

Enrolled

Senate Bill 339

Sponsored by Senators HALLOCK, WINGARD, Representatives ACHILLES, BUGAS, BURROWS, DAVIS, FADELEY, FROHNMAYER, RICHARDS, ROGERS, WHITING, Senators W. BROWN, HANNON, KAFOURY, TROW

CHAPTER 196

AN ACT

Relating to taxation; creating new provisions; and amending sections 1 and 2, chapter 460, Oregon Laws 1975.

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

SECTION 1. Sections 2 to 6 of this Act are added to and made a part of ORS 469.010 to 469.140.

SECTION 2. As used in sections 2 to 6 of this 1977 Act:

(1) "Alternative energy device" means any system, mechanism or series of mechanisms which uses solar radiation, wind or geothermal resource as a source for space heating, water heating, cooling, electrical energy or any combination thereof for a dwelling which source meets or exceeds 10 percent of the total energy requirements for the dwelling.

(2) "Dwelling" means real or personal property ordinarily inhabited as a principal or secondary residence and located within this state.

SECTION 3. (1) For the purposes of carrying out the provisions of sections 2 to 6 of this 1977 Act, the Department of Energy shall adopt rules prescribing minimum performance criteria for alternative energy devices for dwellings.

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

SECTION 4. (1) Any person may apply to the department for certification under section 5 of this 1977 Act of an alternative energy device if such person intends to install an alternative energy device in his dwelling.

(2) Applications for certification shall be made in writing on a form provided by the department and shall contain:

(a) A statement that the applicant intends to install an alternative energy device in his dwelling;

(b) A description of the alternative energy device, including but not limited to, the materials incorporated therein, equipment and mechanism made a part thereof and the operational procedure thereof; and

(c) The actual cost of the alternative energy device.

(3) The director may require such further information as the director considers necessary prior to issuance of a certificate.

SECTION 5. (1) Within 30 days of the receipt of an application for certification filed pursuant to section 4 of this 1977 Act, the director may require the submission of plans and specifications and, after examination thereof, may request corrections and revisions of the plans and specifications necessary to bring the alternative energy device into compliance with the standards of performance criteria adopted by the department pursuant to section 3 of this 1977 Act.

(2) The director shall act on an application for certification before the 120th day after filing of the application under section 4 of this 1977 Act. The action of the director shall include certification of the actual cost of the alternative energy device. Under extraordinary circumstances, an additional 30-day period may be allowed for the director to act on an application in which case the director shall so notify the applicant. Such notice shall include a finding setting forth the extraordinary circumstances.

(3) If the director rejects an application for certification, or certifies a lesser actual cost of the alternative energy device than was claimed in the application, the director shall cause written notice of his action, together with a statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant. Failure of the director to act constitutes approval of the application.

(4) If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the alternative energy device, or if the applicant is dissatisfied with the certification of actual cost, then, within 60 days of the date of mailing of the notice under subsection (3) of this section, the applicant may appeal the rejection pursuant to the provisions of ORS chapter 183 governing contested cases.

(5) If the director approves an application for certification of an alternative device, the director shall certify such device.

(6) A certificate issued under this section shall be effective for purposes of tax relief in accordance with section 8 of this 1977 Act.

SECTION 6. (1) Pursuant to the procedures for a contested case under ORS chapter 183, the director may order the revocation of the certificate issued under section 5 of this 1977 Act if the director finds that:

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

(b) The holder of the certificate has failed substantially to install or operate the alternative energy device in compliance with the plans, specifications or procedures specified in the certificate.

(2) As soon as the order of revocation under this section becomes final, the director shall give notice thereof to the Department of Revenue.

(3) If the certification of an alternative energy device is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief provided to the holder of the certificate by virtue of such certificate shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credit relief under section 8 of this 1977 Act.

(4) If the certification of an alternative energy device is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further tax credit relief under section 8 of this 1977 Act.

SECTION 7. Section 8 of this Act is added to and made a part of ORS chapter 316.

SECTION 8. (1) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter, based upon the cost of the alternative energy device which has been certified under sections 2 to 6 of this 1977 Act.

(2) To qualify for the credit under this section:

(a) The alternative energy device must be constructed, installed and operated in accordance with the provisions of sections 2 to 6 of this 1977 Act and a certificate issued thereunder;

(b) The taxpayer who is allowed the credit must be the owner or contract purchaser of the dwelling served by the alternative energy device; and

(c) The taxpayer must claim the credit in the tax year during which the alternative energy device which has been certified under sections 2 to 6 of this 1977 Act is placed in service.

(3) The taxpayer who is allowed the credit shall not be entitled to more than one credit under this section in any one taxable year.

(4) The credit allowed under this section shall not exceed the lesser of:

(a) Twenty-five percent of the actual cost of the acquisition, construction and installation of the alternative energy device; or

(b) \$1,000.

(5) A credit under this section may be claimed by a taxpayer for an alternative energy device in those tax years which begin on or after January 1, 1978, but prior to January 1, 1985.

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

(7) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(8) 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.

(9) A nonresident shall be allowed the credit under this section in the proportion provided in subsection (6) of ORS 316.117.

(10) If a change in the taxable year of a taxpayer occurs as described in ORS 316.215, or if the department 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 316.215.

(11) 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 316.397.

(12) 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 his or her separate principal residence may claim the tax credit in the same amount as permitted a single person.

Section 9. Section 1, chapter 460, Oregon Laws 1975, is amended to read:

Sec. 1. Property equipped with a solar energy heating or cooling system is exempt from ad valorem taxation in an amount that equals any positive amount obtained by subtracting the true cash value of the property as if it [*had a conventional*] were not equipped with a solar heating or cooling system from the true cash value of the property with the solar heating or cooling system.

Section 10. Section 2, chapter 460, Oregon Laws 1975, is amended to read:

Sec. 2. This Act applies to assessment years beginning on or after January 1, 1976, but prior to [*January 1, 1986*] January 1, 1986.