79th OREGON LEGISLATIVE ASSEMBLY--2017 Regular Session

House Bill 2146

Sponsored by Representative JOHNSON (Presession filed.)

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 tax-exempt entities from earning or transferring energy-related tax credits. Applies to final certifications issued on or after January 1, 2018, and to tax years beginning on or after January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to the use of energy-related tax credits by tax-exempt entities; creating new provisions; amending ORS 315.053, 315.331 and 315.336; and prescribing an effective date.

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

SECTION 1. ORS 315.331 is amended to read:

315.331. (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, for an energy conservation project that is certified under ORS 469B.270 to 469B.306. The credit is allowed as follows:

(a) Except as provided in ORS 469B.298 and in paragraph (b) 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 (3) 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.

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

(a) The project must be located in Oregon.

(b) The project must have received final certification from the Director of the State Department of Energy under ORS 469B.270 to 469B.306.

(c) If the project is a research and development project, it must receive, prior to certification under ORS 469B.288, a recommendation from a qualified third party selected by the director.

(d) If the project is new construction or a total building retrofit, then the project must achieve, at a minimum, the energy efficiency standards required for:

(A) LEED Platinum certification;

(B) A four globes rating from the Green Globes program;

(C) A nationally or regionally recognized and appropriate sustainable building program whose performance standards are equivalent to the standards required for LEED Platinum certification or a four globes rating from the Green Globes program, as determined by the department; or

(D) Verification that the construction conformed to the standards of the Reach Code adopted

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.

pursuant to ORS 455.500.

(3) The total amount of credit allowable to an eligible taxpayer under this section may not exceed 35 percent of the certified cost of the project.

(4)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the project, notice thereof shall be given to the director, who shall revoke the certificate covering the project as of the date of such disposition.

(b) A new owner, or, upon re-leasing of the project, a new lessee, may apply for a new certificate under ORS 469B.291. The new lessee or owner must meet the requirements of ORS 469B.270 to 469B.306 and may claim a tax credit under this section only if all moneys owed by the new owner or lessee to the State of Oregon have been paid, if the project continues to operate and if 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 lessee, the amount of credit not claimed by the lessee under all previous leases. The State Department of Energy may waive the requirement that a new owner or lessee apply for a new certificate under ORS 469B.291 if the remaining credit is less than $20,000.

(c) The department may not revoke the certificate covering a project under paragraph (a) of this subsection if the tax credit associated with the project has been transferred to a taxpayer who is an eligible applicant under ORS 469B.285.

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

(6) A tax-exempt entity may not:

(a) Earn a credit under this section; or

(b) Transfer a credit allowed under this section to a taxpayer.

[*(6)*] **(7)** 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, 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)*] **(8)** The credit allowed under this section is not in lieu of any depreciation or amortization deduction for the project to which the taxpayer otherwise may be entitled for purposes of ORS chapter 316, 317 or 318 for such year.

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

[*(9)*] **(10)** The definitions in ORS 469B.270 apply to this section.

SECTION 2. ORS 315.336 is amended to read:

315.336. (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, for a transportation project, based upon the certified cost of the project during the period for which the project is certified under ORS 469B.320 to 469B.347.

(2) The credit allowed for a project other than an alternative fuel vehicle project shall be as

follows:

(a) For tax years beginning on or after January 1, 2011, and before January 1, 2012, the maximum allowed credit shall be:

(A) 35 percent of certified cost, if a preliminary certification is issued under ORS 469B.329 prior to July 1, 2011; or

(B) 25 percent of certified cost, if a preliminary certification is issued under ORS 469B.329 on or after July 1, 2011, and before January 1, 2012.

(b) For tax years beginning on or after January 1, 2012, and before January 1, 2013, the maximum allowed credit shall be 25 percent of certified cost.

(c) For tax years beginning on or after January 1, 2013, and before January 1, 2014, the maximum allowed credit shall be 20 percent of certified cost.

(d) For tax years beginning on or after January 1, 2014, and before January 1, 2015, the maximum allowed credit shall be 15 percent of certified cost.

(e) For tax years beginning on or after January 1, 2015, and before January 1, 2016, the maximum allowed credit shall be 10 percent of certified cost.

(3) The total amount of the credit allowable for an alternative fuel vehicle project under this section may not exceed 35 percent of the certified cost of the project.

(4)(a) Except as provided in paragraph (b) 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 project, 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 amount of the credit allowed under this section is less than 35 percent of the certified cost of the project, the credit allowed in any tax year may not exceed five percent of the certified cost of the project, and may not exceed the tax liability of the taxpayer.

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

(a) The project must be located in Oregon.

(b) The project must have received final certification from the Director of the State Department of Energy under ORS 469B.320 to 469B.347.

(6) A tax-exempt entity may not:

(a) Earn a credit under this section; or

(b) Transfer a credit allowed under this section to a taxpayer.

[*(6)*] **(7)** 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, 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 (2) of this section only as provided in this subsection.

[*(7)*] **(8)** The credit allowed under this section is not in lieu of any depreciation or amortization deduction for the transportation project to which the taxpayer otherwise may be entitled for purposes of ORS chapter 316, 317 or 318 for such year.

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

[*(9)*] **(10)** The definitions in ORS 469B.320 apply to this section.

SECTION 3. ORS 315.053 is amended to read:

315.053. An income tax credit allowed under ORS 315.141, [*315.331, 315.336,*] 315.341 or 315.354 or section 12, chapter 855, Oregon Laws 2007, may be transferred or sold only to one or more of the following:

(1) A C corporation.

(2) An S corporation.

(3) A personal income taxpayer.

SECTION 4. The amendments to ORS 315.053, 315.331 and 315.336 by sections 1 to 3 of this 2017 Act apply to final certifications issued under ORS 469B.291 or 469B.332 on or after January 1, 2017, and to tax years beginning on or after January 1, 2017.

SECTION 5. 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.