

House Bill 2180

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 **as introduced**.

Establishes Oregon Renewable Energy Grant Account and allows credit against income taxes for contributions to account. Authorizes State Department of Energy to award grants for renewable energy projects.

Modifies business energy tax credit to include certain recycling facilities. Allows taxpayer to claim residential energy tax credit for hydroelectric generating system.

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.

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

A BILL FOR AN ACT

1
2 Relating to energy; creating new provisions; amending ORS 315.141, 315.144, 315.354, 469.160 and
3 469.185; and appropriating money.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 315.**

6 **SECTION 2. (1) A taxpayer shall be allowed a credit against the taxes otherwise due un-**
7 **der ORS chapter 316 for amounts contributed during the tax year to the Oregon Renewable**
8 **Energy Grant Account established under section 4 of this 2009 Act.**

9 **(2) A taxpayer that is a corporation shall be allowed a credit against the taxes otherwise**
10 **due under ORS chapter 317 or 318 for amounts contributed during the tax year to the Oregon**
11 **Renewable Energy Grant Account established under section 4 of this 2009 Act.**

12 **(3) The amount of the credit shall equal 100 percent of the amount contributed to the**
13 **Oregon Renewable Energy Grant Account, but may not exceed the lesser of the tax liability**
14 **of the:**

15 **(a) Taxpayer under ORS chapter 316 for the tax year or \$250.**

16 **(b) Taxpayer that is a corporation under ORS chapter 317 or 318 for the tax year or**
17 **\$1,250.**

18 **(4) The credit allowed under this section may not be carried over to another tax year.**

19 **(5) The credit allowed under this section is in addition to any charitable contribution**
20 **deduction allowable to the taxpayer.**

21 **(6) In the case of a credit allowed under this section for purposes of ORS chapter 316:**

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

24 **(b) If a change in the status of a taxpayer from resident to nonresident or from nonres-**
25 **ident to resident occurs, the credit allowed under this section shall be determined in a**
26 **manner consistent with ORS 316.117.**

27 **(c) A husband and wife who file separate returns for a taxable year may each claim a**

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 share of the tax credit that would have been allowed on a joint return in proportion to the
2 contribution of each.

3 (d) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or
4 if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the
5 credit allowed under this section shall be prorated or computed in a manner consistent with
6 ORS 314.085.

7 **SECTION 3.** Section 4 of this 2009 Act is added to and made a part of ORS chapter 469.

8 **SECTION 4.** (1) The Oregon Renewable Energy Grant Account is established in the State
9 Treasury, separate and distinct from the General Fund. Interest earned by the Oregon
10 Renewable Energy Grant Account shall be credited to the account. The primary purpose of
11 the account is to provide grants for the development of community-scale renewable energy
12 resource projects in Oregon.

13 (2) All moneys in the Oregon Renewable Energy Grant Account are appropriated contin-
14 uously to the State Department of Energy for the purposes of section 5 of this 2009 Act.

15 **SECTION 5.** (1) The State Department of Energy shall award grants from the Oregon
16 Renewable Energy Grant Account established under section 4 of this 2009 Act to fund
17 renewable energy projects in Oregon. The total amount awarded by the department in a
18 calendar year may not exceed \$1 million.

19 (2) The grants authorized under this section:

20 (a) Shall fund renewable energy facilities of less than ten megawatts or comparably sized
21 heat and fuel generation projects; and

22 (b) Shall require applicants to provide matching funds.

23 (3) The department shall by rule establish criteria for the awarding of grants under this
24 section. The department may give preference to:

25 (a) Public bodies, tribal governments and nonprofit organizations;

26 (b) Community-based renewable energy facilities;

27 (c) Renewable energy facilities likely to benefit rental or low-income housing develop-
28 ments;

29 (d) Projects intended to test, demonstrate or develop innovative renewable energy
30 equipment manufacturing processes or innovative renewable energy products intended for
31 manufacture in Oregon by firms based in Oregon;

32 (e) Projects for communities with demonstrated need, such as rural or economically
33 distressed communities;

34 (f) Projects that have received feasibility study funding from the department; and

35 (g) Projects that are unlikely to proceed without funding under this section.

36 (4) Any amount received under this section shall be subtracted when determining certi-
37 fied costs under ORS 469.185 to 469.225.

38 **SECTION 6.** ORS 315.354 is amended to read:

39 315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if
40 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the
41 facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit
42 is allowed as follows:

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

1 succeeding three years shall be five percent of the certified cost, but may not exceed the tax liability
2 of the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

27 (a) 50 percent of the certified cost of a renewable energy resources facility, a renewable energy
28 resource equipment manufacturing facility [or], a high-efficiency combined heat and power facility
29 **or a recycling facility;**

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

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

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

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

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

44 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
45 particular year may be carried forward and offset against the taxpayer's tax liability for the next

1 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
2 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
3 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,
4 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
5 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
6 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that
7 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and
8 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in
9 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax
10 year may be carried forward and used in the eighth succeeding tax year, but may not be carried
11 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-
12 yond the years specified in subsection (1) of this section only as provided in this subsection.

13 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
14 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter
15 316, 317 or 318 for such year.

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

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

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

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

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

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

27 **SECTION 7.** ORS 469.160 is amended to read:

28 469.160. As used in ORS 316.116, 317.115 and 469.160 to 469.180:

29 (1) "Alternative energy device" means a category one alternative energy device or a category
30 two alternative energy device.

31 (2) "Alternative fuel device" means any of the following:

32 (a) An alternative fuel vehicle;

33 (b) Related equipment; or

34 (c) A fueling station necessary to operate an alternative fuel vehicle.

35 (3) "Alternative fuel vehicle" means a motor vehicle as defined in ORS 801.360 that is:

36 (a) Registered in this state; and

37 (b) Manufactured or modified to use an alternative fuel, including but not limited to electricity,
38 natural gas, ethanol, methanol, propane and any other fuel approved in rules adopted by the Direc-
39 tor of the State Department of Energy that produces less exhaust emissions than vehicles fueled by
40 gasoline or diesel. Determination that a vehicle is an alternative fuel vehicle shall be made [*without*
41 *regard to energy consumption savings*] **by the director based on a consideration of petroleum**
42 **reduction, efficiency, greenhouse gas reduction and technology.**

43 (4) "Category one alternative energy device" means:

44 (a) Any system, mechanism or series of mechanisms that uses solar radiation for space heating
45 or cooling for one or more dwellings;

- 1 (b) Any system that uses solar radiation for:
 2 (A) Domestic water heating; or
 3 (B) Swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS
 4 316.116;
 5 (c) A ground water heat pump and ground loop system;
 6 (d) Any wind powered device used to offset or supplement the use of electricity by performing
 7 a specific task such as pumping water;
 8 (e) Equipment used in the production of alternative fuels;
 9 (f) A generator powered by alternative fuels and used to produce electricity;
 10 (g) An energy efficient appliance;
 11 (h) An alternative fuel device; or
 12 (i) A premium efficiency biomass combustion device that includes a dedicated outside com-
 13 bustion air source and that meets minimum performance standards that are established by the State
 14 Department of Energy.
- 15 (5) “Category two alternative energy device” means a fuel cell system, **hydroelectric generat-**
 16 **ing system**, solar electric system or wind electric system.
- 17 (6) “Coefficient of performance” means the ratio calculated by dividing the usable output energy
 18 by the electrical input energy. Both energy values must be expressed in equivalent units.
- 19 (7) “Contractor” means a person whose trade or business consists of offering for sale an alter-
 20 native energy device, construction service, installation service or design service.
- 21 (8)(a) “Cost” means the actual cost of the acquisition, construction and installation of the al-
 22 ternative energy device paid by the taxpayer for the alternative energy device.
- 23 (b) For an alternative fuel vehicle, “cost” means the difference between the cost of the alter-
 24 native fuel vehicle and the same vehicle or functionally similar vehicle manufactured to use con-
 25 ventional gasoline or diesel fuel or, in the case of modification of an existing vehicle, the cost of the
 26 modification. “Cost” does not include any amounts paid for remodification of the same vehicle,
 27 **unless added efficiency or capacity meets requirements established by the Director of the**
 28 **State Department of Energy.**
- 29 (c) For a fueling station necessary to operate an alternative fuel vehicle, “cost” means the cost
 30 to the contractor of constructing or installing the fueling station in a dwelling and of making the
 31 fuel station operational in accordance with the specifications issued under ORS 469.160 to 469.180
 32 and any rules adopted by the Director of the State Department of Energy.
- 33 (d) For related equipment, “cost” means the cost of the related equipment and any modifications
 34 or additions to the related equipment necessary to prepare the related equipment for use in con-
 35 verting a vehicle to alternative fuel use.
- 36 (9) “Domestic water heating” means the heating of water used in a dwelling for bathing, clothes
 37 washing, dishwashing and other related functions.
- 38 (10) “Dwelling” means real or personal property ordinarily inhabited as a principal or secondary
 39 residence and located within this state. “Dwelling” includes, but is not limited to, an individual unit
 40 within multiple unit residential housing.
- 41 (11) “Energy efficient appliance” means a clothes washer, clothes dryer, water heater,
 42 refrigerator, freezer, dishwasher, appliance designed to heat or cool a dwelling or other major
 43 household appliance that has been certified by the State Department of Energy to have premium
 44 energy efficiency characteristics.
- 45 (12) “First year energy yield” of an alternative energy device is the usable energy produced

1 under average environmental conditions in one year.

2 (13) “Fuel cell system” means any system, mechanism or series of mechanisms that uses fuel
3 cells or fuel cell technology to generate electrical energy for a dwelling.

4 (14) “Fueling station” includes but is not limited to a compressed natural gas compressor fueling
5 system or an electric charging system for vehicle power battery charging.

6 **(15) “Hydroelectric generating system” means a system that obtains all applicable per-
7 mits and complies with all state and federal statutory requirements for the protection of fish
8 and wildlife and does not exceed 10 megawatts of installed capacity.**

9 [(15)] (16) “Placed in service” means:

10 (a) The date an alternative energy device is ready and available to produce usable energy or
11 save energy.

12 (b) For an alternative fuel vehicle:

13 (A) In the case of purchase, the date that the alternative fuel vehicle is first purchased as an
14 alternative fuel vehicle ready and available for use.

15 (B) In the case of modification, the date that the modification is completed and the vehicle is
16 ready and available for use as an alternative fuel vehicle.

17 (c) For a fueling station necessary to operate an alternative fuel vehicle, the date that the fu-
18 eling station is first operational.

19 (d) For related equipment, the date that the equipment is first operational.

20 [(16)] (17) “Related equipment” means equipment necessary to convert a vehicle to use an al-
21 ternative fuel.

22 [(17)] (18) “Solar electric system” means any system, mechanism or series of mechanisms, in-
23 cluding photovoltaic systems, that uses solar radiation to generate electrical energy for a dwelling.

24 [(18)] (19) “Wind electric system” means any system, mechanism or series of mechanisms that
25 uses wind to generate electrical energy for a dwelling.

26 **SECTION 8.** ORS 469.185 is amended to read:

27 469.185. As used in ORS 469.185 to 469.225 and 469.878:

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

33 (2) “Car sharing facility” means the expenses of operating a car sharing program, including but
34 not limited to the fair market value of parking spaces used to store the fleet of cars available for
35 a car sharing program, but does not include the costs of the fleet of cars.

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

39 (4) “Cost” means the capital costs and expenses necessarily incurred in the acquisition, erection,
40 construction and installation of a facility, including site development costs and expenses for a
41 sustainable building practices facility.

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

44 (a) Any land, structure, building, installation, excavation, machinery, equipment or device, or
45 any addition to, reconstruction of or improvement of, land or an existing structure, building, instal-

1 lation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or in-
 2 stalled by any person in connection with the conduct of a trade or business and actually used in the
 3 processing or utilization of renewable energy resources to:

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

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

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

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

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

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

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

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

22 (6) "Facility" means an energy facility, recycling facility, transportation facility, car sharing
 23 facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to op-
 24 erate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling
 25 station, a high-efficiency combined heat and power facility, a high-performance home, a
 26 homebuilder-installed renewable energy system, or a renewable energy resource equipment manu-
 27 facturing facility.

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

31 (8) "High-performance home" means a new single-family dwelling that:

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

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

35 (9) "Homebuilder-installed renewable energy system" means a renewable energy resource system
 36 that:

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

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

41 (10) "Qualified transit pass contract" means a purchase agreement entered into between a
 42 transportation provider and a person, the terms of which obligate the person to purchase transit
 43 passes on behalf or for the benefit of employees, students, patients or other individuals over a
 44 specified period of time.

45 (11) "Recycling facility" means equipment used by a trade or business solely for recycling in-

1 **cluding:**

2 [(a) *Including:*]

3 [(A)] (a) Equipment used solely for hauling and refining used oil;

4 [(B)] (b) New vehicles or modifications to existing vehicles used solely to transport used
5 recyclable materials that cannot be used further in their present form or location such as glass,
6 metal, paper, aluminum, rubber and plastic;

7 [(C)] (c) Trailers, racks or bins that are used for hauling used recyclable materials and are
8 added to or attached to existing waste collection vehicles; *[and]*

9 [(D)] (d) Any equipment used solely for processing recyclable materials such as bailers,
10 flatteners, crushers, separators and scales[.]; **and**

11 [(b)] (e) *[But not including]* Equipment used for transporting or processing scrap materials that
12 are recycled as a part of the normal operation of a trade or business as defined by the director.

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

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

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

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

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

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

23 (13) “Renewable energy resource equipment manufacturing facility” means any structure, build-
24 ing, installation, excavation, machinery, equipment or device, or an addition, reconstruction or im-
25 provement to land or an existing structure, building, installation, excavation, machinery, equipment
26 or device, that is necessarily acquired, constructed or installed by a person in connection with the
27 conduct of a trade or business, that is used primarily to manufacture equipment, machinery or other
28 products designed to use a renewable energy resource and that meets the criteria established under
29 ORS 469.197.

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

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

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

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

45 **SECTION 9.** ORS 315.141 is amended to read:

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

2 (a) “Agricultural producer” means a person that produces biomass that is used in Oregon as
3 biofuel or to produce biofuel.

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

7 (c) “Biomass” means organic matter that is available on a renewable or recurring basis and that
8 is derived from:

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

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

12 (C) Agricultural residues;

13 (D) Offal and tallow from animal rendering;

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

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

16 (G) Wastewater solids; or

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

18 (d) “Biomass” does not mean wood that has been treated with creosote, pentachlorophenol, in-
19 organic arsenic or other inorganic chemical compounds.

20 (e) “Biomass collector” means a person that collects biomass to be used in Oregon as biofuel
21 or to produce biofuel.

22 (2)(a) An agricultural producer [*or*], a biomass collector **or a biofuel producer that is also an**
23 **agricultural producer or biomass collector** shall be allowed a credit against the taxes that would
24 otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter
25 317 or 318 for:

26 (A) The production of biomass [*that is*] **in Oregon used to produce biofuel** in Oregon [*as biofuel*
27 *or to produce biofuel*]; or

28 (B) The collection of biomass [*that is used*] in Oregon [*as biofuel or*] to produce biofuel **in**
29 **Oregon.**

30 (b) A credit under this section may be claimed in the tax year in which the agricultural pro-
31 ducer or biomass collector [*transfers*] **delivers** biomass to a biofuel producer.

32 (c) Notwithstanding paragraph (a) of this subsection, a tax credit is not allowed for grain corn,
33 but a tax credit shall be allowed for other corn material.

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

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

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

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

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

42 (5)(a) A biofuel producer shall provide a written receipt **of delivery** to an agricultural producer
43 or biomass collector at the time biomass is [*transferred*] **delivered** from the agricultural producer
44 or biomass collector to the biofuel producer. The receipt must state the quantity and type of biomass
45 being [*transferred*] **delivered** and that the biomass is to be used to produce biofuel.

1 **(b) If the biofuel producer is also the agricultural producer or biomass collector to which**
 2 **the biomass is delivered, the agricultural producer or biomass collector may claim the credit**
 3 **under this section.**

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

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

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

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

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

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

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

25 **SECTION 10.** ORS 315.144 is amended to read:

26 315.144. (1) A person that has obtained a tax credit under ORS 315.141 may transfer the credit
 27 for consideration to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

28 (2) To transfer the tax credit, the taxpayer earning the credit and the taxpayer that will claim
 29 the credit shall jointly file a notice of tax credit transfer with the Department of Revenue. The no-
 30 tice shall be given on a form prescribed by the department that contains all of the following:

- 31 (a) The name, address and taxpayer identification number of the transferor and transferee;
- 32 (b) The amount of the tax credit; and
- 33 (c) Any other information required by the department.

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

36 (a) From an agricultural producer to a biomass collector claiming a credit for collecting the
 37 **same** biomass; or

38 (b) From a biomass collector to an agricultural producer claiming a credit for producing the
 39 **same** biomass.

40 **SECTION 11. Section 2 of this 2009 Act and the amendments to ORS 315.141, 315.144,**
 41 **315.354, 469.160 and 469.185 by sections 6 to 10 of this 2009 Act apply to tax years beginning**
 42 **on or after January 1, 2010.**