

Enrolled
House Bill 3606

Sponsored by Representatives BREWER, BAILEY, Senator TELFER

CHAPTER

AN ACT

Relating to tax credits for energy facilities; creating new provisions; amending ORS 315.354, 315.356 and 469.220; and prescribing an effective date.

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

SECTION 1. ORS 315.354, as amended by section 3, chapter 76, Oregon Laws 2010, is amended to read:

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

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

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

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

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

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

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

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

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

(a) The facility must be located in Oregon;

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

(c) The taxpayer must be an eligible applicant under ORS 469.205 (1)(c); and

(d) If the alternative fuel vehicle is a gasoline-electric hybrid vehicle not designed for electric plug-in charging, it must be purchased before January 1, 2010.

(4) The total amount of credit allowable to an eligible taxpayer under this section may not exceed:

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

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

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

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

(5)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the facility, notice thereof shall be given to the Director of the State Department of Energy, who shall revoke the certificate covering the facility as of the date of such disposition.

(b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 469.215. The new lessor or owner must meet the requirements of ORS 469.185 to 469.225 and may claim a tax credit under this section only if all moneys owed to the State of Oregon have been paid, the facility continues to operate, unless continued operation is waived by the State Department of Energy, and all conditions in the final certification are met. The tax credit available to the new owner shall be limited to the amount of credit not claimed by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all previous leases.

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

[(d) A transferee holding a credit that has been transferred under ORS 469.206 or 469.208 may not claim the tax credit under this section for any tax year prior to the tax year in which the transferee obtained the credit.]

(6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise, any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax year may be carried forward and used in the eighth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in subsection (1) of this section only as provided in this subsection.

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

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

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

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

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

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

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

SECTION 2. ORS 315.356 is amended to read:

315.356. (1) If a taxpayer obtains a grant from the federal government in connection with a facility that has been certified by the Director of the State Department of Energy, the [certified] total cost of the facility shall be reduced on a dollar for dollar basis. Any income or excise tax credits that the taxpayer would be entitled to under ORS 315.354 and 469.185 to 469.225 after any reduction described in this subsection may not be reduced by the federal grant. A taxpayer applying for a federal grant shall notify the Department of Revenue by certified mail within 30 days after each application, and after the receipt of any grant.

(2) A taxpayer, **or an applicant who is otherwise eligible**, is eligible to participate in both this tax credit program and low interest, government-sponsored loans.

(3) A taxpayer who receives a tax credit or property tax relief on a pollution control facility or an alternative energy device under ORS 307.405, 315.304 or 316.116 is not eligible for a tax credit on the same facility or device under ORS 315.354 and 469.185 to 469.225.

(4) A credit may not be allowed under ORS 315.354 if the taxpayer has received a tax credit on the same facility or device under ORS 315.324.

SECTION 3. ORS 469.220, as amended by section 13, chapter 76, Oregon Laws 2010, is amended to read:

469.220. [(1)] (1)(a) A certificate issued under ORS 469.215 is required for purposes of obtaining tax credits in accordance with ORS 315.354. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which the completed application for final certification of the facility under ORS 469.215 is received by the State Department of Energy.

[(2) Notwithstanding subsection (1) of this section, for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million and that receives final certification under ORS 469.215 after January 1, 2010, the five-year period shall begin with the tax year immediately following the tax year during which the completed application for final certification of the facility under ORS 469.215 is received by the department.]

(b) **For a transferee holding a credit that has been transferred under ORS 469.206 or 469.208, the five-year period shall begin with the tax year in which the transferee pays for the credit.**

(2) **Notwithstanding subsection (1) of this section, for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million and that receives final certification under ORS 469.215 after January 1, 2010:**

(a) **The five-year period prescribed in subsection (1)(a) of this section shall begin with the tax year immediately following the tax year during which the completed application for final certification of the facility under ORS 469.215 is received by the department.**

(b) **If claimed by a transferee, the first of five tax years in which the transferee may claim the credit is the tax year in which the transferee paid for the credit or the tax year prescribed in paragraph (a) of this subsection, whichever is later.**

(c) **An application shall be considered complete without the identification of a transferee for purposes of ORS 469.206 or 469.208.**

(3) **If the original owner of the certificate uses any portion of the credit, the certificate becomes nontransferable.**

SECTION 4. (1) **The amendments to ORS 315.354 and 315.356 by sections 1 and 2 of this 2011 Act apply to tax years beginning on or after January 1, 2009, and any tax year for which a taxpayer may file an amended return or for which the Department of Revenue may issue a notice of deficiency.**

(2) The amendments to ORS 469.220 by section 3 of this 2011 Act apply to final certifications issued under ORS 469.215 on or after January 1, 2010.

(3) Notwithstanding the applicability dates in subsections (1) and (2) of this section, the amendments to ORS 315.354, 315.356 and 469.220 by sections 1 to 3 of this 2011 Act do not invalidate any action taken by the State Department of Energy prior to the effective date of this 2011 Act and do not provide a basis for applicants to obtain amendments to certifications issued under ORS 469.210 or 469.215 prior to the effective date of this 2011 Act.

SECTION 5. This 2011 Act takes effect on the 91st day after the date on which the 2011 regular session of the Seventy-sixth Legislative Assembly adjourns sine die.

Passed by House June 22, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate June 24, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State