

House Bill 2725

Sponsored by Representative WINGARD; Representatives CAMERON, ESQUIVEL, FREEMAN, GILMAN, RICHARDSON, THATCHER, WEIDNER, Senator KRUSE

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**.

Prohibits allowance of tax incentives for use of biofuel or biomass that is fit for human consumption.

Applies to tax years beginning on or after January 1, 2010, and to preliminary certifications issued on or after January 1, 2010.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax incentives for use of organic matter; creating new provisions; amending ORS 315.141,
3 315.354, 315.465 and 469.790; and prescribing an effective date.

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 305.**

6 **SECTION 2. A taxpayer may not claim any state tax benefit, including a property tax
7 exemption or special assessment, an income tax subtraction, deduction or credit, including
8 a credit under ORS 315.141, 315.354, 315.465 or 315.469, based upon the use or purchase of
9 biomass, biofuel, alternative fuel, renewable energy resources or similar material that is fit
10 for human consumption or directly derived from material that is fit for human consumption.**

11 **SECTION 3. ORS 315.141 is amended to read:**

12 315.141. (1) As used in this section:

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

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

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

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

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

21 (C) Agricultural residues;

22 (D) Offal and tallow from animal rendering;

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

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

25 (G) Wastewater solids; or

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

27 (d) "Biomass" does not mean:

28 **(A) Organic matter that is fit for human consumption or directly derived from matter
29 that is fit for human consumption; or**

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)** Wood that has been treated with creosote, pentachlorophenol, inorganic arsenic or other
 2 inorganic chemical compounds.

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

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

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

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

10 (b) A credit under this section may be claimed in the tax year in which the agricultural pro-
 11 ducer or biomass collector transfers biomass to a biofuel producer.

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

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

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

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

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

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

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

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

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

30 (7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
 31 particular tax year may be carried forward and offset against the taxpayer’s tax liability for the next
 32 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
 33 forward and used in the second succeeding tax year, and likewise any credit not used in that second
 34 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
 35 credit not used in that third succeeding tax year may be carried forward and used in the fourth
 36 succeeding tax year, but may not be carried forward for any tax year thereafter.

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

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

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

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

1 **SECTION 4.** ORS 315.354 is amended to read:

2 315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if
3 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the
4 facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit
5 is allowed as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (5)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the
42 facility, notice thereof shall be given to the Director of the State Department of Energy who shall
43 revoke the certificate covering the facility as of the date of such disposition. The new owner, or
44 upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 469.215,
45 but the tax credit available to the new owner shall be limited to the amount of credit not claimed

1 by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all
2 previous leases.

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

6 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
7 particular year may be carried forward and offset against the taxpayer's tax liability for the next
8 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
9 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
10 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,
11 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
12 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
13 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that
14 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and
15 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in
16 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax
17 year may be carried forward and used in the eighth succeeding tax year, but may not be carried
18 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-
19 yond the years specified in subsection (1) of this section only as provided in this subsection.

20 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
21 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter
22 316, 317 or 318 for such year.

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

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

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

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

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

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

34 (11) **A taxpayer may not claim a credit under this section for any portion of the cost of**
35 **a facility that is attributable to alternative fuel or renewable energy resources that are fit**
36 **for human consumption or directly derived from material that is fit for human consumption.**

37 **SECTION 5.** ORS 315.465 is amended to read:

38 315.465. (1) As used in this section and ORS 315.469:

39 (a) "Alternative fuel vehicle" means a motor vehicle that can operate on a fuel blend.

40 (b) "Biodiesel" has the meaning given that term in ORS 646.905.

41 (c) "Biomass" has the meaning given that term in ORS 315.141.

42 (d) "Bone dry ton" means matter that is dried to less than one percent moisture content and
43 that weighs 2,000 pounds.

44 (e) "Fuel blend" means diesel fuel of blends equal to or exceeding 99 percent biodiesel or gaso-
45 line of a blend equal to or exceeding 85 percent methanol or ethanol. **"Fuel blend" does not mean**

1 **fuel that is fit for human consumption or produced from material that is directly derived**
 2 **from material that is fit for human consumption.**

3 (2)(a) A resident individual shall be allowed a credit against the taxes otherwise due under ORS
 4 chapter 316 for costs paid or incurred to purchase fuel blends for use in an alternative fuel vehicle.

5 (b) A resident individual shall be allowed a credit against the taxes otherwise due under ORS
 6 chapter 316 for costs paid or incurred to purchase forest, rangeland or agriculture waste or residue
 7 densified and dried prepared solid biofuel that contains 100 percent biomass.

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

9 (a) Determine the quantity of fuel blend or solid biofuel purchased by the taxpayer during the
 10 tax year;

11 (b) Categorize the fuel blend or solid biofuel as prescribed in rules adopted under ORS 469.785;
 12 and

13 (c) Multiply the quantity of fuel blend or solid biofuel in a particular category by the appropri-
 14 ate credit rate for that category, expressed in dollars and cents.

15 (4) Notwithstanding subsection (3) of this section:

16 (a) The credit allowed under this section for diesel blended fuel is equal to \$0.50 per gallon and
 17 in any one tax year may not exceed \$200 per Oregon registered motor vehicle that is owned or
 18 leased by the taxpayer under a lease of greater than 30 days' duration and that is capable of using
 19 a fuel blend.

20 (b) The credit allowed for gasoline blended fuel is equal to \$0.50 per gallon and in any one tax
 21 year may not exceed \$200 per Oregon registered motor vehicle that is owned or leased by the tax-
 22 payer under a lease of greater than 30 days' duration and that is capable of using a fuel blend.

23 (c) The credit allowed for forest, rangeland or agriculture waste or residue densified and dried
 24 prepared solid biofuel is equal to \$10 per bone dry ton of solid biofuel and in any one tax year may
 25 not exceed \$200 per taxpayer.

26 (d) The credit allowed in any one tax year may not exceed the tax liability of the taxpayer and
 27 may not be carried forward to a subsequent tax year.

28 (5) For each tax year for which a credit is claimed under this section, the taxpayer shall main-
 29 tain records sufficient to determine the taxpayer's purchase of qualifying fuel blends. A taxpayer
 30 shall maintain the records required under this subsection for at least five years.

31 (6) A nonresident shall be allowed the credit under this section in the proportion provided in
 32 ORS 316.117.

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

36 (8) If a change in the status of a taxpayer from resident to nonresident or from nonresident to
 37 resident occurs, the credit allowed by this section shall be determined in a manner consistent with
 38 ORS 316.117.

39 (9) A husband and wife who file separate returns for a taxable year may each claim a share of
 40 the tax credit that would have been allowed on a joint return in proportion to the contribution of
 41 each.

42 **SECTION 6.** ORS 469.790 is amended to read:

43 469.790. To be eligible for the tax credit under ORS 315.141, the biomass must be produced or
 44 collected in Oregon as a feedstock for bioenergy or biofuel production in Oregon. The credit rates
 45 for biomass are:

- 1 (1) For oil seed crops, \$0.05 per pound.
- 2 (2) For **the portion of** grain crops **that is not fit for human consumption**, including but not
- 3 limited to wheat, barley and triticale, \$0.90 per bushel.
- 4 (3) For virgin oil or alcohol delivered for production in Oregon from Oregon-based feedstock,
- 5 \$0.10 per gallon.
- 6 (4) For used cooking oil or waste grease, \$0.10 per gallon.
- 7 (5) For wastewater biosolids, \$10.00 per wet ton.
- 8 (6) For woody biomass collected from nursery, orchard, agricultural, forest or rangeland prop-
- 9 erty in Oregon, including but not limited to prunings, thinning, plantation rotations, log landing or
- 10 slash resulting from harvest or forest health stewardship, \$10.00 per green ton.
- 11 (7) For **the portion of** grass, wheat, straw or other vegetative biomass from agricultural crops
- 12 **that is not fit for human consumption**, \$10.00 per green ton.
- 13 (8) For yard debris and municipally generated food waste, \$5.00 per wet ton.
- 14 (9) For animal manure or rendering offal, \$5.00 per wet ton.
- 15 **SECTION 7. (1) Section 2 of this 2009 Act and the amendments to ORS 315.141, 315.465**
- 16 **and 469.790 by sections 3, 5 and 6 of this 2009 Act apply to tax years beginning on or after**
- 17 **January 1, 2010.**
- 18 **(2) The amendments to ORS 315.354 by section 4 of this 2009 Act apply to tax years be-**
- 19 **ginning on or after January 1, 2010, and to preliminary certifications issued under ORS**
- 20 **469.210 on or after January 1, 2010.**
- 21 **SECTION 8. This 2009 Act takes effect on the 91st day after the date on which the reg-**
- 22 **ular session of the Seventy-fifth Legislative Assembly adjourns sine die.**
- 23