

House Bill 3485

Sponsored by Representatives SCHAUFLE, THOMPSON; Representatives BOONE, BRUUN, CAMERON, ESQUIVEL, GILLIAM, GILMAN, HANNA, HUFFMAN, KRIEGER, MAURER, OLSON, ROBLAN, SPRENGER, WHISNANT, WINGARD

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 tax credit for transportation of woody biomass from forest management operations to biofuel producer.

Establishes tax credit for biomass electrical generation based on kilowatt hours of electricity produced.

Establishes tax credit for purchase of equipment to collect or process waste materials or to manufacture product from waste materials.

Directs State Department of Energy to conduct study of biomass facility sites in state.

A BILL FOR AN ACT

Relating to tax treatment of waste materials; creating new provisions; and amending ORS 314.752, 315.141, 318.031 and 469.790.

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

TAX CREDIT FOR TRANSPORTATION OF WOODY BIOMASS

SECTION 1. ORS 469.790 is amended to read:

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

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

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

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

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

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

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

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

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

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

(10) For transportation of woody biomass from forest management operations to a biofuel producer, \$_____ per green ton.

SECTION 2. ORS 315.141 is amended to read:

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.

1 315.141. (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.

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

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

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

10 (C) Agricultural residues;

11 (D) Offal and tallow from animal rendering;

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

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

14 (G) Wastewater solids; or

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

16 (d) "Biomass" does not mean wood that has been treated with creosote, pentachlorophenol, in-
17 organic arsenic or other inorganic chemical compounds.

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

20 (f) **"Woody biomass transporter" means a person that transports woody biomass from**
21 **forest management operations to a biofuel producer.**

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

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

26 (B) The collection of biomass **or transportation of woody biomass** that is used in Oregon as
27 biofuel or to produce biofuel.

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

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

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

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

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

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

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

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

45 (b) Each agricultural producer, [or] biomass collector **and woody biomass transporter** shall

1 maintain the receipts described in this subsection in their records for a period of at least five years
 2 after the tax year in which the credit is claimed or for a longer period of time prescribed by the
 3 Department of Revenue.

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

6 (7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
 7 particular tax 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 the 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 any
 11 credit not used in that third succeeding tax year may be carried forward and used in the fourth
 12 succeeding tax year, but may not be carried forward for any tax year thereafter.

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

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

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

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

22 **SECTION 3. The amendments to ORS 315.141 and 469.790 by sections 1 and 2 of this 2009**
 23 **Act apply to tax years beginning on or after January 1, 2010.**

24
 25 **TAX CREDIT FOR BIOMASS ELECTRICAL GENERATION**

26
 27 **SECTION 4. Section 5 of this 2009 Act is added to and made a part of ORS chapter 315.**

28 **SECTION 5. (1) A taxpayer may claim a credit against taxes imposed by ORS chapter 316**
 29 **or, if the taxpayer is a corporation, by ORS chapter 317 for biomass electrical generation as**
 30 **described in subsection (4) of this section.**

31 **(2)(a) The amount of the credit allowed under this section is equal to _____ cents for**
 32 **every kilowatt hour of electricity generated from biomass by a closed-loop generating oper-**
 33 **ation that grows the biomass used by the facility on a schedule of sustainable plantings and**
 34 **harvests.**

35 **(b) The amount of the credit allowed under this section is equal to _____ cents for ev-**
 36 **ery kilowatt hour of electricity generated from biomass by a facility that is not a closed-loop**
 37 **generating operation.**

38 **(3) The credit allowed under this section may not exceed the tax liability of the taxpayer.**

39 **(4) Electricity qualifies for the credit provided in this section if:**

40 **(a) The electricity is generated by a facility located in Oregon;**

41 **(b) The equipment generates electricity using only biomass, as defined in ORS 315.141;**
 42 **and**

43 **(c) The facility generating the electricity is first put in service on or after _____,**
 44 **_____.**

45 **(5) Any tax credit otherwise allowable under this section that is not used by the taxpayer**

1 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
 2 for the next succeeding tax year. Any credit remaining unused in the next succeeding tax
 3 year may be carried forward and used in the second succeeding tax year, and likewise, any
 4 credit not used in that second succeeding tax year may be carried forward and used in the
 5 third succeeding tax year and any credit not used in that third succeeding tax year may be
 6 carried forward and used in the fourth succeeding tax year, but may not be carried forward
 7 for any tax year thereafter.

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

10 (7) If a change in the status of a taxpayer from resident to nonresident or from nonres-
 11 ident to resident occurs, the credit allowed by this section shall be determined in a manner
 12 consistent with ORS 316.117.

13 (8) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or
 14 if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the
 15 credit allowed under this section shall be prorated or computed in a manner consistent with
 16 ORS 314.085.

17 SECTION 6. Section 5 of this 2009 Act applies to tax years beginning on or after
 18 _____, _____.

19
 20 **TAX CREDIT FOR USE OF WASTE MATERIALS**

21
 22 SECTION 7. Section 8 of this 2009 Act is added to and made a part of ORS chapter 315.

23 SECTION 8. (1) As used in this section, "waste material" means materials used in a
 24 business that would otherwise be destined for solid waste disposal, including materials and
 25 by-products generated from an original manufacturing or fabrication process.

26 (2) A credit against the taxes otherwise due under ORS chapter 316 or, if the taxpayer
 27 is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer for expenses related
 28 to the purchase of equipment used to collect or process waste materials or used to manu-
 29 facture a product from waste materials during the tax year. The taxpayer must be the owner
 30 of the equipment.

31 (3) The amount of the tax credit available to a taxpayer under this section shall equal the
 32 cost of the equipment.

33 (4) The credit allowed under this section may not exceed the tax liability of the taxpayer
 34 for the tax year in which the credit is claimed.

35 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer
 36 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
 37 for the next succeeding tax year. Any credit remaining unused in the next succeeding tax
 38 year may be carried forward and used in the second succeeding tax year, and likewise, any
 39 credit not used in that second succeeding tax year may be carried forward and used in the
 40 third succeeding tax year, and any credit not used in that third succeeding tax year may be
 41 carried forward and used in the fourth succeeding tax year, but may not be carried forward
 42 for any tax year thereafter.

43 SECTION 9. Section 8 of this 2009 Act applies to tax years beginning on or after January
 44 1, 2010.

CONFORMING AMENDMENTS

SECTION 10. ORS 314.752 is amended to read:

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

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

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

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

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141 (biomass production for biofuel) **and section 5 of this 2009 Act (biomass electrical generation) and section 8 of this 2009 Act (use of waste materials).**

SECTION 11. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156, 315.204, 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 **and sections 5 and 8 of this 2009 Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

BIOMASS SITING STUDY

SECTION 12. The State Department of Energy shall conduct a study of biomass facility

1 sites in this state, including retired or abandoned wood processing plants in rural communi-
2 ties, and of the benefits of favorable tax treatment for biomass electrical generation oper-
3 ations in rural communities. The department shall report the results of the study to the
4 Legislative Assembly in the manner provided by ORS 192.245 before February 1, 2011.

5 SECTION 13. The unit captions used in this 2009 Act are provided only for the conven-
6 ience of the reader and do not become part of the statutory law of this state or express any
7 legislative intent in the enactment of this 2009 Act.

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