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**SENATE BILL 5700**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Hargrove, Hatfield, Conway, and Warnick; by request of Office of Financial Management

AN ACT Relating to extending the expiration date of tax preferences for biofuel, biomass, and energy conservation; amending RCW 82.04.4334, 82.08.955, 82.12.955, 82.29A.135, 84.36.635, 82.04.4494, and 82.04.310; creating new sections; providing an effective date; providing expiration dates; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**PART I**

**Biofuel Tax Incentives**

NEW SECTION. **Sec.**  It is the intent of the legislature to promote the use of alternative fuels and meet Washington state's commitment to its present and future generations to fully address the climate change challenge. This section is the tax preference performance statement for the tax preferences contained in sections 102 through 106 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to accomplish a general purpose as indicated in RCW 82.32.808(2)(f).

(2) It is the legislature's specific public policy objective to promote the production and biofuels that can replace the use of fossil fuels to produce energy and thereby help with achieving the state's renewable energy and greenhouse gas emissions targets. It is also the legislature's specific public policy objective to create new markets for Washington oilseeds.

(3) To measure the effectiveness of the exemptions in sections 102 through 106 of this act in achieving the public policy objectives described in subsection (2) of this section, the joint legislative audit and review committee must evaluate the number of biofuel plants operating in Washington state, the number of taxpayers that claim the preferences, the amount and type of preferences claimed, the amount of biodiesel or E85 motor fuel produced or manufactured in Washington state, and the number of acres of land used for oilseed production that is used to produce or manufacture biofuels. If a review finds that there is an increase in use of the tax preferences in sections 102 through 106 of this act, then the legislature intends to extend the expiration date of the tax preferences.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to data from the department of revenue, the Washington State University energy extension program, the Washington state department of agriculture, the federal energy information administration, and any other data source it deems necessary.

**Sec.**  RCW 82.04.4334 and 2007 c 309 s 3 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax amounts received from the retail sale, or for the distribution, of:

(a) Biodiesel fuel; or

(b) E85 motor fuel.

(2) For the purposes of this section and RCW 82.08.955 and 82.12.955, the following definitions apply:

(a) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(b) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(c) "Distribution" means any of the actions specified in RCW 82.36.020(2).

(3) Every taxpayer claiming a deduction under this section must file a complete annual survey with the department under RCW 82.32.585.

(4) This section expires July 1, ((~~2015~~))2025.

**Sec.**  RCW 82.08.955 and 2007 c 309 s 4 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of machinery and equipment, or to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or machinery and equipment, or to sales of tangible personal property that becomes an ingredient or component of structures or machinery and equipment, if the machinery, equipment, or structure is used directly for the retail sale of a biodiesel blend or E85 motor fuel. Structures and machinery and equipment that are used for the retail sale of a biodiesel blend or E85 motor fuel and for other purposes are exempt only on the portion used directly for the retail sale of a biodiesel blend or E85 motor fuel.

(2) The tax levied by RCW 82.08.020 does not apply to sales of fuel delivery vehicles or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles including repair parts and replacement parts if at least seventy-five percent of the fuel distributed by the vehicles is a biodiesel blend or E85 motor fuel.

(3) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(4) For the purposes of this section, the definitions in RCW 82.04.4334 and this subsection apply.

(a) "Biodiesel blend" means fuel that contains at least twenty percent biodiesel fuel by volume.

(b) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(c) "Machinery and equipment" means industrial fixtures, devices, and support facilities and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts that are integral and necessary for the delivery of biodiesel blends or E85 motor fuel into the fuel tank of a motor vehicle.

(5) Every taxpayer claiming a deduction under this section must file a complete annual survey with the department under RCW 82.32.585.

(6) This section expires July 1, ((~~2015~~))2025.

**Sec.**  RCW 82.12.955 and 2007 c 309 s 5 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of machinery and equipment, or to services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, or tangible personal property that becomes an ingredient or component of machinery and equipment used directly for the retail sale of a biodiesel or E85 motor fuel.

(2) The provisions of this chapter do not apply in respect to the use of fuel delivery vehicles including repair parts and replacement parts and to services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles if at least seventy-five percent of the fuel distributed by the vehicles is a biodiesel or E85 motor fuel.

(3) For the purposes of this section, the definitions in RCW 82.04.4334 and 82.08.955 apply.

(4) Every taxpayer claiming a deduction under this section must file a complete annual survey with the department under RCW 82.32.585.

(5) This section expires July 1, ((~~2015~~))2025.

**Sec.**  RCW 82.29A.135 and 2010 1st sp.s. c 11 s 6 are each amended to read as follows:

(1) ((~~For the purposes of this section:~~))The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas, which is used alone or in combination with gasoline or other petroleum products for use as a fuel for motor vehicles, farm implements, and machines or implements of husbandry.

(b) "Anaerobic digester" has the same meaning as provided in RCW 82.08.900.

(c) "Biodiesel feedstock" means oil that is produced from an agricultural crop for the sole purpose of ultimately producing biodiesel fuel.

(d) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(e) "Wood biomass fuel" means a pyrolytic liquid fuel or synthesis gas-derived liquid fuel, used in internal combustion engines, and produced from wood, forest, or field residue, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(2)(a) All leasehold interests in buildings, machinery, equipment, and other personal property which are used primarily for the manufacturing of alcohol fuel, wood biomass fuel, biodiesel fuel, biodiesel feedstock, or the operation of an anaerobic digester, the land upon which this property is located, and land that is reasonably necessary in the manufacturing of alcohol fuel, wood biomass fuel, biodiesel fuel, biodiesel feedstock, or the operation of an anaerobic digester, but not land necessary for growing of crops, which together comprise a new manufacturing facility or an addition to an existing manufacturing facility, are exempt from leasehold taxes for a period of six years from the date on which the facility or the addition to the existing facility becomes operational.

(b) For manufacturing facilities which produce products in addition to alcohol fuel, wood biomass fuel, biodiesel fuel, or biodiesel feedstock, the amount of the leasehold tax exemption is based upon the annual percentage of the total value of all products manufactured that is the value of the alcohol fuel, wood biomass fuel, biodiesel fuel, and biodiesel feedstock manufactured.

(3) Claims for exemptions authorized by this section must be filed with the department ((~~of revenue~~)) on forms prescribed by the department ((~~of revenue~~)) and furnished by the department ((~~of revenue~~)). Once filed, the exemption is valid for six years and may not be renewed. The department ((~~of revenue~~)) must verify and approve claims as the department ((~~of revenue~~)) determines to be justified and in accordance with this section. No claims may be filed after December 31, ((~~2015~~))2025, except for claims for anaerobic digesters, which may be filed no later than December 31, 2012.

(4) The department ((~~of revenue~~)) may promulgate ((~~such~~)) rules, pursuant to chapter 34.05 RCW, as are necessary to properly administer this section.

**Sec.**  RCW 84.36.635 and 2010 1st sp.s. c 11 s 4 are each amended to read as follows:

(1) ((~~For the purposes of this section:~~))The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas, which is used alone or in combination with gasoline or other petroleum products for use as a fuel for motor vehicles, farm implements, and machines or implements of husbandry.

(b) "Anaerobic digester" has the same meaning as provided in RCW 82.08.900.

(c) "Biodiesel feedstock" means oil that is produced from an agricultural crop for the sole purpose of ultimately producing biodiesel fuel.

(d) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(2)(a) All buildings, machinery, equipment, and other personal property which are used primarily for the manufacturing of alcohol fuel, biodiesel fuel, biodiesel feedstock, or the operation of an anaerobic digester, the land upon which this property is located, and land that is reasonably necessary in the manufacturing of alcohol fuel, biodiesel fuel, biodiesel feedstock, or the operation of an anaerobic digester, but not land necessary for growing of crops, which together comprise a new manufacturing facility or an addition to an existing manufacturing facility, are exempt from property taxation for the six assessment years following the date on which the facility or the addition to the existing facility becomes operational.

(b) For manufacturing facilities which produce products in addition to alcohol fuel, biodiesel fuel, or biodiesel feedstock, the amount of the property tax exemption is based upon the annual percentage of the total value of all products manufactured that is the value of the alcohol fuel, biodiesel fuel, and biodiesel feedstock manufactured.

(3) Claims for exemptions authorized by this section must be filed with the county assessor on forms prescribed by the department ((~~of revenue~~)) and furnished by the assessor. Once filed, the exemption is valid for six years and may not be renewed. The assessor must verify and approve claims as the assessor determines to be justified and in accordance with this section. No claims may be filed after December 31, ((~~2015~~))2025, except for claims for anaerobic digesters, which may be filed no later than December 31, 2012.

(4) The department ((~~of revenue~~)) may promulgate ((~~such~~)) rules, pursuant to chapter 34.05 RCW, as necessary to properly administer this section.

**PART II**

**Biomass Tax Incentives**

NEW SECTION. **Sec.**  It is the intent of the legislature to utilize Washington's abundant forest resources to promote diversified renewable energy use, and to promote healthy, fire resistant forests in the state. This section is the tax preference performance statement for the tax preference contained in RCW 82.04.4494. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to promote the production of steam, heat, electricity, or biofuel using forest derived biomass that is renewable and has been deemed carbon neutral under RCW 70.235.020(3), and can thereby replace the use of fossil fuel to produce energy and thereby help with achieving the state's renewable energy and greenhouse gas emissions targets; further, the use of forest derived biomass used to produce energy will help defray the cost of forest thinning thereby improving forest health and reducing the threat of wildfires. It is the legislature's intent to provide a forest derived biomass credit in order to encourage the harvesting, collection, and utilization of the more than eleven million tons of forest derived biomass available annually, thereby producing renewable, carbon neutral energy, thereby helping the state achieve its renewable energy targets, its greenhouse gas emissions targets, improve forest health and reduce the threat of wildfires.

(3) If a review finds that the amount of forest derived biomass collected and utilized to produce energy between July 1, 2015, and June 30, 2024, increases by at least an average annual rate of ten percent per year, then the legislature intends to extend the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to the total green tons of forest derived biomass harvested data available from the department of revenue and any other data source it deems necessary.

**Sec.**  RCW 82.04.4494 and 2009 c 469 s 401 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, harvesters are allowed a credit against the amount of tax otherwise due under this chapter, as provided in this section. The credit per harvested green ton of forest derived biomass sold, transferred, or used for production of electricity, steam, heat, or biofuel is ((~~as follows:~~

~~(a) For forest derived biomass harvested October 1, 2009, through June 30, 2010, zero dollars;~~

~~(b) For forest derived biomass harvested July 1, 2010, through June 30, 2013, three dollars;~~

~~(c) For forest derived biomass harvested July 1, 2013, through June 30, 2015,~~)) five dollars.

(2) Credit may not be claimed for forest derived biomass sold, transferred, or used before July 1, 2009. The amount of credit allowed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. Any unused excess credit in a reporting period may be carried forward to future reporting periods for a maximum of two years.

(3) For the purposes of this section, "harvested" and "harvesters" are defined in RCW 84.33.035, and "biofuel" is defined in RCW 43.325.010.

(4) Every taxpayer claiming a deduction under this section must file a complete annual survey with the department under RCW 82.32.585.

(5) This section expires June 30, ((~~2015~~))2025.

**PART III**

**Energy Conservation Payments from Bonneville Power Administration**

NEW SECTION. **Sec.**  This section is the tax preference performance statement for the tax preference contained in section 302 of this act. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to increase investment in energy efficiency and conservation programs, and to support efforts by utilities to acquire all cost-effective energy conservation as required under state law. To support this objective, it is the legislature's intent to extend the expiration date of the exemption from business and occupation tax amounts received by utilities in the form of credits against power contracts or received from the Bonneville power administration for energy conservation purposes, thereby inducing utilities to invest funds in energy conservation and efficiency programs, thereby reducing the amount of electric energy that such utilities must either generate or purchase, thereby reducing energy costs to utilities and customers.

(3) To measure the effectiveness of the exemption in section 302 of this act in achieving the public policy objectives described in subsection (2) of this section, the joint legislative audit and review committee must evaluate the number of taxpayers that claim the exemption and the amount of investment made by utilities in energy conservation and efficiency programs.

(4) The joint legislative audit and review committee may use data from the department of revenue, the utilities and transportation commission, and any other data it deems necessary in performing the evaluation under subsection (3) of this section.

**Sec.**  RCW 82.04.310 and 2014 c 216 s 302 are each amended to read as follows:

(1) This chapter does not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 82.16 RCW including amounts derived from activities for which a deduction is allowed under RCW 82.16.050. The exemption in this subsection does not apply to sales of natural gas, including compressed natural gas and liquefied natural gas, by a gas distribution business, if such sales are exempt from the tax imposed under chapter 82.16 RCW as provided in RCW 82.16.310.

(2) This chapter does not apply to amounts received by any person for the sale of electrical energy for resale within or outside the state.

(3)(a) This chapter does not apply to amounts received by any person for the sale of natural or manufactured gas in a calendar year if that person sells within the United States a total amount of natural or manufactured gas in that calendar year that is no more than twenty percent of the amount of natural or manufactured gas that it consumes within the United States in the same calendar year.

(b) For purposes of determining whether a person has sold within the United States a total amount of natural or manufactured gas in a calendar year that is no more than twenty percent of the amount of natural or manufactured gas that it consumes within the United States in the same calendar year, the following transfers of gas are not considered to be the sale of natural or manufactured gas:

(i) The transfer of any natural or manufactured gas as a result of the acquisition of another business, through merger or otherwise; or

(ii) The transfer of any natural or manufactured gas accomplished solely to comply with federal regulatory requirements imposed on the pipeline transportation of such gas when it is shipped by a third-party manager of a person's pipeline transportation.

(4) Until July 1, 2025, this chapter does not apply to amounts received by any person in the form of credits against power contracts with the Bonneville power administration, or funds provided by the Bonneville power administration, for the purpose of implementing energy conservation programs or demand-side management programs.

**PART IV**

**Miscellaneous Provisions**

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

**--- END ---**