

House Bill 3455

Sponsored by COMMITTEE ON REVENUE

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**.

Modifies definition of pollution control facility and increases percentages of facility costs that are eligible for income tax credit. Provides dates for which modifications and increased percentages apply and for sunset of pollution control tax credit program.

Prevents taxpayers from claiming pollution control facility tax credit and other tax credits for same facility.

Expands business energy tax credit to include renewable energy equipment manufacturing facilities. Increases percentage of cost allowed as tax credit. Increases allowable size of solar electric system for which alternative energy device tax credit may be claimed. Applies energy tax credit changes to tax years beginning on or after January 1, 2006.

A BILL FOR AN ACT

Relating to environmental improvement tax credits; creating new provisions; and amending ORS 315.304, 315.354, 315.356, 316.116, 468.155, 468.165, 468.167, 468.170, 468.173, 468.180, 468.183, 468.185, 469.160, 469.185, 469.190 and 469.205.

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

SECTION 1. ORS 468.155 is amended to read:

468.155. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:[]

[(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the Department of Environmental Quality, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or]

*[(B)] the [sole] **principal** purpose of [such] **the** use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.*

(b) *[Such]* **The** prevention, control or reduction required by this subsection shall be accomplished by:

(A) The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005;

(B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468A.005;

(C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the Environmental Quality Commission;

(D) The use of a material recovery process which obtains useful material from material that

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.

would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005, or used oil as defined in ORS 459A.555; or

(E) The treatment, substantial reduction or elimination of or redesign to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005.

(2)(a) As used in ORS 468.155 to 468.190, "pollution control facility" or "facility" includes:

(A) A nonpoint source pollution control facility[.];

(B) **A confined animal feeding operation; or**

(C) **A land management system that has been approved by the Natural Resources Conservation Service of the United States Department of Agriculture.**

(b) As used in this subsection, "nonpoint source pollution control facility" means a facility that the Environmental Quality Commission has identified by rule as reducing or controlling significant amounts of nonpoint source pollution.

(3) As used in ORS 468.155 to 468.190, "pollution control facility" or "facility" does not include:

(a) Air conditioners;

(b) Septic tanks or other facilities for human waste;

(c) Property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system;

(d) Any distinct portion of a pollution control facility that makes an insignificant contribution to the principal [*or sole*] purpose of the facility including the following specific items:

(A) Office buildings and furnishings;

(B) Parking lots and road improvements;

(C) Landscaping;

(D) External lighting;

(E) Company or related signs; and

(F) Automobiles;

(e) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued under ORS 468.170, except:

(A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the Department of **Environmental Quality**, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility; or

(B) If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility;

(f) Asbestos abatement; or

(g) Property installed, constructed or used for cleanup of emergency spills or unauthorized releases, as defined by the **Environmental Quality** Commission.

SECTION 2. ORS 468.155, as amended by section 1 of this 2005 Act is amended to read:

468.155. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if the principal purpose of the use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of

1 used oil.

2 (b) The prevention, control or reduction required by this subsection shall be accomplished by:

3 (A) The disposal or elimination of or redesign to eliminate industrial waste and the use of
4 treatment works for industrial waste as defined in ORS 468B.005;

5 (B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or
6 air contamination sources and the use of air cleaning devices as defined in ORS 468A.005;

7 (C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise
8 emission sources as defined by rule of the Environmental Quality Commission;

9 (D) The use of a material recovery process which obtains useful material from material that
10 would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS
11 466.005, or used oil as defined in ORS 459A.555; or

12 (E) The treatment, substantial reduction or elimination of or redesign to treat, substantially re-
13 duce or eliminate hazardous waste as defined in ORS 466.005.

14 (2)(a) As used in ORS 468.155 to 468.190, "pollution control facility" or "facility" includes:

15 (A) A nonpoint source pollution control facility;

16 (B) A confined animal feeding operation; *[or]*

17 (C) A land management system that has been approved by the Natural Resources Conservation
18 Service of the United States Department of Agriculture; **or**

19 **(D) An alternative fuel producing facility.**

20 (b) As used in this subsection, "nonpoint source pollution control facility" means a facility that
21 the Environmental Quality Commission has identified by rule as reducing or controlling significant
22 amounts of nonpoint source pollution.

23 **(c) As used in this subsection, "alternative fuel producing facility" means a facility that**
24 **is used to produce biodiesel, bio-oil or other fuel derived from the processing of agricultural**
25 **crops, from food processing waste or from rendering waste, if:**

26 **(A) The alternative fuel produced at the facility produces less air pollution than conven-**
27 **tional fossil fuels; or**

28 **(B) The facility reduces solid or hazardous waste or used oil.**

29 (3) As used in ORS 468.155 to 468.190, "pollution control facility" or "facility" does not include:

30 (a) Air conditioners;

31 (b) Septic tanks or other facilities for human waste;

32 (c) Property installed, constructed or used for moving sewage to the collecting facilities of a
33 public or quasi-public sewerage system;

34 (d) Any distinct portion of a pollution control facility that makes an insignificant contribution
35 to the principal purpose of the facility including the following specific items:

36 (A) Office buildings and furnishings;

37 (B) Parking lots and road improvements;

38 (C) Landscaping;

39 (D) External lighting;

40 (E) Company or related signs; and

41 (F) Automobiles;

42 (e) Replacement or reconstruction of all or a part of any facility for which a pollution control
43 facility certificate has previously been issued under ORS 468.170, except:

44 (A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement
45 cost of the original facility due to a requirement imposed by the Department of Environmental

1 Quality, the federal Environmental Protection Agency or a regional air pollution authority, then the
 2 facility may be eligible for tax credit certification up to an amount equal to the difference between
 3 the cost of the new facility and the like-for-like replacement cost of the original facility; or

4 (B) If a facility is replaced or reconstructed before the end of its useful life then the facility
 5 may be eligible for the remainder of the tax credit certified to the original facility;

6 (f) Asbestos abatement; or

7 (g) Property installed, constructed or used for cleanup of emergency spills or unauthorized re-
 8 leases, as defined by the Environmental Quality Commission.

9 **SECTION 3. The amendments to ORS 468.155 by section 2 of this 2005 Act apply to pol-
 10 lution control facilities for which an application for certification is filed under ORS 468.165
 11 on or after January 1, 2006.**

12 **SECTION 4.** ORS 468.165 is amended to read:

13 468.165. (1) Any person may apply to the Environmental Quality Commission for certification
 14 under ORS 468.170 of a pollution control facility or portion thereof erected, constructed or installed
 15 by the person in Oregon if:

16 (a) The air or water pollution control facility was erected, constructed or installed on or after
 17 January 1, 1967.

18 (b) The noise pollution control facility was erected, constructed or installed on or after January
 19 1, 1977.

20 (c) The solid waste facility was under construction on or after January 1, 1973, the hazardous
 21 waste or used oil facility was under construction on or after October 3, 1979, and if:

22 (A) The facility's principal [*or sole*] purpose conforms to the requirements of ORS 468.155 (1) and
 23 (2);

24 (B) The facility will utilize material that would otherwise be solid waste as defined in ORS
 25 459.005, hazardous waste as defined in ORS 466.005 or used oil as defined in ORS 459A.555 by me-
 26 chanical process or chemical process or through the production, processing including presegre-
 27 gation, or use of, materials which have useful chemical or physical properties and which may be
 28 used for the same or other purposes, or materials which may be used in the same kind of application
 29 as its prior use without change in identity;

30 (C) The end product of the utilization is an item of real economic value;

31 (D) The end product of the utilization, other than a usable source of power, is competitive with
 32 an end product produced in another state; and

33 (E) The Oregon law regulating solid waste imposes standards at least substantially equivalent
 34 to the federal law.

35 (d) The hazardous waste control facility was erected, constructed or installed on or after Janu-
 36 ary 1, 1984, and if:

37 (A) The facility's principal [*or sole*] purpose conforms to the requirements of ORS 468.155 (1) and
 38 (2); and

39 (B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as de-
 40 fined in ORS 466.005.

41 (2) The application shall be made in writing in a form prescribed by the Department of Envi-
 42 ronmental Quality and shall contain information on the actual cost of the facility, a description of
 43 the materials incorporated therein, all machinery and equipment made a part thereof, the existing
 44 or proposed operational procedure thereof, and a statement of the purpose of prevention, control or
 45 reduction of air, water or noise pollution or solid or hazardous waste or recycling or appropriate

1 disposal of used oil served or to be served by the facility and the portion of the actual cost properly
 2 allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazard-
 3 ous waste or to recycling or appropriately disposing of used oil.

4 (3) The Director of the Department of Environmental Quality may require any further informa-
 5 tion the director considers necessary before a certificate is issued.

6 (4) The application shall be accompanied by a fee established under subsection (5) of this sec-
 7 tion. The fee *[may]* **shall** be refunded if the application for certification is rejected.

8 (5) By rule and after hearing the commission may adopt a schedule of reasonable fees which the
 9 department may require of applicants for certificates issued under ORS 468.167 and 468.170. Before
 10 the adoption or revision of any such fees the commission shall estimate the total cost of the program
 11 to the department. The fees shall be based on the anticipated cost of filing, investigating, granting
 12 and rejecting the applications and shall be designed not to exceed the total cost estimated by the
 13 commission. Any excess fees shall be *[held by the department and shall be used by the commission]*
 14 **used** to reduce any future fee increases. The fee may vary according to the size and complexity of
 15 the facility. The fees may not be considered *[by the commission]* as part of the cost of the facility
 16 to be certified.

17 (6) The application shall be submitted after construction of the facility is substantially completed
 18 and the facility is placed in service and within one year after construction of the facility is sub-
 19 stantially completed. Failure to file a timely application shall make the facility ineligible for tax
 20 credit certification. An application may not be considered filed until it is complete and ready for
 21 processing. The commission may grant an extension of time to file an application for circumstances
 22 beyond the control of the applicant that would make a timely filing unreasonable. *[However, the*
 23 *period for filing an application may not be extended to a date beyond December 31, 2008.]*

24 **SECTION 5.** ORS 468.167 is amended to read:

25 468.167. (1) Any person proposing to apply for certification for tax relief under ORS 468.155 to
 26 468.190 may apply, before the completion of a pollution control facility, for precertification of the
 27 facility with the Environmental Quality Commission.

28 (2)(a) The application shall be made in writing in a form prescribed by the Department of En-
 29 vironmental Quality. The application shall contain the following information:

30 (A) A statement of the purpose of prevention, control or reduction of air, water or noise pol-
 31 lution or solid or hazardous waste or recycling or appropriate disposal of used oil served or to be
 32 served by the facility.

33 (B) A description of the materials for incorporation into the facility or incorporated into the
 34 facility, machinery and equipment to be made or made a part of the facility and the proposed or
 35 existing operational procedure of the facility.

36 (C) Any further information the Director of the Department of Environmental Quality considers
 37 necessary before precertification is issued.

38 (b) The application need not contain information on the actual cost of the facility or the portion
 39 of the actual cost properly allocable to the prevention, control or reduction of air, water or noise
 40 pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil.

41 (c) The application shall be accompanied by a fee as provided under ORS 468.165 (5). The fee
 42 may be refunded if the application for preliminary certification is rejected.

43 (3) If the commission determines that the person and the pollution control facility will be eligible
 44 for tax relief under ORS 307.405 or 315.304 if the facility is erected, constructed, reconstructed,
 45 added to, installed, improved or used in accordance with the application for precertification, the

commission shall precertify the facility by approving the application.

(4) If the facility is erected, constructed, reconstructed, added to, installed, improved or used as proposed in the application for precertification, the commission's approval of the application shall be prima facie evidence that the facility is qualified for certification for tax relief under ORS 468.170. However, precertification [*shall*] **does** not ensure that a facility erected, constructed, reconstructed, added to, installed, improved or used by the precertified person will receive certification under ORS 468.170 or tax relief under ORS 307.405 or 315.304.

(5) If the commission fails or refuses to precertify a person and facility, the person may appeal as provided in ORS 468.170 [(3)] (4).

SECTION 6. ORS 468.170 is amended to read:

468.170. (1) The Environmental Quality Commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468.165.

(2) The action of the commission **under subsection (1) of this section** shall include certification of the actual cost of the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil. The actual cost or portion of the actual cost certified may not exceed the taxpayer's own cash investment in the facility or portion of the facility. Each certificate shall bear a separate serial number for each such facility.

[(2)] (3) If the commission rejects an application for certification, or certifies a lesser actual cost of the facility or a lesser portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil than was claimed in the application for certification, the commission shall cause written notice of its action, and a concise statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application.

[(3)] (4) If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the facility, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil, the applicant may appeal from the rejection as provided in ORS 468.110. The rejection or the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the commission.

[(4)(a)] (5)(a) The commission shall certify a pollution control, solid waste, hazardous waste or used oil facility or portion thereof, for which an application has been made under ORS 468.165, if the commission finds that the facility:

(A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165 (1);

(B) Is designed for, and is being operated or will operate in accordance with the requirements of ORS 468.155; and

(C) Is necessary to satisfy the intents and purposes of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 466 and 467 and ORS chapters 468, 468A and 468B and rules thereunder.

(b) No determination of the proportion of the actual cost of the facility to be certified shall be made until receipt of the application.

(c) If one or more facilities constitute an operational unit, the commission may certify such facilities under one certificate.

(d) A certificate under this section is effective for purposes of tax relief in accordance with ORS 307.405 and 315.304 if, *on or before December 31, 2007,*] erection, construction or installation of the facility is completed, the facility is placed in service and the application for certification is filed with the commission under ORS 468.165.

[(5)] (6) A person receiving a certificate under this section may take tax relief only under ORS 315.304, depending upon the tax status of the person's trade or business except that:

(a) A corporation organized under ORS chapter 65 or any subsequent transferee of the corporation shall take tax relief only under ORS 307.405; and

(b)(A) A corporation organized under ORS chapter 62 or any predecessor to ORS chapter 62 relating to the incorporation of cooperative associations or the subsequent transferee of the corporation may make an irrevocable election to take the tax relief under either ORS 315.304 or 307.405. The corporation shall make the election at the time of applying for the certificate, except that a corporation receiving a certificate prior to December 31, 1995, may make the election at any time on or before December 31, 1995. If a corporation elects on or before December 31, 1995, to take the tax relief under ORS 315.304, any income taxes, penalties or interest otherwise payable by the corporation for improperly taking the tax relief under ORS 315.304 in a taxable year prior to making the election shall be waived.

(B) In the case of a corporation making the election under subparagraph (A) of this paragraph, the election applies to:

(i) All existing or future facilities that are certified under this section, if the corporation claimed a credit under ORS 315.304 for a tax year beginning prior to December 31, 1995; or

(ii) All future facilities that are certified under this section, if the corporation did not claim a credit under ORS 315.304 for a tax year beginning prior to December 31, 1995.

[(6)] (7) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 315.304, based on that partner's pro rata share of the certified cost of the facility.

[(7)] (8) Certification under this section of a pollution control facility qualifying under ORS 468.165 (1) shall be granted for a period of 10 consecutive years which 10-year period shall begin with the tax year of the person in which the facility is certified under this section, except that if ad valorem tax relief is utilized by a corporation organized under ORS chapter 62 or 65 the facility shall be exempt from ad valorem taxation for a period of 20 consecutive years.

[(8)] (9) Portions of a facility qualifying under ORS 468.165 (1)(c) may be certified separately under this section if ownership of the portions is in more than one person. Certification of such portions of a facility shall include certification of the actual cost of the portion of the facility to the person receiving the certification. The actual cost certified for all portions of a facility separately certified under this subsection may not exceed the total cost of the facility that would have been certified under one certificate. The provisions of ORS 315.304 (8) apply to any sale, exchange or other disposition of a certified portion of a facility.

[(9)] (10) A certificate issued under this section shall state the applicable percentage of the certified cost of the facility, as determined under ORS 468.173.

[(10) *If the construction or installation of a facility is commenced after December 31, 2005, the facility may be certified only if the facility or applicant is described in ORS 468.173 (3). A facility described in ORS 468.173 (2) for which construction or installation is commenced after December 31,*

2005, may not be certified under this section.]

SECTION 7. A pollution control facility may be certified under ORS 468.170 only if the erection, construction or installation of the facility for which certification is to be issued is commenced at the site before January 1, 2014.

SECTION 8. ORS 468.173 is amended to read:

468.173. For purposes of ORS 315.304, the applicable percentage of the certified cost of a facility shall be one of the following:

(1) If the facility is certified under ORS 468.155 to 468.190 (1999 Edition) or if construction or installation of the facility is commenced prior to January 1, 2001, and completed prior to January 1, 2004, 50 percent.

(2) Except as provided in subsection (1), [or] (3) **or (4)** of this section, if the facility is certified pursuant to application for certification filed on or after January 1, 2002, and:

(a) Construction or installation of the facility is commenced on or after January 1, 2001, and on or before December 31, 2003, 25 percent; [or]

(b) Construction or installation of the facility is commenced after December 31, 2003, and on or before December 31, 2005, 15 percent; **or**

(c) Construction or installation of the facility is commenced after December 31, 2005, 35 percent.

(3) If certified pursuant to **an** application for certification filed on or after January 1, 2002, **and before January 1, 2006**, 35 percent if:

(a) The applicant is certified under International Organization for Standardization standard ISO 14001;

(b) A Green Permit that applies to the facility has been issued under ORS 468.501 to 468.521;

(c) The facility is a nonpoint source or is regulated as a confined animal feeding operation under ORS 468B.200 to 468B.230;

(d) The facility is used for material recovery or recycling, as those terms are defined in ORS 459.005;

(e) The facility is used in an agricultural or forest products operation and is used for energy recovery, as defined in ORS 459.005;

(f) The certified cost of the facility does not exceed \$200,000;

(g) Construction or installation of the facility is entirely voluntary and no portion of it is required in order to comply with a federal law administered by the United States Environmental Protection Agency, a state law administered by the Department of Environmental Quality or a law administered by a regional air pollution authority;

(h) The facility is, at the time of certification, located within an enterprise zone established under ORS 285C.050 to 285C.250 or within an area that has been designated a distressed area, as defined in ORS 285A.010, by the Economic and Community Development Department; or

(i) The applicant demonstrates to the Department of Environmental Quality that the applicant uses an environmental management system at the facility. In order for the department to determine that the applicant uses an environmental management system at the facility:

(A) The applicant must have the environmental management system used at the facility reviewed by an independent third party familiar with environmental management systems and submit a report to the department stating that the provisions of this paragraph have been met. The report shall be accompanied by supporting materials that document compliance with the provisions of this paragraph. The report shall include certification from a registered or certified environmental manage-

ment auditor employed by, or under contract with, the independent third party that reviewed the environmental management system; or

(B) The department shall contract with an independent third party familiar with environmental management systems to review the environmental management system employed at the facility. The third party shall review the environmental management system, and, if the third party determines that the environmental management system meets the provisions of this paragraph, a registered or certified environmental management system auditor employed by, or contracted with, the third party shall certify that determination to the department. The department shall recover from the applicant the costs incurred by the department as prescribed in ORS 468.073. An applicant shall be liable for the costs of the department under this subparagraph without regard to whether the department certifies the facility as a pollution control facility. The department may not certify a facility to which this subparagraph applies until the department has received full payment from the applicant.

(4) If certified pursuant to an application for certification filed on or after January 1, 2006, 50 percent if:

(a) The applicant is certified under International Organization for Standardization standard ISO 14001;

(b) A Green Permit that applies to the facility has been issued under ORS 468.501 to 468.521;

(c) The facility is a nonpoint source or is regulated as a confined animal feeding operation under ORS 468B.200 to 468B.230;

(d) The facility is used for material recovery or recycling, as those terms are defined in ORS 459.005;

(e) The facility is used in an agricultural or forest products operation and is used for energy recovery, as defined in ORS 459.005;

(f) The certified cost of the facility does not exceed \$200,000;

(g) Construction or installation of the facility is entirely voluntary and no portion of it is required in order to comply with a federal law administered by the United States Environmental Protection Agency, a state law administered by the Department of Environmental Quality or a law administered by a regional air pollution authority;

(h) The facility is, at the time of certification, located within an enterprise zone established under ORS 285C.050 to 285C.250 or within an area that has been designated a distressed area, as defined in ORS 285A.010, by the Economic and Community Development Department; or

(i) The applicant demonstrates to the Department of Environmental Quality that the applicant uses an environmental management system at the facility. In order for the department to determine that the applicant uses an environmental management system at the facility:

(A) The applicant must have the environmental management system used at the facility reviewed by an independent third party familiar with environmental management systems and submit a report to the department stating that the provisions of this paragraph have been met. The report shall be accompanied by supporting materials that document compliance with the provisions of this paragraph. The report shall include certification from a registered or certified environmental management auditor employed by, or under contract with, the independent third party that reviewed the environmental management system; or

(B) The department shall contract with an independent third party familiar with envi-

ronmental management systems to review the environmental management system employed at the facility. The third party shall review the environmental management system, and, if the third party determines that the environmental management system meets the provisions of this paragraph, a registered or certified environmental management system auditor employed by, or contracted with, the third party shall certify that determination to the department. The department shall recover from the applicant the costs incurred by the department as prescribed in ORS 468.073. An applicant shall be liable for the costs of the department under this subparagraph without regard to whether the department certifies the facility as a pollution control facility. The department may not certify a facility to which this subparagraph applies until the department has received full payment from the applicant.

SECTION 9. If the Department of Environmental Quality determines that an applicant seeking to meet the requirements of ORS 468.173 (3)(i) or (4)(i) does not use an environmental management system that permits certification under ORS 468.173 (3)(i) or (4)(i), the department shall notify the applicant of the specific reasons for the determination and the specific actions needed to be taken by the applicant in order to be certified under ORS 468.173 (3)(i) or (4)(i).

SECTION 10. ORS 468.180 is amended to read:

468.180. (1) *[No certification shall]* **A certification may not** be issued by the Environmental Quality Commission pursuant to ORS 468.170 unless the facility, facilities or part thereof was erected, constructed or installed in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B and the applicable rules or standards adopted pursuant thereto.

(2) Nothing in this section is intended to apply to erection, construction or installation of pollution control facilities begun before October 5, 1973.

SECTION 11. ORS 468.183 is amended to read:

468.183. (1) If a person has obtained pollution control facility certification in which the applicable percentage is 35 percent because of issuance of a Green Permit described under ORS 468.173 (3)(b), **or 50 percent because of issuance of a Green Permit described under ORS 468.173 (4)(b),** that applies to the certified facility and the Green Permit is revoked, the applicable percentage for any remaining tax credit to be claimed under ORS 315.304 shall be the applicable percentage described under ORS 468.173 (2). *[If the construction or installation of the facility is commenced on or after January 1, 2006, the pollution control facility certification shall be revoked.]*

(2) The Department of Environmental Quality shall inform the Department of Revenue of the revocation.

SECTION 12. ORS 468.185 is amended to read:

468.185. (1) Pursuant to the procedures for a contested case under ORS chapter 183, the Environmental Quality Commission may order the revocation of the certification issued under ORS 468.170 of any pollution control or solid waste, hazardous wastes or used oil facility, if *[it]* **the commission** finds that:

(a) The certification was obtained by fraud or misrepresentation; or

(b) The holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary for, preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil as specified in such certificate.

(2) As soon as the order of revocation under this section has become final, the commission shall

1 notify the Department of Revenue and the county assessor of the county in which the facility is lo-
2 cated of such order.

3 (3) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility
4 is ordered revoked pursuant to subsection (1)(a) of this section, all prior tax relief provided to the
5 holder of such certificate by virtue of such certificate shall be forfeited and the Department of Re-
6 venue or the proper county officers shall proceed to collect those taxes not paid by the certificate
7 holder as a result of the tax relief provided to the holder under any provision of ORS 307.405 and
8 315.304.

9 (4) Except as provided in subsection (5) of this section, if the certification of a pollution control
10 or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to subsection (1)(b)
11 of this section, the certificate holder shall be denied any further relief provided under ORS 307.405
12 or 315.304 in connection with such facility, as the case may be, from and after the date that the
13 order of revocation becomes final.

14 (5) The commission may reinstate a tax credit certification revoked under subsection (1)(b) of
15 this section if the commission finds the facility has been brought into compliance. If the commission
16 reinstates certification under this subsection, the commission shall notify the Department of Re-
17 venue or the county assessor of the county in which the facility is located that the tax credit cer-
18 tification is reinstated for the remaining period of the tax credit, less the period of revocation as
19 determined by the commission.

20 **SECTION 13.** ORS 315.304 is amended to read:

21 315.304. (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corpo-
22 ration, under ORS chapter 317 or 318) for a pollution control facility or facilities certified under
23 ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4) of this section.

24 (2) For a facility certified under ORS 468.170, the maximum credit allowed in any one tax year
25 shall be the lesser of the tax liability of the taxpayer or the applicable percentage of the certified
26 cost of the facility, as determined under ORS 468.173 or 468.183, multiplied by the certified per-
27 centage allocable to pollution control, divided by the number of years of the facility's useful life.
28 The number of years of the facility's useful life used in this calculation shall be the remaining
29 number of years of useful life at the time the facility is certified but not less than one year nor more
30 than 10 years.

31 (3) To qualify for the credit the pollution control facility must be erected, constructed or in-
32 stalled in accordance with the provisions of ORS 468.165 (1) and must be certified for tax relief un-
33 der ORS 468.155 to 468.190.

34 (4) To qualify for a tax credit under this section:

35 (a) The taxpayer who is allowed the credit must be:

36 (A) The owner, including a contract purchaser, of the trade or business that utilizes Oregon
37 property requiring a pollution control facility to prevent or minimize pollution;

38 (B) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that
39 operates or utilizes such property; or

40 (C) A person who, as an owner, including a contract purchaser, or lessee, owns or leases a
41 pollution control facility that is used:

42 (i) In a business that is engaged in a production activity described in 40 C.F.R. 430.20 (as of July
43 1, 1998); or

44 (ii) For recycling, material recovery or energy recovery as defined in ORS 459.005; and

45 (b) The facility must be owned or leased during the tax year by the taxpayer claiming the credit

1 and must have been in use and operation during the tax year for which the credit is claimed.

2 (5) Regardless of when the facility is erected, constructed or installed, a credit under this sec-
3 tion may be claimed by a taxpayer:

4 (a) For a facility qualifying under ORS 468.165 (1)(a) or (b), only in those tax years which begin
5 on or after January 1, 1967.

6 (b) For a facility qualifying under ORS 468.165 (1)(c), in those tax years which begin on or after
7 January 1, 1973.

8 (c) For a facility qualifying under ORS 468.165 (1)(d), in those tax years which begin on or after
9 January 1, 1984.

10 (6) For a facility certified under ORS 468.170, the maximum total credit allowable shall not ex-
11 ceed one-half of the certified cost of the facility multiplied by the certified percentage allocable to
12 pollution control.

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

16 (8) Upon any sale, exchange or other disposition of a facility, notice thereof shall be given to
17 the Environmental Quality Commission who shall revoke the certification covering such facility as
18 of the date of such disposition. Notwithstanding ORS 468.170 [(4)(c)] **(5)(c)**, the transferee may apply
19 for a new certificate under ORS 468.170, but the tax credit available to such transferee shall be
20 limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposi-
21 tion of shares in an S corporation as defined in section 1361 of the Internal Revenue Code or of a
22 partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a
23 facility for purposes of this subsection.

24 (9) Any tax credit otherwise allowable under this section which is not used by the taxpayer in
25 a particular year may be carried forward and offset against the taxpayer's tax liability for the next
26 succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried
27 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
28 succeeding tax year may be carried forward and used in the third succeeding tax year, but may not
29 be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax
30 year beyond the years specified in ORS 468.170.

31 (10) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased
32 by any tax credits allowed under this section.

33 (11) A person described in subsection (4)(a)(C) of this section may, but need not, operate the
34 facility or conduct a trade or business that utilizes property requiring the facility. If more than one
35 person has an interest under subsection (4)(a)(C) of this section in the facility, only one person may
36 claim the credit allowed under this section. However, portions of the facility may be certified sepa-
37 rately in the same manner as provided in ORS 468.170 [(8)] **(9)** if ownership of the portions is in
38 more than one person. The person claiming the credit as between an owner, including a contract
39 purchaser, and lessee under this subsection shall be designated in a written statement signed by
40 both the lessor and lessee of the facility. This statement shall be filed with the Department of Re-
41 venue not later than the final day of the first tax year for which a tax credit is claimed.

42 (12)(a) A taxpayer may not be allowed a tax credit under this section for any tax year during
43 which the taxpayer is convicted of a felony under ORS 468.922 to 468.956 that is related to the fa-
44 cility for which the tax credit would otherwise be claimed, or for the four tax years succeeding the
45 tax year during which the taxpayer is convicted.

(b) The amount of any tax credit that is otherwise allowable under this section but for paragraph (a) of this subsection shall be considered to be claimed by the taxpayer for purposes of determining the amount of tax credit that may be claimed in a tax year in which paragraph (a) of this subsection permits the taxpayer to claim the credit.

(13) A taxpayer may not be allowed a credit under this section for any facility:

(a) For which a tax credit is claimed under ORS 315.354; or

(b) For which a tax credit is claimed under any other section of law if the facility is a truck engine that emits oxides of nitrogen at the rate of 2.5 grams per brake horsepower-hour or less.

SECTION 14. The amendments to ORS 315.304 by section 13 of this 2005 Act apply to tax years beginning on or after January 1, 2004.

SECTION 15. (1) ORS 468.962 is added to and made a part of ORS 468.922 to 468.956.

(2) Section 9 of this 2005 Act is added to and made a part of ORS 468.155 to 468.190.

SECTION 16. ORS 469.185 is amended to read:

469.185. As used in ORS **315.354**, 469.185 to 469.225 and 469.878:

(1) "Alternative fuel vehicle" means a vehicle as defined by the Director of the State Department of Energy by rule that is used primarily in connection with the conduct of a trade or business and that is manufactured or modified to use an alternative fuel, including but not limited to electricity, ethanol, methanol, gasohol and propane or natural gas, regardless of energy consumption savings.

(2) "Car sharing facility" means the expenses of operating a car sharing program, including but not limited to the fair market value of parking spaces used to store the fleet of cars available for a car sharing program, but does not include the costs of the fleet of cars.

(3) "Car sharing program" means a program in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. "Car sharing program" does not include operations conducted by car rental agencies.

(4) "Cost" means the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of a facility, including site development costs and expenses for a sustainable building practices facility.

(5) "Energy facility" means any capital investment for which the first year energy savings yields a simple payback period of greater than one year. An energy facility includes:

(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business and actually used in the processing or utilization of renewable energy resources to:

(A) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(B) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(C) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business; or

(D) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005.

(b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired,

erected, constructed or installed by any person in connection with the conduct of a trade or business in order to substantially reduce the consumption of purchased energy.

(c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance standard in the state building code.

(d) The replacement of an electric motor with another electric motor that substantially reduces the consumption of electricity.

(6) "Facility" means an energy facility, recycling facility, transportation facility, car sharing facility, sustainable building practices facility, **renewable energy equipment manufacturing facility**, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station.

(7) "Qualified transit pass contract" means a purchase agreement entered into between a transportation provider and a person, the terms of which obligate the person to purchase transit passes on behalf or for the benefit of employees, students, patients or other individuals over a specified period of time.

(8) "Recycling facility" means equipment used by a trade or business solely for recycling:

(a) Including:

(A) Equipment used solely for hauling and refining used oil;

(B) New vehicles or modifications to existing vehicles used solely to transport used recyclable materials that cannot be used further in their present form or location such as glass, metal, paper, aluminum, rubber and plastic;

(C) Trailers, racks or bins that are used for hauling used recyclable materials and are added to or attached to existing waste collection vehicles; and

(D) Any equipment used solely for processing recyclable materials such as bailers, flatteners, crushers, separators and scales.

(b) But not including equipment used for transporting or processing scrap materials that are recycled as a part of the normal operation of a trade or business as defined by the director.

(9) **"Renewable energy equipment manufacturing facility" means a facility at which machinery and equipment are manufactured to be used to produce renewable energy by using renewable energy resources or a facility at which a component of machinery and equipment is used to generate renewable energy by using renewable energy resources.**

[(9)(a)] (10)(a) "Renewable energy resource" includes, but is not limited to, straw, forest slash, wood waste or other wastes from farm or forest land, industrial waste, solar energy, wind power, water power or geothermal energy.

(b) "Renewable energy resource" does not include a hydroelectric generating facility larger than one megawatt of installed capacity unless the facility qualifies as a research, development or demonstration facility.

[(10)] (11) "Sustainable building practices facility" means a commercial building in which building practices that reduce the amount of energy, water or other resources needed for construction and operation of the building are used. "Sustainable building practices facility" may be further defined by the State Department of Energy by rule, including rules that establish traditional building practice baselines in energy, water or other resource usage for comparative purposes for use in determining whether a facility is a sustainable building practices facility.

[(11)] (12) "Transportation facility" means a transportation project that reduces energy use during commuting to and from work or school, during work-related travel, or during travel to obtain

1 medical or other services, and may be further defined by the department by rule. "Transportation
2 facility" includes, but is not limited to, a qualified transit pass contract or a transportation services
3 contract.

4 [(12)] (13) "Transportation provider" means a public, private or nonprofit entity that provides
5 transportation services to members of the public.

6 [(13)] (14) "Transportation services contract" means a contract that is related to a transporta-
7 tion facility, and may be further defined by the department by rule.

8 **SECTION 17.** ORS 469.190 is amended to read:

9 469.190. In the interest of the public health, safety and welfare, it is the policy of the State of
10 Oregon to encourage the **reduction in pollution and the** conservation of electricity, petroleum and
11 natural gas by providing tax relief for Oregon facilities that conserve energy resources or meet en-
12 ergy requirements through the use of renewable resources.

13 **SECTION 18.** ORS 469.205 is amended to read:

14 469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any
15 person may apply to the State Department of Energy for preliminary certification under ORS 469.210
16 if:

17 (a) The erection, construction, installation or acquisition of the facility is to be commenced on
18 or after October 3, 1979;

19 (b) The facility complies with the standards or rules adopted by the Director of the State De-
20 partment of Energy; and

21 (c) The applicant meets one of the following criteria:

22 (A) The applicant is a person to whom a tax credit has been transferred; or

23 (B) The applicant will be the owner or contract purchaser of the facility at the time of erection,
24 construction, installation or acquisition of the proposed facility, and:

25 (i) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to
26 utilize the facility in connection with Oregon property; or

27 (ii) The applicant is the owner, contract purchaser or lessee of a trade or business that plans
28 to lease the facility to a person who will utilize the facility in connection with Oregon property.

29 (2) An application for preliminary certification shall be made in writing on a form prepared by
30 the department and shall contain:

31 (a) A statement that the applicant or the lessee of the applicant's facility:

32 (A) Intends to convert from a purchased energy source to a renewable energy resource;

33 (B) Plans to acquire, construct or install a facility that will use a renewable energy resource
34 or solid waste instead of electricity, petroleum or natural gas;

35 (C) Plans to use a renewable energy resource in the generation of electricity for sale or to re-
36 place an existing or proposed use of an existing source of electricity;

37 (D) Plans to acquire, construct or install a facility that substantially reduces the consumption
38 of purchased energy;

39 (E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185 (8);

40 (F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alterna-
41 tive fuel vehicle;

42 (G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehicles;

43 (H) Plans to acquire transit passes for use by individuals specified by the applicant;

44 (I) Plans to acquire, construct or install a transportation facility;

45 (J) Plans to acquire a sustainable building practices facility; [or]

1 (K) Plans to acquire a car sharing facility and operate a car sharing program; or

2 **(L) Plans to acquire, construct or install a renewable energy equipment manufacturing**
 3 **facility.**

4 (b) A detailed description of the proposed facility and its operation and information showing that
 5 the facility will operate as represented in the application.

6 (c) Information on the amount by which consumption of electricity, petroleum or natural gas by
 7 the applicant or the lessee of the applicant's facility will be reduced, and on the amount of energy
 8 that will be produced for sale, as the result of using the facility or, if applicable, information about
 9 the expected level of sustainable building practices facility performance.

10 (d) The projected cost of the facility.

11 (e) If applicable, a copy of the proposed qualified transit pass contract, transportation services
 12 contract or contract for lease of parking spaces for a car sharing facility.

13 (f) Any other information the director considers necessary to determine whether the proposed
 14 facility is in accordance with the provisions of ORS 469.185 to 469.225, and any applicable rules or
 15 standards adopted by the director.

16 (3) An application for preliminary certification shall be accompanied by a fee established under
 17 ORS 469.217. The director may refund the fee if the application for certification is rejected.

18 (4) The director may allow an applicant to file the preliminary application after the start of
 19 erection, construction, installation or acquisition of the facility if the director finds:

20 (a) Filing the application before the start of erection, construction, installation or acquisition is
 21 inappropriate because special circumstances render filing earlier unreasonable; and

22 (b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to
 23 469.225.

24 (5) A preliminary certification of a sustainable building practices facility shall be applied for and
 25 issued as prescribed by the department by rule.

26 **SECTION 19.** ORS 315.354 is amended to read:

27 315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if
 28 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the
 29 facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit
 30 is allowed as follows:

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

35 **(A) Five percent of the certified cost, but may not exceed the tax liability of the taxpayer; or**

36 **(B) Ten percent of the certified cost, but may not exceed the tax liability of the taxpayer,**
 37 **in the case of an energy facility that processes or utilizes a renewable energy resource for**
 38 **the purposes described in ORS 469.185 (5)(a)(A) to (D) or in the case of a renewable energy**
 39 **equipment manufacturing facility.**

40 (b) If the application for certification under ORS 469.185 to 469.225 was filed with the State
 41 Department of Energy on or after January 1, 2001, and the certified cost of the facility does not
 42 exceed \$20,000, the total amount of the credit allowable under subsection (3) of this section may be
 43 claimed in the first tax year for which the credit may be claimed, but may not exceed the tax li-
 44 ability of the taxpayer.

45 (2) 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; and

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

(3) The maximum total credit or credits allowed for a facility under this section to eligible taxpayers may not exceed 35 percent of the certified cost of the facility **or 50 percent in the case of a facility described in subsection (1)(a)(B) of this section.**

(4)(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. The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 469.215, but 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.

(b) 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).

(5) 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.

(6) 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.

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

SECTION 20. The amendments to ORS 469.185, 469.190, 469.205 and 315.354 by sections 16 to 19 of this 2005 Act apply to applications for preliminary certification filed on or after the effective date of this 2005 Act and to claims for tax credit under ORS 315.354 in tax years beginning on or after January 1, 2006.

SECTION 21. ORS 315.356 is amended to read:

315.356. (1) If a taxpayer obtains a grant *[or tax credit]* from the federal government *[other than an investment tax credit or a low income housing tax credit]* in connection with a facility which has been certified by the Director of the State Department of Energy, the certified cost of the facility shall be reduced on a dollar for dollar basis. Any income or excise tax credits which such taxpayer

1 would be entitled to under ORS 315.354 and 469.185 to 469.225 after any such reduction shall not
 2 be reduced by such federal grants [*or tax credits*]. A taxpayer applying for a federal grant [*or*
 3 *credit*] shall notify the Department of Revenue by certified mail within 30 days after each applica-
 4 tion, and after the receipt of any grant.

5 (2) A taxpayer is eligible to participate in both [*this*] **the** tax credit [*program*] **under ORS**
 6 **315.354** and low interest, government-sponsored loans.

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

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

12 **SECTION 22. The amendments to ORS 315.356 by section 21 of this 2005 Act apply to tax**
 13 **years beginning on or after January 1, 2006.**

14 **SECTION 23.** ORS 316.116 is amended to read:

15 316.116. (1)(a) A resident individual shall be allowed a credit against the taxes otherwise due
 16 under this chapter for costs paid or incurred for construction or installation of an alternative energy
 17 device in a dwelling.

18 (b) A resident individual shall be allowed a credit against the taxes otherwise due under this
 19 chapter for costs paid or incurred to modify or purchase an alternative fuel vehicle or related
 20 equipment.

21 (2)(a) Except in the case of an alternative fuel device **or a solar electric system**, the credit
 22 shall be based upon the first year energy yield of the alternative energy device that qualifies under
 23 ORS 469.160 to 469.180. The amount of the credit shall be the same whether for collective or non-
 24 collective investment.

25 (b) The credit allowed under this section for each dwelling shall not exceed the lesser of:

26 (A) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per
 27 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or
 28 domestic water heating for tax years beginning on or after January 1, 1990, and before January 1,
 29 1996.

30 (B) \$1,200 or the first year energy yield in kilowatt hours per year multiplied by 48 cents per
 31 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or
 32 domestic water heating for tax years beginning on or after January 1, 1996, and before January 1,
 33 1998.

34 (C) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per
 35 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or
 36 domestic water heating for tax years beginning on or after January 1, 1998.

37 (c) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit
 38 allowed under this section shall be based upon 50 percent of the cost of the device or the first year's
 39 energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to:

40 (A) \$1,500 for tax years beginning on or after January 1, 1990, and before January 1, 1996.

41 (B) \$1,200 for tax years beginning on or after January 1, 1996, and before January 1, 1998.

42 (C) \$1,500 for tax years beginning on or after January 1, 1998.

43 **(d)(A) For a solar electric system, the credit allowed under this section shall equal \$3.00**
 44 **per watt of installed output for up to 2,000 watts of installed output.**

45 **(B) Notwithstanding subparagraph (A) of this paragraph, the amount of the credit al-**

lowed in any one tax year may not exceed the lesser of the tax liability of the taxpayer or \$1,500.

(C) Any credit otherwise allowable under this paragraph that is not used by the taxpayer may be carried forward and offset against the taxpayer's tax liability in the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and offset against the taxpayer's tax liability in the second succeeding tax year, and likewise any credit not used in the second succeeding tax year may be carried forward and offset against the taxpayer's tax liability in the third succeeding tax year, but may not be carried forward for any tax year thereafter, except as provided in subparagraph (D) of this paragraph.

(D) If any credit remains unused after application of subparagraph (C) of this paragraph, the amount may be carried forward and used as prescribed in subsection (7) of this section:

(i) Except that the amount carried forward and used under subsection (7) of this section may not exceed \$6,000 per system less the total amount per system already claimed under this paragraph for all tax years; and

(ii) The first tax year in which a credit carryforward described in this subparagraph is claimed under subsection (7) of this section shall be considered the fourth succeeding tax year under subsection (7) of this section.

[(d)] (e) For an alternative fuel device, the credit allowed under this section is 25 percent of the cost of the alternative fuel device but the total credit shall not exceed \$750 if the device is placed in service on or after January 1, 1998.

(3)(a) In the case of a credit for an alternative energy device that is an energy efficient appliance, the credit allowed to a resident individual under this section shall equal:

(A) 48 cents per first year kilowatt hour saved, or the equivalent for other fuel saved, not to exceed \$1,200 for each tax year beginning on or after January 1, 1998, and before January 1, 1999; and

(B) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved, not to exceed \$1,000 for each tax year beginning on or after January 1, 1999.

(b) Notwithstanding paragraph (a) of this subsection, the credit allowed for an energy efficient appliance shall not exceed 25 percent of the cost of the appliance.

(4) To qualify for a credit under this section, all of the following are required:

(a) The alternative energy device must be purchased, constructed, installed and operated in accordance with ORS 469.160 to 469.180 and a certificate issued thereunder.

(b) Except for credits claimed for alternative fuel devices, the taxpayer who is allowed the credit must be the owner or contract purchaser of the dwelling or dwellings served by the alternative energy device or the tenant of the owner or of the contract purchaser and must:

(A) Use the dwelling or dwellings served by the alternative energy device as a principal or secondary residence; or

(B) Rent or lease, under a residential rental agreement, the dwelling or dwellings to a tenant who uses the dwelling or dwellings as a principal or secondary residence, unless the basis for the credit is the installation of an energy efficient appliance. If the basis for the credit is the installation of an energy efficient appliance, the credit shall be allowed only to the taxpayer who actually occupies the dwelling as a principal or secondary residence.

(c) In the case of an alternative fuel device, if the device is a fueling station necessary to operate an alternative fuel vehicle, unless the verification form and certificate are transferred as au-

thorized under ORS 469.170 (8), the taxpayer who is allowed the credit must be the contractor who constructs the dwelling that incorporates the fueling station into the dwelling or installs the fueling station in the dwelling. If the alternative energy device is an alternative fuel vehicle, the credit must be claimed by the owner as defined under ORS 801.375 or contract purchaser. If the alternative energy device is related equipment, the credit may be claimed by the owner or contract purchaser.

(d) The credit must be claimed for the tax year in which the alternative energy device was purchased if the system is operational by April 1 of the next following tax year.

(5) The credit provided by this section shall not affect the computation of basis under this chapter.

(6) The credit allowed under this section in any one year shall not exceed the tax liability of the taxpayer.

(7) Any tax credit otherwise allowable under this section which 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 such 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, and 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.

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

(9) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

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

(11) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each. However, a husband or wife living in a separate principal residence may claim the tax credit in the same amount as permitted a single person.

(12) As used in this section, unless the context requires otherwise:

(a) "Collective investment" means an investment by two or more taxpayers for the acquisition, construction and installation of an alternative energy device for one or more dwellings.

(b) "First year energy yield" has the meaning given in ORS 469.160.

(c) "Noncollective investment" means an investment by an individual taxpayer for the acquisition, construction and installation of an alternative energy device for one or more dwellings.

(13) As used in this section, "taxpayer" includes a transferee of a verification form under ORS 469.170 (8).

(14) Notwithstanding any provision of subsection (1) or (2) of this section, the sum of the credit allowed under subsection (1) of this section plus any similar credit allowed for federal income tax purposes shall not exceed the cost to the taxpayer for the acquisition, construction and installation of the alternative energy device.

SECTION 24. The amendments to ORS 316.116 by section 23 of this 2005 Act apply to tax

years beginning on or after January 1, 2006.

SECTION 25. ORS 469.160 is amended to read:

469.160. As used in ORS 316.116, 317.115 and 469.160 to 469.180:

(1) "Alternative energy device" means:

(a) Any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation or wind for space heating, cooling or electrical energy for one or more dwellings;

(b) Any system that uses solar radiation for:

(A) Domestic water heating; or

(B) Swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS 316.116;

(c) A ground water heat pump and ground loop system;

(d) A wind powered turbine that generates electricity;

(e) Any wind powered device used to offset or supplement the use of electricity by performing a specific task such as pumping water;

(f) Equipment used in the production of alternative fuels;

(g) A generator powered by alternative fuels and used to produce electricity;

(h) A fuel cell;

(i) An energy efficient appliance; or

(j) An alternative fuel device.

(2) "Alternative fuel device" means any of the following:

(a) An alternative fuel vehicle;

(b) Related equipment; or

(c) A fueling station necessary to operate an alternative fuel vehicle.

(3) "Alternative fuel vehicle" means a motor vehicle as defined in ORS 801.360 that is:

(a) Registered in this state; and

(b) Manufactured or modified to use an alternative fuel, including but not limited to electricity, natural gas, ethanol, methanol, propane and any other fuel approved in rules adopted by the Director of the State Department of Energy that produces less exhaust emissions than vehicles fueled by gasoline or diesel. Determination that a vehicle is an alternative fuel vehicle shall be made without regard to energy consumption savings.

(4) "Coefficient of performance" means the ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(5) "Contractor" means a person whose trade or business consists of offering for sale an alternative energy device, construction service, installation service or design service.

(6)(a) "Cost" means the actual cost of the acquisition, construction and installation of the alternative energy device paid by the taxpayer for the alternative energy device.

(b) For an alternative fuel vehicle, "cost" means the difference between the cost of the alternative fuel vehicle and the same vehicle or functionally similar vehicle manufactured to use conventional gasoline or diesel fuel or, in the case of modification of an existing vehicle, the cost of the modification. "Cost" does not include any amounts paid for remodification of the same vehicle.

(c) For a fueling station necessary to operate an alternative fuel vehicle, "cost" means the cost to the contractor of constructing or installing the fueling station in a dwelling and of making the fuel station operational in accordance with the specifications issued under ORS 469.160 to 469.180 and any rules adopted by the Director of the State Department of Energy.

(d) For related equipment, "cost" means the cost of the related equipment and any modifications

1 or additions to the related equipment necessary to prepare the related equipment for use in con-
2 verting a vehicle to alternative fuel use.

3 (7) "Domestic water heating" means the heating of water used in a dwelling for bathing, clothes
4 washing, dishwashing and other related functions.

5 (8) "Dwelling" means real or personal property ordinarily inhabited as a principal or secondary
6 residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit
7 within multiple unit residential housing.

8 (9) "Energy efficient appliance" means a clothes washer, clothes dryer, water heater,
9 refrigerator, freezer, dishwasher, appliance designed to heat or cool a dwelling or other major
10 household appliance that has been certified by the State Department of Energy to have premium
11 energy efficiency characteristics.

12 (10) "First year energy yield" of an alternative energy device is the usable energy produced
13 under average environmental conditions in one year.

14 (11) "Fueling station" includes but is not limited to a compressed natural gas compressor fueling
15 system or an electric charging system for vehicle power battery charging.

16 (12) "Placed in service" means:

17 (a) The date an alternative energy device is ready and available to produce usable energy or
18 save energy.

19 (b) For an alternative fuel vehicle:

20 (A) In the case of purchase, the date that the alternative fuel vehicle is first purchased as an
21 alternative fuel vehicle ready and available for use.

22 (B) In the case of modification, the date that the modification is completed and the vehicle is
23 ready and available for use as an alternative fuel vehicle.

24 (c) For a fueling station necessary to operate an alternative fuel vehicle, the date that the fu-
25 eling station is first operational.

26 (d) For related equipment, the date that the equipment is first operational.

27 (13) "Related equipment" means equipment necessary to convert a vehicle to use an alternative
28 fuel.

29 **(14) "Solar electric system" means any system, mechanism or series of mechanisms, in-**
30 **cluding photovoltaic systems, that uses solar radiation to generate electrical energy for a**
31 **dwelling.**