise any credit not used in that  
14 second succeeding tax year may be carried forward and used in the third succeeding tax year, and  
15 any credit not used in that third succeeding tax year may be carried forward and used in the fourth  
16 succeeding tax year, but may not be carried forward for any tax year thereafter.

17 [(8)] (10) In the case of a credit allowed under this section:

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

20 (b) If a change in the status of the taxpayer from resident to nonresident or from nonresident  
21 to resident occurs, the credit allowed by this section shall be determined in a manner consistent  
22 with ORS 316.117.

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

26 **SECTION 5.** ORS 315.144 is amended to read:

27 315.144. (1) A person that has obtained a tax credit under ORS 315.141 may transfer the credit  
28 [*for consideration*] to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

29 **(2) A tax credit allowed under ORS 315.141 may be transferred on or before the date on**  
30 **which the return is due for the tax year in which the credit may first be claimed. After that**  
31 **date, no portion of a credit allowed under ORS 315.141 may be transferred.**

32 [(2)] (3) To transfer the tax credit, the taxpayer earning the credit and the taxpayer that will  
33 claim the credit shall, **on or before the date prescribed in subsection (2) of this section**, jointly  
34 file a notice of tax credit transfer with the Department of Revenue. The notice shall be given on a  
35 form prescribed by the department that contains all of the following:

36 (a) The name[,] **and** address [*and taxpayer identification number*] of the transferor and transferee;

37 (b) The amount of the tax credit **that is being transferred**; [*and*]

38 **(c) The amount of the tax credit that is being retained by the transferor; and**

39 [(c)] **(d)** Any other information required by the department.

40 [(3) *Notwithstanding subsection (1) of this section, a tax credit may not be transferred under this*  
41 *section.*]

42 [(a) *From an agricultural producer to a biomass collector claiming a credit for collecting the*  
43 *biomass; or*]

44 [(b) *From a biomass collector to an agricultural producer claiming a credit for producing the*  
45 *biomass.*]

1       **(4) The State Department of Energy may establish by rule a minimum discounted value**  
2 **of a tax credit under this section.**

3       **(5) The Department of Revenue, in consultation with the State Department of Energy,**  
4 **may by rule establish procedures for the transfer of tax credits provided by this section.**

5       **SECTION 6. The amendments to ORS 315.141, 315.144, 315.354, 316.116 and 469.185 by**  
6 **sections 1 to 5 of this 2009 Act apply to tax years beginning on or after January 1, 2010.**

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