

D R A F T

SUMMARY

Imposes tax on each fuel supplier and utility based on amount of carbon in carbon-based fuel that is sold by fuel supplier to consumers in state or that is used to produce carbon-generated electricity supplied by utility to consumers in state. Limits tax on certain oil and natural gas to six percent of market value of oil or natural gas.

Distributes moneys collected from tax to State Highway Fund, Common School Fund, Energy Crisis Trust Fund and Renewable Energy Resources Account.

Creates Renewable Energy Resources Account to fund development of renewable energy resources.

Appropriates moneys from General Fund to Department of Revenue and State Department of Energy for purpose of funding first year of administration of tax.

Applies to carbon-based fuel sold to consumers or used to produce carbon-generated electricity on or after January 1, 2015.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to carbon tax; creating new provisions; amending ORS 458.510; ap-
3 propriating money; prescribing an effective date; and providing for reve-
4 nue raising that requires approval by a three-fifths majority.

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

6 **SECTION 1. As used in sections 1 to 6 of this 2013 Act:**

7 **(1) “Carbon-based fuel” means coal, natural gas, petroleum pro-**
8 **ducts and any other product used for fuel that contains carbon and**
9 **emits carbon dioxide when combusted. “Carbon-based fuel” does not**
10 **include any product used for fuel that is from a resource that is less**
11 **than 1,000 years old in its natural state.**

1 **(2) “Carbon-generated electricity” means electric energy that is**
2 **produced using a carbon-based fuel.**

3 **(3) “Fuel supplier” means a person that sells carbon-based fuel to**
4 **consumers.**

5 **(4) “Utility” means a public utility operating under ORS chapter**
6 **757, a people’s utility district operating under ORS chapter 261, a mu-**
7 **nicipal utility operating under ORS chapter 225 or any other entity**
8 **that supplies carbon-generated electricity to consumers.**

9 **SECTION 2. (1) A tax is imposed on each fuel supplier and utility**
10 **at a rate of \$_____ per ton of carbon in a carbon-based fuel that is:**

11 **(a) Sold by a fuel supplier to consumers in this state; or**

12 **(b) Used to produce carbon-generated electricity that is supplied by**
13 **a utility to consumers in this state.**

14 **(2) Notwithstanding the rate designated under subsection (1) of this**
15 **section, the amount of tax imposed on oil or natural gas under this**
16 **section may not exceed six percent of the market value of oil or na-**
17 **tural gas that is described in Article IX, section 3b, of the Oregon**
18 **Constitution. If the total of all taxes imposed by all laws on oil or**
19 **natural gas described in Article IX, section 3b, of the Oregon Consti-**
20 **tution, exceeds six percent of the market value of the oil or natural**
21 **gas, the amount that is in excess because of taxes imposed by the laws**
22 **of this state, other than the tax imposed by this section, shall be re-**
23 **funded to the taxpayer.**

24 **(3) The Department of Revenue shall calculate the tax liability of**
25 **a fuel supplier or utility by multiplying the rate designated in sub-**
26 **section (1) of this section by the total amount of carbon in carbon-**
27 **based fuels that are:**

28 **(a) Sold by the fuel supplier to consumers in this state in the pre-**
29 **vious calendar year; or**

30 **(b) Used to produce carbon-generated electricity supplied by the**
31 **utility to consumers in this state in the previous calendar year.**

1 (4)(a) If a utility is unable to provide the information required for
2 the calculation under subsection (3) of this section, the Department
3 of Revenue shall calculate the utility's tax liability by multiplying the
4 rate designated in subsection (1) of this section by the product of the
5 average amount of carbon used in the production of one kilowatt of
6 electricity supplied by the utility and the total number of kilowatts
7 of electricity supplied by the utility to consumers in this state.

8 (b) The State Department of Energy shall calculate the average
9 amount of carbon used in the production of one kilowatt of electricity
10 supplied by the utility based upon the proportion that each carbon-
11 based fuel constitutes of the total amount of carbon-based fuel used
12 in the generation of the electricity by the utility and the amount of
13 carbon used in the production of one kilowatt of electricity for each
14 carbon-based fuel. Each year, the State Department of Energy shall
15 recalculate and report to the Department of Revenue the average
16 amount of carbon used in the production of one kilowatt of electricity
17 supplied by the utility to take into account any changes in the relative
18 proportion of carbon-based fuels used in the generation of the elec-
19 tricity by the utility.

20 (5) The Department of Revenue and the State Department of Energy
21 may adopt any rules necessary for the calculation of tax liability and
22 the collection of the tax imposed under this section.

23 (6) The tax imposed under this section does not apply to:

24 (a) Carbon-based fuel or carbon-generated electricity that this state
25 is prohibited from taxing under the Constitution or laws of the United
26 States or the Constitution or laws of the State of Oregon.

27 (b) Any fuel supplier or utility that is administered by a federal
28 agency.

29 (c) Any carbon-based fuel or carbon-generated electricity that is
30 transported through this state, or produced in this state, but not
31 consumed in this state.

1 **SECTION 3.** (1) Every fuel supplier and utility required to pay the
2 tax imposed under section 2 of this 2013 Act shall file a report with the
3 Department of Revenue on or before April 1 of each year.

4 (2) The report filed by a fuel supplier under this section shall in-
5 clude:

6 (a) The total amount of each carbon-based fuel sold by the fuel
7 supplier to consumers in this state in the previous calendar year;

8 (b) The market value of and any taxes paid for any oil or natural
9 gas that is described in Article IX, section 3b, of the Oregon Consti-
10 tution, and sold by the fuel supplier to consumers in this state in the
11 previous calendar year; and

12 (c) Any other information required by the department by rule.

13 (3) The report filed by a utility under this section shall include:

14 (a) The total amount of each carbon-based fuel used to produce the
15 carbon-generated electricity supplied by the utility to consumers in
16 this state in the previous calendar year;

17 (b) The market value of and any taxes paid for any oil or natural
18 gas that is described in Article IX, section 3b, of the Oregon Consti-
19 tution, and used to produce carbon-generated electricity supplied by
20 the utility to consumers in this state in the previous calendar year;
21 and

22 (c) Any other information required by the department by rule.

23 (4) If a utility is unable to provide the information required under
24 subsection (3) of this section, the utility shall report:

25 (a) To the State Department of Energy the information required by
26 the department by rule to make the calculations under section 2 (4)
27 of this 2013 Act; and

28 (b) To the Department of Revenue the total number of kilowatts
29 of electricity generated using carbon-based fuel and supplied by the
30 utility to consumers in this state in the previous calendar year.

31 (5) Each fuel supplier and utility shall keep records, render state-

1 ments, make returns and comply with rules adopted by the Depart-
2 ment of Revenue and the Department of Energy related to the tax
3 imposed under section 2 of this 2013 Act.

4 **SECTION 4.** (1) On or before June 1 of each year, the Department
5 of Revenue shall send to each fuel supplier and utility an assessment
6 that identifies the tax liability of the fuel supplier or utility for the
7 previous calendar year for the tax imposed under section 2 of this 2013
8 Act.

9 (2) On or before July 1 of each year, each fuel supplier and utility
10 that receives an assessment under subsection (1) of this section shall
11 pay the amount of the tax liability to the department.

12 (3) If the amount paid by the fuel supplier or utility under sub-
13 section (2) of this section exceeds the amount of tax payable, the de-
14 partment shall refund the amount of the excess with interest at the
15 rate established under ORS 305.220 for each month or fraction of a
16 month from the date of payment of the excess until the date of the
17 refund. A refund is not available to a fuel supplier or utility that fails
18 to claim the refund within two years after the due date for the filing
19 of the return with respect to which the claim for refund relates.

20 (4) If a fuel supplier or utility fails to pay the tax assessed against
21 it under subsection (1) of this section, the department may enforce
22 collection by the issuance of a distraint warrant for the collection of
23 the delinquent amount and all penalties, interest and collection
24 charges. The warrant shall be issued, docketed and proceeded upon in
25 the same manner and shall have the same force and effect as is pre-
26 scribed with respect to warrants for the collection of delinquent in-
27 come taxes.

28 **SECTION 5.** Moneys received by the Department of Revenue pur-
29 suant to the tax imposed under section 2 of this 2013 Act shall be de-
30 posited in a suspense account created pursuant to ORS 293.445. Moneys
31 in that account shall be distributed as follows:

1 (1) All moneys that are collected from motor vehicle fuel or any
2 other product used for the propulsion of motor vehicles shall be used
3 in the manner described in Article IX, section 3a, of the Oregon Con-
4 stitution.

5 (2) All moneys that are collected from natural gas or oil described
6 in Article VIII, section 2 (1)(g), of the Oregon Constitution, shall be
7 used in the manner designated in Article VIII, section 2 (1)(g), of the
8 Oregon Constitution.

9 (3) All moneys collected from sources not described in subsection
10 (1) or (2) of this section, minus any amounts the Department of Rev-
11 enue or State Department of Energy may collect to cover costs in-
12 curred by the Department of Revenue or State Department of Energy
13 in the administration of the tax, shall be deposited as follows:

14 (a) _____ percent to the Common School Fund described in Article
15 VIII, section 2, of the Oregon Constitution;

16 (b) _____ percent to the Energy Crisis Trust Fund established under
17 ORS 458.510 for the purpose of providing low income home energy as-
18 sistance; and

19 (c) _____ percent to the Renewable Energy Resources Account es-
20 tablished in section 6 of this 2013 Act for the purpose of funding the
21 development of renewable energy resources.

22 **SECTION 6.** The Renewable Energy Resources Account is estab-
23 lished in the State Treasury, separate and distinct from the General
24 Fund. The account consists of moneys distributed to the account un-
25 der section 5 of this 2013 Act. All moneys in the account are contin-
26 uously appropriated to the State Department of Energy to fund the
27 development of renewable energy resources, as defined in ORS
28 469B.130.

29 **SECTION 7.** Unless the context requires otherwise, the provisions
30 of ORS chapters 305, 314 and 316 that relate to the audit and exam-
31 ination of reports and returns, confidentiality and disclosure of reports

1 **and returns, determination of deficiencies, assessments, claims for**
2 **refunds, penalties, interest, jeopardy assessments, warrants, confer-**
3 **ences and appeals to the Oregon Tax Court, and related procedures,**
4 **apply to sections 1 to 6 of this 2013 Act, the same as if the tax were a**
5 **tax imposed upon or measured by net income.**

6 **SECTION 8.** ORS 458.510 is amended to read:

7 458.510. (1) There is established an Energy Crisis Trust Fund, separate
8 and distinct from the General Fund, in the State Treasury. As permitted by
9 federal court decisions, federal statutory requirements and administrative
10 decisions, funds from the Petroleum Violation Escrow Fund made available
11 to the Housing and Community Services Department for the Energy Crisis
12 Trust Fund, **funds designated to the Energy Crisis Trust Fund under**
13 **section 5 of this 2013 Act** and any gift, grant, appropriation or donation for
14 the purpose of the Energy Crisis Trust Fund shall be deposited by the State
15 Treasurer and credited to the Energy Crisis Trust Fund. The State Treasurer
16 shall credit monthly to the fund any interest or other income derived from
17 the fund or the investing of the fund. All moneys in the fund are contin-
18 uously appropriated to the Housing and Community Services Department for
19 the purpose of providing low income home energy assistance.

20 (2) If moneys are donated to the fund for low income energy assistance
21 by a home heating fuel or energy service provider that allows its customers
22 to contribute to the program, that money so donated shall be redistributed
23 through the Energy Crisis Trust Fund only within the service area of that
24 home heating fuel or energy service provider.

25 (3) The Housing and Community Services Department shall contract with
26 a private nonprofit or public organization or agency for the distribution of
27 moneys in the Energy Crisis Trust Fund. The department or the contractor
28 shall administer and distribute the funds in accordance with:

29 (a) The Low Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621
30 et seq.);

31 (b) The Petroleum Violation Escrow Fund regulations; and

1 (c) The recommendations of the advisory committee established in ORS
2 458.515.

3 **SECTION 9. For the purpose of first calculating the tax liability of**
4 **fuel suppliers and utilities under section 2 of this 2013 Act, the State**
5 **Department of Energy shall determine the amount of carbon by weight**
6 **in each carbon-based fuel and report those percentages to the De-**
7 **partment of Revenue.**

8 **SECTION 10. (1) In addition to and not in lieu of any other appro-**
9 **priation, there is appropriated to the Department of Revenue, for the**
10 **biennium beginning July 1, 2013, out of the General Fund, the amount**
11 **of \$_____, which may be expended for the purpose of funding the first**
12 **year of administration of the tax imposed under section 2 of this 2013**
13 **Act.**

14 **(2) In addition to and not in lieu of any other appropriation, there**
15 **is appropriated to the State Department of Energy, for the biennium**
16 **beginning July 1, 2013, out of the General Fund, the amount of**
17 **\$_____, which may be expended for the purpose of assisting the De-**
18 **partment of Revenue in administering the first year of the tax imposed**
19 **under section 2 of this 2013 Act.**

20 **SECTION 11. Sections 1 to 7 of this 2013 Act apply to carbon-based**
21 **fuel sold to consumers in this state or used to produce carbon-**
22 **generated electricity that is supplied to consumers in this state on or**
23 **after January 1, 2015.**

24 **SECTION 12. This 2013 Act takes effect on the 91st day after the**
25 **date on which the 2013 regular session of the Seventy-seventh Legis-**
26 **lative Assembly adjourns sine die.**

27