

Enrolled

Senate Bill 337

Sponsored by Senator WINGARD, Representative FADELEY, Senators HALLOCK, HARTUNG, KULONGOSKI, Representatives BURROWS, CAMPBELL, FROHNMAYER, Senator FADELEY

CHAPTER.....670.....

AN ACT

Relating to alternative energy devices; creating new provisions; and amending ORS 307.175, 316.116, 469.160, 469.170, 469.175 and 469.180.

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

Section 1. ORS 307.175 is amended to read:

307.175. *[(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 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.]*

(1) Property equipped with solar, geothermal, wind, water or methane gas energy systems for the purpose of heating, cooling or generating electrical energy shall be 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 were not equipped with such systems, from the true cash value of the property so equipped.

(2) This section applies to assessment years beginning on or after January 1, 1976, but prior to January 1, 1998.

(3) This section shall not apply to property owned or leased by any individual or legal entity whose principal business activity is directly or indirectly the production, transportation or distribution of energy, including but not limited to public utilities as defined in ORS 757.005 and people's utility districts as defined in ORS 261.010.

Section 2. ORS 316.116 is amended to read:

316.116. (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 ORS 469.160 to 469.180.

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

[(a)] (A) The alternative energy device must be constructed, installed and operated in accordance with the provisions of ORS 469.160 to 469.180 and a certificate issued thereunder;

[(b)] (B) 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; *[and]*

(C) Except as provided in paragraph (b) of this subsection, the taxpayer who is allowed the credit must use the dwelling or dwellings served by the alternative energy device as a principal or secondary residence; and

~~[(c)]~~ (D) ~~[The taxpayer must claim]~~ The credit must be claimed in the tax year during which the alternative energy device which has been certified under ORS 469.160 to 469.180 first is placed in service.

(b) Notwithstanding the requirements of subparagraph (C) of paragraph (a) of this subsection, a taxpayer who otherwise qualifies for the credit allowed under this section but who does not use the dwelling or dwellings served by the alternative energy device as a principal or secondary residence, shall be allowed the credit if the taxpayer rents or leases the dwelling or dwellings to a tenant who uses the dwelling or dwellings as a residence.

(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) For collective or noncollective investment, the credit allowed under this section to each taxpayer shall not exceed the percentage of the actual cost of the acquisition, construction and installation of the alternative energy device paid by the taxpayer, multiplied by 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 per dwelling utilizing the alternative energy device.

(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 or dwellings 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)]~~ (5) 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.

(13) 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) "Dwelling" 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.

(14) As used in this section, "taxpayer" includes a transferee of a certificate under subsection (7) of ORS 469.175.

Section 3. ORS 469.160 is amended to read:
469.160. As used in ORS 469.160 to 469.180:

(1) "Alternative energy device" means any system, mechanism or series of mechanisms which uses solar radiation, water, wind or geothermal resource as a source for space heating, water heating, cooling, electrical energy or any combination thereof for [*a dwelling*] one or more dwellings which source meets or exceeds 10 percent of the total energy requirements for the dwelling or dwellings. "Alternative energy device" includes any system which uses solar radiation for domestic water heating and which meets or exceeds 50 percent of the energy requirements for domestic water heating in the dwelling or dwellings.

(2) "Dwelling" means real or personal property ordinarily inhabited as a principal or secondary residence and located within this state, and includes an individual unit within multiple unit residential housing.

Section 4. ORS 469.170 is amended to read:

469.170. (1) Any person may apply to the department for certification under ORS 469.175 of an alternative energy device if [*such*] that person intends to [*install*] pay all or a portion of the costs of an alternative energy device [*in his*] for a dwelling or dwellings.

(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*] pay all or a portion of the costs of an alternative energy device [*in his*] for a dwelling or dwellings;

(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 amount the applicant intends to invest in the alternative energy device;

[(c)] (d) The actual total cost of the alternative energy device[.];

(e) The names and addresses of all other persons investing in the alternative energy device; and

(f) For existing dwellings, energy consumption records for the preceding 12-month period.

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

(4) The director may waive the requirement that an application described in this section be filed before a person invests in an alternative energy device for a dwelling or dwellings, if the director finds the requirement of prior filing inappropriate because special circumstances render the requirement unreasonable, and if the director finds that an alternative energy device would otherwise qualify for certification under ORS 469.160 to 469.180.

Section 5. ORS 469.175 is amended to read:

469.175. (1) Within 30 days of the receipt of an application for certification filed pursuant to ORS 469.170, 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 ORS 469.165.

(2) The director shall act on an application for certification before the 120th day after filing of the application under ORS 469.170. The action of the director shall include certification of the actual cost and the applicant's portion of the 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 or portion of the cost of the alternative energy device than was claimed in the application, the director shall cause written notice of [*his*] the 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*] 183.310 to 183.500 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 ORS 316.116.

(7) A certificate for an approved alternative energy device may be transferred by an applicant who does not qualify for tax relief under ORS 316.116, to the first purchaser of a dwelling who intends to use it as a principal or secondary residence.

Section 6. ORS 469.180 is amended to read:

469.180. (1) Pursuant to the procedures for a contested case under ORS [*chapter 183*] 183.310 to 183.500, the director may order the revocation of the certificate issued under ORS 469.175 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*] alternative energy device for which a certificate has been issued has not been installed or operated in substantial 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 ORS 316.116. No additional assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

(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 ORS 316.116.

SECTION 7. (1) The amendments to ORS 307.175 by section 1 of this Act first apply to assessment years beginning on or after January 1, 1980.

(2) The amendments to ORS 316.116, 469.160, 469.170, 469.175 and 469.180 by sections 2 to 6 of this Act first apply to alternative energy devices constructed, installed and operated in tax years beginning on or after January 1, 1979.