

D R A F T

SUMMARY

Limits total amount of biomass tax credit allowed for animal manure that may be claimed annually by all taxpayers. Limits availability of tax credit to animal manure processed in digester in operation by certain date.

Applies to tax years beginning on or after January 1, 2017, and before January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to tax credits for biomass; creating new provisions; amending ORS 315.141 and section 6, chapter 739, Oregon Laws 2007; and prescribing an effective date.

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

SECTION 1. ORS 315.141 is amended to read:

315.141. (1) As used in this section:

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

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

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

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

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

(C) Uses biomass in Oregon to produce energy.

(d) “Biomass” means organic matter that is available on a renewable or

recurring basis and that is derived from:

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

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

(C) Agricultural residues;

(D) Offal and tallow from animal rendering;

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

(F) Wood debris collected as provided under ORS chapter 459 or 459A;

(G) Wastewater solids; or

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

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

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

(g) "Canola" means plants of the genus Brassica:

(A) In which seeds having a high oil content are the primary economically valuable product; and

(B) That have a high erucic acid content suitable for industrial uses or a low erucic acid content suitable for edible oils.

(h) "Oilseed processor" means a person that receives agricultural oilseeds and separates them into meal and oil by mechanical or chemical means.

(i) "Willamette Valley" means Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and the portion of Benton and Lane Counties lying east of the summit of the Coast Range.

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

(3)(a) An agricultural producer or biomass collector shall be allowed a credit against the taxes that would otherwise be due under ORS chapter 316

or, if the taxpayer is a corporation, under ORS chapter 317 or 318 for:

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

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

(b) A credit under this section may be claimed in the tax year in which the credit is certified under subsection (5) of this section.

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

(d) A credit under this section may be claimed only once for each unit of biomass.

(e) Notwithstanding paragraph (a) of this subsection, a tax credit:

(A) Is not allowed for canola grown, collected or produced in the Willamette Valley; and

(B) Is not allowed for grain corn, but a tax credit shall be allowed for other corn material.

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

(5)(a) The State Department of Energy may establish by rule procedures and criteria for determining the amount of the tax credit to be certified under this section, consistent with ORS 469B.403. The department shall provide written certification to taxpayers that are eligible to claim the credit under this section.

(b) The total amount certified for tax credits for the processing of biomass that is animal manure may not exceed \$5 million for all taxpayers for the tax year in which the certification is made.

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

1 cost.

2 [(c)] (d) The State Department of Energy shall provide to the Department
3 of Revenue a list, by tax year, of taxpayers for which a credit is certified
4 under this section, upon request of the Department of Revenue.

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

7 (7) Each agricultural producer or biomass collector shall maintain the
8 written documentation of the amount certified for tax credit under this sec-
9 tion in its records for a period of at least five years after the tax year in
10 which the credit is claimed and provide the written documentation to the
11 Department of Revenue upon request.

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

14 (9) Any tax credit otherwise allowable under this section that is not used
15 by the taxpayer in a particular tax year may be carried forward and offset
16 against the taxpayer's tax liability for the next succeeding tax year. Any
17 credit remaining unused in the next succeeding tax year may be carried
18 forward and used in the second succeeding tax year, and likewise any credit
19 not used in that second succeeding tax year may be carried forward and used
20 in the third succeeding tax year, and any credit not used in that third suc-
21 ceeding tax year may be carried forward and used in the fourth succeeding
22 tax year, but may not be carried forward for any tax year thereafter.

23 (10) In the case of a credit allowed under this section:

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

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

29 (c) If a change in the taxable year of the taxpayer occurs as described in
30 ORS 314.085, or if the department terminates the taxpayer's taxable year
31 under ORS 314.440, the credit allowed under this section shall be prorated

or computed in a manner consistent with ORS 314.085.

SECTION 2. The amendments to ORS 315.141 by section 1 of this 2017 Act apply to tax years beginning on or after January 1, 2017, and before January 1, 2022.

SECTION 3. Section 6, chapter 739, Oregon Laws 2007, as amended by section 5, chapter 590, Oregon Laws 2007, section 18, chapter 913, Oregon Laws 2009, section 2, chapter 730, Oregon Laws 2011, and section 11, chapter 29, Oregon Laws 2016, is amended to read:

Sec. 6. (1)(a) ORS 315.141, 315.144 and 469B.403 apply to tax credits for tax years beginning on or after January 1, 2007, and before January 1, 2022.

(b) Notwithstanding paragraph (a) of this subsection, [*credits as provided under ORS 469B.403 (1) to (7) are not allowed for tax years beginning on or after January 1, 2018.*] **for tax years beginning on or after January 1, 2018, a credit is not allowed for types of biomass listed in ORS 469B.403 (1) to (7), or for animal manure processed in a manure digester that was not in operation prior to July 1, 2016.**

(2) Notwithstanding subsection (1) of this section, a tax credit is not allowed for wheat grain (other than nongrain wheat material) for tax years beginning before January 1, 2009, or on or after January 1, 2018.

SECTION 4. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.