

31 October 2007

Oregon Income Tax Credits for Biomass Producers and Collectors Provided for in House Bill 2210

The information in this document is intended for informational purposes only and should not be construed as legal or tax law advice. Seek counsel from a lawyer licensed to practice law in the State of Oregon for advice on any legal matter, and/or counsel from a Certified Public Accountant, licensed to practice accounting in the State of Oregon, for advice on accounting or tax related matters.

Detailed information on State of Oregon income tax filing and documenting or claiming tax credits under State of Oregon law is available from the Oregon Department of Revenue at <http://www.oregon.gov/DOR/> Full text of the Enrolled House Bill 2210 may be viewed at: <http://www.leg.state.or.us/07reg/measures/hb2200.dir/hb2210.en.html>

Background and Statutory Reference:

The 74th Oregon Legislature passed House Bill 2210 during the 2007 regular session. It was signed into law by Governor Kulongoski on providing incentives for biomass production and collection for energy use and establishes requirements for biofuel use in Oregon. The bill amends a number of Oregon Revised Statutes relating to fuel and taxation creating new provisions; amending ORS 215.203, 215.213, 215.283, 283.327, 285C.350, 285C.353, 308A.056, 314.752, 318.031, 469.320, 646.905, 646.910 and 646.957.

Producers or collectors of Oregon sourced biomass or energy crops, used for energy production in Oregon, are eligible for tax credit incentives based upon the volume of production or collection. Producers of neat ethanol or pure bio-oils, from Oregon feedstock, are also eligible for tax credits. This advisory addresses claiming these tax credits. Under the statute producers and collectors are described as follows:

'Agricultural producer' means a person that produces biomass that is used in Oregon as biofuel or to produce biofuel.

'Biomass collector' means a person that collects biomass to be used in Oregon as biofuel or to produce biofuel.

(2)(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: ...'

Following is a summary of sections 1 through 8b of House Bill 2210 under the title Tax Credit for Producers of Biofuel Raw Materials.

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Section 1. Adds sections 2 and 3 of this bill to ORS Chapter 315, which deals with personal and corporate income tax credits.

Section 2. Establishes a tax credit for producers of plant or animal material used as biofuel or used to produce biofuel, and to collectors of forest products, wood wastes waste grease, wastewater biosolids and other organic material used as biofuel or to produce biofuel. Provides a four year carry forward for the tax credit in the event of no tax liability.

The credits provided for under House Bill 2210 are:

- oil seed crops, \$0.05 per pound, and
- grain crops, including but not limited to wheat, barley and triticale, \$0.90 per bushel
 - grains do not include corn, and wheat is eligible only after 1 January 2009, and
- virgin oil or alcohol from Oregon-based feedstock, \$0.10 per gallon, and
- used cooking oil or waste grease, \$0.10 per gallon, and
- wastewater biosolids, \$10.00 per wet ton, and
- and 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, and
- grass, wheat, straw or other vegetative biomass from agricultural crops, \$10.00 per green ton, and
- yard debris and municipally generated food waste, \$5.00 per wet ton, and
- animal manure or rendering offal, \$5.00 per wet ton.

Section 3. Allows transfer of the tax credit in section 2 to a taxpayer with tax liability and provides for transferring the tax credit on a form prescribed by the Department of Revenue. The form does not allow for a transfer from a biomass producer to a biomass collector or vice versa.

Section 4. Adds section 5 to ORS chapter 469 energy statutes.

Section 5. Sets the amount of tax credit for each eligible feedstock. Senate Bill 814 amends this section to exclude corn grain and impose a two-year delay of wheat from the grain crop incentive in Section 5(2).

Section 6. Makes sections 2, 3 and 5 applicable for tax years beginning on or after January 1, 2007 and before January 1, 2013.

Section 7. Makes an editorial change consistent with section 2 to ORS 314.752 regarding tax credits for S Corporations.

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Section 8. Makes an editorial change consistent with section 2 to ORS 318.031 regarding uniform administration of corporate tax laws.

Section 8a. Directs the Department of Energy to periodically conduct an impact study of the biofuels program. The study will include the number of jobs created, wages and benefits of such jobs, the amount of acres of biofuel feedstock planted, gallons of biofuel produced and consumed in the State, cost of production of biofuel compared to petroleum, environmental impacts of biofuel production and other issues.

Section 8b. Requires the first report on the biofuels program is due from the Department of Energy two years after the effective date of this Act.

In addition, HB 2210 set a timetable and conditions for providing blends of ethanol and biodiesel in Oregon are set. And, the legislation provides incentives for consumers of biofuels (ethanol at 85% and Biodiesel at 99% concentrations). Details of these aspects of the legislation are being defined under the Administrative Rulemaking authority of the Oregon Department of Agriculture and Oregon Department of Energy respectively.

Enactment and Years Eligible to Claim Credits:

The legislation passed out of the Legislature on 18 June 2007. It was signed into law in Eugene, Oregon by the Governor on 3 July 2007. Tax credits for producers, collectors and consumers may be claimed for biomass collected or produced on or after January 1, 2007, and before January 1, 2013.

Unused credits can be carried forward for up four years.
("In Quotations" Statutory Excerpt)

"Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the 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 any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, but may not be carried forward for any tax year thereafter."

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Records and Retention

There are statutory requirements for both defining an eligible biomass and claiming a tax credit. The following is considered appropriate documentation necessary to meet statutory standards for transacting a biomass for use as energy or biofuel, and subsequently claiming a tax credit.

The biomass production or collection credit is claimed on one's tax form for the year the biomass was sold. Appropriate documentation and record keeping is required. Records are required to be held for five years following the claim (not collection).

Eligible biomass is required to be produced and collected in Oregon for use as a biofuel produced in Oregon. A receipt for delivery or sale of the qualifying biomass would document the necessary information if it contained:

- the name address and of the producer or collector of the biomass, and
- location of production and collection of the biomass (street or road address, or forest unit, and county) and
- the type of biomass (grain, seed oil, manure...), and
- the amount of biomass in the appropriate quantity (tons, pounds, bushels, gallons ...), and
- receiver of the biomass, and
- location of the biofuel energy use of the biomass, and
- a signed declaration that the receiver will put the feedstock to biofuel or energy use in Oregon.

These attributes are required to be recorded and documented by the taxpayer claiming the credit. Records of these attributes of the taxpayer, source, biomass feedstock collection, type, use, or transfer of credit are required to be retained for five years.

Determining, verifying and documenting the amount of biomass for which an income tax credit is claimed should be done using scales or meters that are licensed for use for certifying transactions by the Oregon Department of Agriculture Weights and Measures Division.

Transfer of Credits

The tax credit for biomass production or collection may be transferred to a third party. However, a tax credit may not be transferred from an agricultural producer to a biomass collector claiming a credit for collecting the biomass; or from a biomass collector to an agricultural producer claiming a credit for producing the biomass.

For example: a grass seed grower may produce and bale straw for use as a feedstock for cellulosic ethanol. That producer is eligible to claim a credit for that feedstock. However, a collector that serves as a straw broker may be contracted to collect and distribute that

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feedstock to a qualifying biofuel facility. Only the producer or the collector may claim a credit. Under no circumstance may a producer and a collector claim credits on the same tonnage of feedstock.

To transfer the credit the biomass producer or collector shall provide the following, on a form provided by the Oregon Department of Revenue: the name, address and taxpayer identification number of the transferor and transferee; the amount of the tax credit; and any other information required on the form by Revenue. Records of the transfer and the right to claim the credit are required to be retained for five years.

Biomass Eligible for Producer and Collector Credits:

Oregon producers and collectors may claim tax credits for the following biomass, energy crops or biofuel precursors:

- Oil seed crops, \$0.05 per pound.
- Grain crops, including but not limited to wheat (after 1 Jan. 2009), barley and triticale, \$0.90 per bushel.
- Virgin oil or alcohol delivered for production in Oregon from Oregon-based feedstock, \$0.10 per gallon.
- Used cooking oil or waste grease, \$0.10 per gallon.
- Wastewater biosolids, \$10.00 per wet ton.
- 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.
- Grass, wheat straw or other vegetative biomass from agricultural crops, \$10.00 per green ton.
- Yard debris and municipally generated food waste, \$5.00 per wet ton.
- Animal manure or rendering offal, \$5.00 per wet ton

“(c) '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) Yard or wood debris collected as provided under ORS chapter 459 or 459A;
- (G) Wastewater solids; or
- (H) Crops grown solely to be used for energy.

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

Forest Sourced Woody Biomass

Any documentation (bills of lading, delivery documents, receipts' of purchase) for claiming a credit for woody should include the feedstock definition (mixed hogged fuel, chips, bark...), it's forest site source in Oregon, it's delivery point and declaration as an energy fuel. Any transfer of credits, earned by a collector, to a third party, would likely be an accumulation of multiple deliveries documented as aforementioned. The transfer should be documented in a way that it rolls up the sum of delivery, date ranges within a given tax year, the credit amount, the transaction value and respective taxpayer(s) identification.

Wood processing or manufacturing mill residues are not eligible for the tax credit. Residues from barking, peeling, sawing or hogging wood at a saw, pulp, peeler, veneer or wood products manufacturing operation are not eligible. For example, the by-products of processing a saw log of greater than 8" in diameter at a mill site after that merchantable product has been delivered to the mill is a current market and earns no credit.

Oil Seeds

Canola, camelina, mustard or other oil seed crops are eligible for the \$0.05 credit per pound. Pounds of oil seed delivered to either a broker or a biofuel producer should be documented by evidence that the purchaser will use that seed to produce oil for biofuel production in Oregon. The site of growing and collecting the seed should be identified as well as the location of the Oregon biofuel production facility processing the seed and/or resultant seed oil into a biofuel.

Virgin Biobased Oil From Oregon-Based Feedstock

Biobased oils resulting from crushing seed grown in Oregon, which is to be used in the production of biodiesel fuel in Oregon, is eligible for \$0.10 per gallon credit.

Used Cooking Oil or Waste Grease

Commercial waste cooking oil and waste cooking grease from restaurants, institutional food service, food processing or other source is eligible for \$0.10 per gallon credit.

Livestock Manure

As example, estimating 15 wet tons of manure per cow per year (as per National Resource Conservation Service standards), a 400 cow dairy could channel 6,000 tons of manure through a digester.

Biomass feedstock production: this is specific to the type of crop or feedstock produced or gathered. The crop or feedstock is delivered to an Oregon processing facility that will use the feedstock to produce a biofuel. For oilseeds, it is 5 cents per pound. For

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qualifying grains, it is 90 cents per bushel. For straw or other cellulosic materials, it is \$10 per ton.

Vegetative Biomass, Food Waste

Biomass should be weighted on a scale approved by Oregon Department of Agriculture Weights and Measures division. There should be receipts that would qualify the amount for any tax credit claimed and those receipts should be generally verifiable through comparison with a metered amount of gas produced or offset by the digester. Vegetative or food waste biomass is typically not more than 40% water by content. Having three times the tonnage of biomass than the midpoint of a typical range of gas technically expected to be produced would likely be a red flag, should a verification of credit claimed be initiated. Weight at 30% moisture content or less is a standard for basing net tonnage on a slurry delivered.

Grains

Grains grown in Oregon, including but not limited to wheat, barley and triticale, may earn a \$0.90 per bushel tax credit for the year in which they are grown and sold for use in Oregon for biofuel production. Corn is not eligible. Wheat is only eligible for grain collected on or after 1 January 2009.

Orchard, Agriculture, Rangeland, Urban or Woody Yard Debris

Urban or woody yard debris collected under Oregon Revised Statutes Chapter 459 or 459A, which identify the authority of jurisdictions to franchise refuse hauling, shall be weighted using Oregon Department of Agriculture Weights and Measures Division approved and licensed scale to document any amount for which there is a claim of the \$10 per green ton credit. The biomass must be identified in a signed receipt for purchase that the biomass is to be used solely for fuel.

Biomass for use in soil building, soil amendments or soil conditioning or in any composting materials is not eligible.

Wastewater Biosolids

Biosolids from wastewater treatment that are used directly as an energy feedstock or fuel are eligible for a \$10 per wet ton tax credit. Waste water biosolids are sediments from waste water treatment digesters and are typically drained and received as a wet cake or slurry, with usually no less than 30% moisture content. Vehicles transferring this product on Oregon roadways are subject to weight mile tax and therefore subject to weighting. Documentation of the tonnage should be conducted using Oregon Department of Agriculture or Oregon Department of Transportation certified scales and receipts.

Use of wastewater treatment biosolids cake or sludge as a boiler or gassifier fuel is eligible. Use in a secondary digester for either gas recovery or fuel is also eligible.

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Use of wastewater biosolids as a soil amendment is not eligible for a tax credit under this statute. Use of wastewater biosolids to offset nitrogen fertilizer and to provide soil tilth is an existing, developed market and requires no incentives. The energy use offset by using wastewater biosolids to supplement fertilization is secondary.

For general information about House Bill 2210, contact:

Oregon Department of Energy 800-221-8035
Oregon Department of Revenue 800-356-4222

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