

HOUSE AMENDMENTS TO SENATE BILL 31

By COMMITTEE ON REVENUE

July 5

1 On page 1 of the printed bill, line 2, delete “316.207” and insert “307.090, 314.665, 316.116,
2 469.160, 469.165, 469.170, 469.172, 469.176 and 469.180”.

3 Delete lines 5 through 28 and pages 2 and 3 and insert:

4 “**SECTION 1.** ORS 307.090 is amended to read:

5 “307.090. (1) Except as provided by law, all property of the state and all public or corporate
6 property used or intended for corporate purposes of the several counties, cities, towns, school dis-
7 tricts, irrigation districts, drainage districts, ports, water districts, housing authorities and all other
8 public or municipal corporations in this state, is exempt from taxation.

9 “(2) Any city may agree with any school district to make payments in lieu of taxes on all
10 property of the city located in any such school district, and which is exempt from taxation under
11 subsection (1) of this section when such property is outside the boundaries of the city and owned,
12 used or operated for the production, transmission, distribution or furnishing of electric power or
13 energy or electric service for or to the public.

14 “(3) **Any tangible or intangible property, property rights or property interests in or re-**
15 **lated to the Pacific Northwest AC Intertie, as referenced in a written agreement executed**
16 **between the United States Department of Energy and a city of any state, are exempt from**
17 **taxation.**

18 “**SECTION 2.** The amendments to ORS 307.090 by section 1 of this 2005 Act apply to:

19 “(1) **Any tax year beginning on or after the date a written agreement described in ORS**
20 **307.090 (3) is executed; and**

21 “(2) **Any tax year beginning on or after July 1, 2005.**

22 “**SECTION 3.** ORS 314.665 is amended to read:

23 “314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the numerator of which is
24 the total sales of the taxpayer in this state during the tax period, and the denominator of which is
25 the total sales of the taxpayer everywhere during the tax period.

26 “(2) Sales of tangible personal property are in this state if:

27 “(a) The property is delivered or shipped to a purchaser, other than the United States Govern-
28 ment, within this state regardless of the f.o.b. point or other conditions of the sale; or

29 “(b) The property is shipped from an office, store, warehouse, factory, or other place of storage
30 in this state and [(A)] the purchaser is the United States Government or [(B)] the taxpayer is not
31 taxable in the state of the purchaser. **For purposes of this paragraph:**

32 “(A) **The sale of goods shipped from a public warehouse is not considered to take place**
33 **in this state if:**

34 “(i) **The taxpayer’s only activity in Oregon is the storage of the goods in the public**
35 **warehouse prior to shipment; or**

1 “(ii) The taxpayer’s only activities in Oregon are the storage of the goods in the public
2 warehouse prior to shipment and the presence of employees within this state solely for pur-
3 poses of soliciting sales of the taxpayer’s products; and

4 “(B) ‘Taxpayer’ means a taxpayer as defined in section 7701 of the Internal Revenue Code,
5 an affiliate of the person storing goods in a public warehouse or a person that is related
6 under section 267 of the Internal Revenue Code to the person storing goods in a public
7 warehouse.

8 “(3) Subsection (2)(b) of this section shall not apply to sales of tangible personal property if:

9 “(a) The sales are included in the numerator of a formula used to apportion business income to
10 another state of the United States, a foreign country or the District of Columbia; and

11 “(b) The other state, a foreign country or the District of Columbia has imposed a tax on or
12 measured by the apportioned business income.

13 “(4) Sales, other than sales of tangible personal property, are in this state if (a) the income-
14 producing activity is performed in this state; or (b) the income-producing activity is performed both
15 in and outside this state and a greater proportion of the income-producing activity is performed in
16 this state than in any other state, based on costs of performance.

17 “(5) Where the sales apportionment factor is determined by administrative rule pursuant to ORS
18 314.682, 314.684, 317.660 or other law, the Department of Revenue shall adopt rules that are con-
19 sistent with the determination of the sales factor under this section.

20 “(6) For purposes of this section, ‘sales’:

21 “(a) Excludes gross receipts arising from the sale, exchange, redemption or holding of intangible
22 assets, including but not limited to securities, unless those receipts are derived from the taxpayer’s
23 primary business activity.

24 “(b) Includes net gain from the sale, exchange or redemption of intangible assets not derived
25 from the primary business activity of the taxpayer but included in the taxpayer’s business income.

26 “(c) Excludes gross receipts arising from an incidental or occasional sale of a fixed asset or
27 assets used in the regular course of the taxpayer’s trade or business if a substantial amount of the
28 gross receipts of the taxpayer arise from an incidental or occasional sale or sales of fixed assets
29 used in the regular course of the taxpayer’s trade or business. Insubstantial amounts of gross re-
30 cepts arising from incidental or occasional transactions or activities may be excluded from the sales
31 factor unless the exclusion would materially affect the amount of income apportioned to this state.

32 “(7) The department may determine that a warehouse that meets the definition of ‘public
33 warehouse’ under this section may not be treated as a public warehouse if the warehouse is
34 being used primarily for tax avoidance purposes or if transactions related to the use of the
35 warehouse are primarily for tax avoidance purposes.

36 “(8) As used in this section, ‘public warehouse’:

37 “(a) Means a warehouse owned or operated by a person that does not own the goods
38 stored in the warehouse; and

39 “(b) Does not include a warehouse that is owned by a person that is related to the person
40 that owns goods that are stored in the warehouse, as determined under section 267 of the
41 Internal Revenue Code, or an affiliate of the person that owns goods that are stored in the
42 warehouse.

43 “SECTION 4. The amendments to ORS 314.665 by section 3 of this 2005 Act apply to tax
44 years beginning on or after January 1, 2006.

45 “SECTION 5. ORS 316.116 is amended to read:

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

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

7 **“(c) A resident individual shall be allowed a credit against the taxes otherwise due under
8 this chapter for costs paid or incurred for construction or installation of a solar electric
9 system in a dwelling.**

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

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

15 “(A) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per
16 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or
17 domestic water heating for tax years beginning on or after January 1, 1990, and before January 1,
18 1996.

19 “(B) \$1,200 or the first year energy yield in kilowatt hours per year multiplied by 48 cents per
20 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or
21 domestic water heating for tax years beginning on or after January 1, 1996, and before January 1,
22 1998.

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

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

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

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

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

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

35 **“(e)(A) For a solar electric system, the credit allowed under this section shall equal \$3
36 per watt of installed output, but the installed output that is used to determine the amount
37 of credit under this paragraph may not exceed 2,000 watts.**

38 **“(B) Notwithstanding subparagraph (A) of this paragraph, the amount of the credit al-
39 lowed in any one tax year may not exceed the tax liability of the taxpayer or \$1,500, which-
40 ever is less. Unused credit amounts may be carried forward as provided in subsection (7) of
41 this section, but may not be carried forward to a tax year that is more than five tax years
42 following the first tax year for which any credit was allowed with respect to the solar electric
43 system that is the basis for the credit.**

44 **“(C) Notwithstanding subparagraph (A) of this paragraph, the total amount of the credit
45 allowed under this paragraph may not exceed 50 percent of the total installed cost of the**

1 **solar electric system.**

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

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

7 “(B) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved, not to exceed
8 \$1,000 for each tax year beginning on or after January 1, 1999.

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

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

12 “(a) The alternative energy device **or solar electric system** must be purchased, constructed,
13 installed and operated in accordance with ORS 469.160 to 469.180 and a certificate issued there-
14 under.

15 “(b) Except for credits claimed for alternative fuel devices, the taxpayer who is allowed the
16 credit must be the owner or contract purchaser of the dwelling or dwellings served by the alterna-
17 tive energy device **or solar electric system** or the tenant of the owner or of the contract purchaser
18 and must:

19 “(A) Use the dwelling or dwellings served by the alternative energy device **or solar electric**
20 **system** as a principal or secondary residence; or

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

26 “(c) In the case of an alternative fuel device, if the device is a fueling station necessary to op-
27 erate an alternative fuel vehicle, unless the verification form and certificate are transferred as au-
28 thorized under ORS 469.170 (8), the taxpayer who is allowed the credit must be the contractor who
29 constructs the dwelling that incorporates the fueling station into the dwelling or installs the fueling
30 station in the dwelling. If the alternative energy device is an alternative fuel vehicle, the credit must
31 be claimed by the owner as defined under ORS 801.375 or contract purchaser. If the alternative
32 energy device is related equipment, the credit may be claimed by the owner or contract purchaser.

33 “(d) The credit must be claimed for the tax year in which the alternative energy device **or solar**
34 **electric system** was purchased if the **device or** system is operational by April 1 of the next fol-
35 lowing tax year.

36 “(5) The credit provided by this section [*shall*] **does** not affect the computation of basis under
37 this chapter.

38 “(6) The credit allowed under this section in any one year [*shall*] **may** not exceed the tax li-
39 ability of the taxpayer.

40 “(7) Any tax credit otherwise allowable under this section [*which*] **that** is not used by the tax-
41 payer in a particular year may be carried forward and offset against the taxpayer’s tax liability for
42 the next succeeding tax year. Any credit remaining unused in [*such*] **the** next succeeding tax year
43 may be carried forward and used in the second succeeding tax year, and likewise any credit not used
44 in that second succeeding tax year may be carried forward and used in the third succeeding tax
45 year, and any credit not used in that third succeeding tax year may be carried forward and used in

1 the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be
2 carried forward and used in the fifth succeeding tax year, but may not be carried forward for any
3 tax year thereafter.

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

6 “(9) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
7 Department of Revenue terminates the taxpayer’s taxable year under ORS 314.440, the credit al-
8 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

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

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

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

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

19 “(b) ‘First year energy yield’ has the meaning given in ORS 469.160.

20 “(c) ‘Noncollective investment’ means an investment by an individual taxpayer for the acqui-
21 sition, construction and installation of an alternative energy device for one or more dwellings.

22 “(13) As used in this section, ‘taxpayer’ includes a transferee of a verification form under ORS
23 469.170 (8).

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

28 “**SECTION 6.** ORS 469.160 is amended to read:

29 “469.160. As used in ORS 316.116, 317.115 and 469.160 to 469.180:

30 “(1) ‘Alternative energy device’ means:

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

33 “(b) Any system that uses solar radiation for:

34 “(A) Domestic water heating; or

35 “(B) Swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS
36 316.116;

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

38 “(d) A wind powered turbine that generates electricity;

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

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

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

43 “(h) A fuel cell;

44 “(i) An energy efficient appliance; or

45 “(j) An alternative fuel device.

1 “(2) ‘Alternative fuel device’ means any of the following:

2 “(a) An alternative fuel vehicle;

3 “(b) Related equipment; or

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

5 “(3) ‘Alternative fuel vehicle’ means a motor vehicle as defined in ORS 801.360 that is:

6 “(a) Registered in this state; and

7 “(b) Manufactured or modified to use an alternative fuel, including but not limited to electricity,

8 natural gas, ethanol, methanol, propane and any other fuel approved in rules adopted by the Direc-

9 tor of the State Department of Energy that produces less exhaust emissions than vehicles fueled by

10 gasoline or diesel. Determination that a vehicle is an alternative fuel vehicle shall be made without

11 regard to energy consumption savings.

12 “(4) ‘Coefficient of performance’ means the ratio calculated by dividing the usable output energy

13 by the electrical input energy. Both energy values must be expressed in equivalent units.

14 “(5) ‘Contractor’ means a person whose trade or business consists of offering for sale an alter-

15 native energy device, construction service, installation service or design service.

16 “(6)(a) ‘Cost’ means the actual cost of the acquisition, construction and installation of the al-

17 ternative energy device **or solar electric system** paid by the taxpayer for the alternative energy

18 device **or solar electric system**.

19 “(b) For an alternative fuel vehicle, ‘cost’ means the difference between the cost of the alter-

20 native fuel vehicle and the same vehicle or functionally similar vehicle manufactured to use con-

21 ventional gasoline or diesel fuel or, in the case of modification of an existing vehicle, the cost of the

22 modification. ‘Cost’ does not include any amounts paid for remodification of the same vehicle.

23 “(c) For a fueling station necessary to operate an alternative fuel vehicle, ‘cost’ means the cost

24 to the contractor of constructing or installing the fueling station in a dwelling and of making the

25 fuel station operational in accordance with the specifications issued under ORS 469.160 to 469.180

26 and any rules adopted by the Director of the State Department of Energy.

27 “(d) For related equipment, ‘cost’ means the cost of the related equipment and any modifications

28 or additions to the related equipment necessary to prepare the related equipment for use in con-

29 verting a vehicle to alternative fuel use.

30 “(7) ‘Domestic water heating’ means the heating of water used in a dwelling for bathing, clothes

31 washing, dishwashing and other related functions.

32 “(8) ‘Dwelling’ means real or personal property ordinarily inhabited as a principal or secondary

33 residence and located within this state. ‘Dwelling’ includes, but is not limited to, an individual unit

34 within multiple unit residential housing.

35 “(9) ‘Energy efficient appliance’ means a clothes washer, clothes dryer, water heater,

36 refrigerator, freezer, dishwasher, appliance designed to heat or cool a dwelling or other major

37 household appliance that has been certified by the State Department of Energy to have premium

38 energy efficiency characteristics.

39 “(10) ‘First year energy yield’ of an alternative energy device is the usable energy produced

40 under average environmental conditions in one year.

41 “(11) ‘Fueling station’ includes but is not limited to a compressed natural gas compressor fueling

42 system or an electric charging system for vehicle power battery charging.

43 “(12) ‘Placed in service’ means:

44 “(a) The date an alternative energy device **or solar electric system** is ready and available to

45 produce usable energy or save energy.

1 “(b) For an alternative fuel vehicle:

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

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

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

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

9 “(13) ‘Related equipment’ means equipment necessary to convert a vehicle to use an alternative
10 fuel.

11 “(14) **‘Solar electric system’ means any system, mechanism or series of mechanisms, in-**
12 **cluding photovoltaic systems, that uses solar radiation to generate electrical energy for a**
13 **dwelling.**

14 “**SECTION 7.** ORS 469.165 is amended to read:

15 “469.165. (1) For the purposes of carrying out ORS 469.160 to 469.180, the State Department of
16 Energy may adopt rules prescribing minimum performance criteria for alternative energy devices for
17 dwellings **and solar electric systems.**

18 “(2) The department, in adopting rules under this section for solar heating and cooling systems,
19 shall take into consideration applicable standards of federal performance criteria prescribed pursu-
20 ant to the provisions of section 5506, title 42, United States Code (Solar Heating and Cooling Act
21 of 1974).

22 “(3) The Director of the State Department of Energy shall adopt rules governing the determi-
23 nation of eligibility, verification and certification of an alternative fuel device for purposes of the
24 tax credits granted under ORS 316.116 and 317.115, including but not limited to rules that further
25 define an alternative fuel vehicle, related equipment or fueling station necessary to operate an al-
26 ternative fuel vehicle, that govern the computation of costs eligible for credit and that require eq-
27 uitable allocation of the tax credit benefits between the lessor and the lessee of an alternative fuel
28 vehicle as a condition of tax credit eligibility.

29 “**SECTION 8.** ORS 469.170 is amended to read:

30 “469.170. (1) Any person may claim a tax credit under ORS 316.116 (or ORS 317.115, if the per-
31 son is a corporation) if the person:

32 “(a) Meets the requirements of ORS 316.116 (or ORS 317.115, if applicable);

33 “(b) Meets the requirements of ORS 469.160 to 469.180; and

34 “(c) Pays, subject to subsection (9) of this section, all or a portion of the costs of an alternative
35 energy device **or a solar electric system.**

36 “(2) A credit under ORS 317.115 may be claimed only if the alternative energy device is a fueling
37 station necessary to operate an alternative fuel vehicle.

38 “(3)(a) In order to be eligible for a tax credit under ORS 316.116 or 317.115, a person claiming
39 a tax credit for construction or installation of an alternative energy device (including a fueling
40 station) **or a solar electric system** shall have the **device or** system certified by the State Depart-
41 ment of Energy or constructed or installed by a contractor certified by the department under sub-
42 section (5) of this section. This [subsection] **paragraph** does not apply to an alternative fuel vehicle
43 or to related equipment.

44 “(b) Certification of an alternative fuel vehicle or related equipment shall be accomplished un-
45 der rules that shall be adopted by the Director of the State Department of Energy.

1 “(4) Verification of the purchase, construction or installation of an alternative energy device
2 **or solar electric system** shall be made in writing on a form provided by the Department of Re-
3 venue and, if applicable, shall contain:

4 “(a) The location of the alternative energy device **or solar electric system**;

5 “(b) A description of the type of device **or system**;

6 “(c) If the device **or system** was constructed or installed by a contractor, evidence that the
7 contractor has any license, bond, insurance and permit required to sell and construct or install the
8 alternative energy device **or solar electric system**;

9 “(d) If the device **or system** was constructed or installed by a contractor, a statement signed
10 by the contractor that the applicant has received:

11 “(A) A statement of the reasonably expected energy savings of the device **or system**;

12 “(B) A copy of consumer information published by the State Department of Energy;

13 “(C) An operating manual for the alternative energy device **or solar electric system**; and

14 “(D) A copy of the contractor’s certification certificate or alternative energy device system
15 certificate **for the alternative energy device or solar electric system**, as appropriate;

16 “(e) If the device **or system** was not constructed or installed by a contractor, evidence that:

17 “(A) The State Department of Energy has issued an alternative energy device system certificate
18 for the **alternative energy device or solar electric system**; and

19 “(B) The taxpayer has obtained all building permits required for construction or installation of
20 the device **or system**;

21 “(f) A statement, signed by both the taxpayer claiming the credit and the contractor if the de-
22 vice **or system** was constructed or installed by a contractor, that the construction or installation
23 meets all the requirements of ORS 469.160 to 469.180 or, if the device is a fueling station and the
24 taxpayer is the contractor, a statement signed by the contractor that the construction or installation
25 meets all of the requirements of ORS 469.160 to 469.180;

26 “(g) The date the alternative energy device **or solar electric system** was purchased;

27 “(h) The date the alternative energy device **or solar electric system** was placed in service; and

28 “(i) Any other information that the Director of the State Department of Energy or the Depart-
29 ment of Revenue determines is necessary.

30 “(5)(a) When the State Department of Energy finds that an alternative energy device **or solar**
31 **electric system** can meet the standards adopted under ORS 469.165, the Director of the State De-
32 partment of Energy may issue a contractor system certification to the person selling and con-
33 structing or installing the alternative energy device **or solar electric system**.

34 “(b) Any person who sells or installs more than 12 alternative energy devices **or solar electric**
35 **systems** in one year shall apply for a contractor system certification. An application for a con-
36 tractor system certification shall be made in writing on a form provided by the State Department
37 of Energy and shall contain:

38 “(A) A statement that the contractor has any license, bonding, insurance and permit that is re-
39 quired for the sale and construction or installation of the alternative energy device **or solar elec-**
40 **tric system**;

41 “(B) A specific description of the alternative energy device **or solar electric system**, including,
42 but not limited to, the material, equipment and mechanism used in the device **or system**, operating
43 procedure, sizing and siting method and construction or installation procedure;

44 “(C) The addresses of three installations of the **device or system** that are available for in-
45 spection by the State Department of Energy;

1 “(D) The range of installed costs to purchasers of the device **or system**;

2 “(E) Any important construction, installation or operating instructions; and

3 “(F) Any other information that the State Department of Energy determines is necessary.

4 “(c) A new application for contractor system approval shall be filed when there is a change in

5 the information supplied under paragraph (b) of this subsection.

6 “(d) The State Department of Energy may issue contractor system certificates to each contrac-

7 tor who on October 3, 1989, has a valid dealer system certification, which shall authorize the sale

8 and installation of the same domestic water heating alternative energy devices authorized by the

9 dealer certification.

10 “(e) If the State Department of Energy finds that an alternative energy device **or solar electric**

11 **system** can meet the standards adopted under ORS 469.165, the Director of the State Department

12 of Energy may issue an alternative energy device system certificate to the taxpayer constructing

13 or installing or having an alternative energy device **or solar electric system** constructed or in-

14 stalled.

15 “(f) An application for an alternative energy device system certificate shall be made in writing

16 on a form provided by the State Department of Energy and shall contain:

17 “(A) A specific description of the alternative energy device **or solar electric system**, including,

18 but not limited to, the material, equipment and mechanism used in the device **or system**, operating

19 procedure, sizing, siting method and construction or installation procedure;

20 “(B) The constructed or installed cost of the device **or system**; and

21 “(C) A statement that the taxpayer has all permits required for construction or installation of

22 the device **or system**.

23 “(6) To claim the tax credit, the verification form described in subsection (4) of this section shall

24 be submitted with the taxpayer’s tax return for the year the alternative energy device **or solar**

25 **electric system** is placed in service or the immediately succeeding tax year. A copy of the con-

26 tractor’s certification certificate, alternative energy device system certificate or alternative fuel

27 vehicle or related equipment certificate also shall be submitted.

28 “(7) The verification form and contractor’s certificate, alternative energy device system certif-

29 icate or alternative fuel vehicle or related equipment certificate described under this section shall

30 be effective for purposes of tax relief allowed under ORS 316.116 or 317.115.

31 “(8) The verification form and contractor’s certificate described under this section may be

32 transferred to the first purchaser of a dwelling or, in the case of construction or installation of a

33 fueling station in an existing dwelling, the current owner, who intends to use or is using the

34 dwelling as a principal or secondary residence.

35 “(9) Any person that pays the present value of the tax credit for an alternative energy device

36 **or solar electric system** provided under ORS 316.116 or 317.115 and 469.160 to 469.180 to the per-

37 son who constructs or installs the alternative energy device **or solar electric system** shall be en-

38 titled to claim the credit in the manner and subject to rules adopted by the Department of Revenue

39 to carry out the purposes of this subsection. The State Department of Energy may establish by rule

40 uniform discount rates to be used in calculating the present value of a tax credit under this sub-

41 section.

42 “**SECTION 9.** ORS 469.172 is amended to read:

43 “469.172. The following devices are not eligible for the [*alternative energy device*] tax credit un-

44 der ORS 316.116:

45 “(1) Standard efficiency furnaces;

1 “(2) Standard back-up heating systems;

2 “(3) Woodstoves or wood furnaces, or any part of a heating system that burns wood;

3 “(4) Heat pump water heaters that are part of a geothermal heat pump space heating system;

4 “(5) Structures that cover or enclose a swimming pool;

5 “(6) Swimming pools, hot tubs or spas used to store heat;

6 “(7) Above ground, uninsulated swimming pools, hot tubs or spas;

7 “(8) Photovoltaic systems installed on recreational vehicles;

8 “(9) Conversion of an existing alternative energy device **or solar electric system** to another

9 type of alternative energy device **or solar electric system**;

10 “(10) Repair or replacement of an existing alternative energy device **or solar electric system**;

11 [or]

12 “(11) **A solar electric system, if the equipment or other property that comprises the solar**

13 **electric system is also the basis for an allowed credit for an alternative energy device under**

14 **ORS 316.116;**

15 “(12) **An alternative energy device, if the equipment or other property that comprises the**

16 **alternative energy device is also the basis for an allowed credit for a solar electric system**

17 **under ORS 316.116; or**

18 “[(11)] (13) Any other device identified by the State Department of Energy. The department may

19 adopt rules defining standards for eligible and ineligible devices under this section.

20 “**SECTION 10.** ORS 469.176 is amended to read:

21 “469.176. (1) Except for alternative fuel vehicles or related equipment, in order to carry out ORS

22 469.160 to 469.180, the State Department of Energy shall develop performance assumptions and

23 prescriptive measures to determine the eligibility and tax credit amount for alternative energy de-

24 vices **and solar electric systems** constructed or installed in a dwelling.

25 “(2) The department shall use the performance assumptions and prescriptive measures to develop

26 information for the Department of Revenue to use to allow taxpayers to determine their eligibility

27 and tax credit amount. The State Department of Energy may review this information on an annual

28 basis to take into consideration new technology and performance assumption accuracy.

29 “(3) For the purpose of determining the first year energy yield of an alternative energy device,

30 the department shall use the following assumptions and test standards:

31 “(a) Solar Rating and Certification Corporation standard SRCC 100, 200, American Society of

32 Heating, Refrigerating and Air-Conditioning Engineers 93-77, or the American Refrigeration Institute

33 standard 325-85 test at 50 degrees entering water temperature, as appropriate. The testing require-

34 ments under this paragraph shall not apply to an owner-built alternative energy device.

35 “(b) For an alternative energy device used as a source for domestic water heating energy, a hot

36 water use of 75 gallons per day at 120 degrees Fahrenheit. The load of 75 gallons per day at 120

37 degrees Fahrenheit shall be achieved by including conservation measures in the construction or in-

38 stallation of the alternative energy device.

39 “(c) For an alternative energy device used as a source for space heating or cooling, the heating

40 or cooling energy load as determined by a heat loss or gain calculation performed in accordance

41 with the methods established by the American Society of Heating, Refrigerating and Air-

42 Conditioning Engineers. Except for an owner-built or site-built system, an alternative energy device

43 used as a source for domestic hot water heating must meet the SRCC OG 300 systems test or comply

44 with comparable requirements as determined by the department.

45 “(d) For an alternative energy device used as a source for electrical energy, the first year en-

1 ergy yield shall be based upon the electrical energy load of the dwelling as determined according
2 to the procedure established by the department.

3 “(e) For an alternative energy device used as a source for swimming pool, spa or hot tub heat-
4 ing, the first year energy yield shall be based on the heating load of the swimming pool, spa or hot
5 tub as determined according to the procedure established by the department.

6 “**SECTION 11.** ORS 469.180 is amended to read:

7 “469.180. (1) Upon the Department of Revenue’s own motion, or upon request of the State De-
8 partment of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax
9 credit allowed under ORS 316.116 or 317.115 if:

10 “(a) The verification was fraudulent because of a misrepresentation by the taxpayer or investor
11 owned utility;

12 “(b) The verification was fraudulent because of a misrepresentation by the contractor;

13 “(c) In the case of a **solar electric system** or an alternative energy device other than an al-
14 ternative fuel vehicle or related equipment, the **solar electric system** or alternative energy device
15 has not been constructed, installed or operated in substantial compliance with the requirements of
16 ORS 469.160 to 469.180; or

17 “(d) The taxpayer or investor owned utility failed to consent to an inspection of the constructed
18 or installed alternative energy device **or solar electric system** by the State Department of Energy
19 after a reasonable, written request for such an inspection by the State Department of Energy. This
20 paragraph does not apply to an alternative fuel vehicle or to related equipment.

21 “(2) Pursuant to the procedures for a contested case under ORS chapter 183, the Director of the
22 State Department of Energy may order the revocation of a contractor certificate issued under ORS
23 469.170 if the director finds that:

24 “(a) The contractor certificate was obtained by fraud or misrepresentation by the contractor
25 certificate holder;

26 “(b) The contractor’s performance for the alternative energy device **or solar electric system**
27 for which the contractor is issued a certificate under ORS 469.170 does not meet industry standards;
28 or

29 “(c) The contractor has misrepresented to the customer either the tax credit program or the
30 nature or quality of the alternative energy device **or solar electric system**.

31 “(3) If the tax credit allowed under ORS 316.116 or 317.115 for the purchase, construction or
32 installation of an alternative energy device **or solar electric system** is ordered forfeited due to an
33 action of the taxpayer or investor owned utility under subsection (1)(a), (c) or (d) of this section, all
34 prior tax relief provided to the taxpayer or investor owned utility shall be forfeited and the De-
35 partment of Revenue shall proceed to collect those taxes not paid by the taxpayer or utility as a
36 result of the tax credit relief under ORS 316.116 or 317.115.

37 “(4) If the tax credit for the construction or installation of an alternative energy device **or solar**
38 **electric system** is ordered forfeited due to an action of the contractor under subsection (1)(b) of
39 this section, the Department of Revenue shall proceed to collect, from the contractor, an amount
40 equivalent to those taxes not paid by the taxpayer or investor owned utility as a result of the tax
41 credit relief under ORS 316.116 or 317.115. [So] **As** long as the forfeiture is due to an action of the
42 contractor and not to an action of the taxpayer or utility, the assessment of such taxes shall be
43 levied on the contractor and not on the taxpayer or utility. Notwithstanding ORS 314.835, the De-
44 partment of Revenue may disclose information from income tax returns or reports to the extent such
45 disclosure is necessary to collect amounts from contractors under this subsection.

1 “(5) In order to obtain information necessary to verify eligibility and amount of the tax credit,
2 the State Department of Energy or its representative may inspect an alternative energy device **or**
3 **solar electric system** that has been purchased, constructed or installed. The inspection shall be
4 made only with the consent of the owner of the dwelling. Failure to consent to the inspection is
5 grounds for the forfeiture of any tax credit relief under ORS 316.116 or 317.115. The Department of
6 Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For
7 electrical generating alternative energy devices **or solar electric systems**, the State Department
8 of Energy may obtain energy consumption records for the dwelling the device **or system** serves, for
9 a 12-month period, in order to verify eligibility and amount of the tax credit.

10 “**SECTION 12.** The amendments to ORS 316.116, 469.160, 469.165, 469.170, 469.172, 469.176
11 and 469.180 by sections 5 to 11 of this 2005 Act apply to alternative energy devices and solar
12 electric systems certified by the State Department of Energy on or after January 1, 2006.

13 “**SECTION 13.** This 2005 Act takes effect on the 91st day after the date on which the
14 regular session of the Seventy-third Legislative Assembly adjourns sine die.”.

15
