

A Prudent Person Advisory for Claiming Biomass Producer or Collector Tax Credits Pursuant to House Bill 2210

Background and Statutory Reference:

The 74th Oregon Legislature passed House Bill 2210 providing incentives for biomass collection for energy use and establishes requirements for biofuel use in Oregon. The bill amends a number of Oregon Revised Statutes relating to fuel and taxation creating new provisions; amending ORS 215.203, 215.213, 215.283, 283.327, 285C.350, 285C.353, 308A.056, 314.752, 318.031, 469.320, 646.905, 646.910 and 646.957.

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

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

Enactment and Years Eligible to Claim Credits:

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

Unused credits can be carried forward for up four years.

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

Records and Retention

There are statutory requirements for both defining an eligible feedstock and claiming a tax credit. The following is considered appropriate documentation necessary to meet

statutory standards for a collector using a qualifying feedstock directly or transacting a feedstock for use as energy or biofuel, and subsequently claiming a tax credit.

Eligible feedstocks are required to be produced and collected in Oregon for use as a biofuel produced in Oregon. A record of on-site use or a receipt for a delivered feedstock could document the necessary information if it contained:

- the name address and of the producer or collector of the feedstock, and
- location of production and collection of the feedstock (street or road address, or forest unit, and county) and
- the type of feedstock (grain, seed oil, manure...), and
- the amount of feedstock in the appropriate quantity (tons, pounds, bushels, gallons ...), and
- receiver of the feedstock, and
- location of the biofuel energy use of the feedstock, and
- what form of energy production the receiver put the feedstock to (hogged fuel, ethanol fermentation, cellulosic ethanol, methane digester fuel...), and
- some declaration that the receiver will put the feedstock to biofuel or energy use in Oregon.

These attributes are required to be recorded or documentable by the taxpayer claiming the credit. Records of these attributes are required to be retained for five years.

Transfer of Credits

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

For example: a grass seed grower may produce and bale straw for use as a feedstock for cellulosic ethanol. That producer can be eligible to claim a credit for that feedstock. However, a collector that serves as a straw broker may be contracted to collect and distribute that feedstock to a qualifying biofuel facility. Only the producer or the collector may claim a credit. Under no circumstance may a producer and a collector claim credits on the same tonnage of feedstock

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

Biomass Eligible for Producer and Collector Credits:

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

- Oil seed crops, \$0.05 per pound.
- Grain crops, including but not limited to wheat, barley and triticale, \$0.90 per bushel.
- Virgin oil or alcohol delivered for production in Oregon from Oregon-based feedstock, \$0.10 per gallon.
- Used cooking oil or waste grease, \$0.10 per gallon.
- Wastewater biosolids, \$10.00 per wet ton.
- Woody biomass collected from nursery, orchard, agricultural, forest or rangeland property in Oregon, including but not limited to prunings, thinning, plantation rotations, log landing or slash resulting from harvest or forest health stewardship, \$10.00 per green ton.
- Grass, wheat, straw or other vegetative biomass from agricultural crops, \$10.00 per green ton.
- Yard debris and municipally generated food waste, \$5.00 per wet ton.
- Animal manure or rendering offal, \$5.00 per wet ton

Waste Water Biosolids

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

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

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