

## HOUSE BILL NO. 166

INTRODUCED BY H. RASER

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALTERNATIVE FUELS TAX LAWS; MODIFYING THE TAX CREDITS FOR PROPERTY USED FOR THE PRODUCTION, BLENDING, AND STORAGE OF BIODIESEL, BIOLUBRICANTS, OR CO-PRODUCTS BIOLUBRICANT; ALLOWING CREDITS TO BE CARRIED FORWARD FOR 7 YEARS; EXTENDING CREDITS TO COVER EXPENSES INCURRED IN CERTAIN TIME PERIODS; EXTENDING THE DURATION OF THE CREDITS; AMENDING SECTIONS 15-32-701, 15-32-702, AND 15-32-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 15-32-701, MCA, is amended to read:

**"15-32-701. Oilseed crush facility -- tax credit.** (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the costs of investments in depreciable property in Montana to crush purchased THAT IS USED primarily for crushing oilseed crops for purposes of biodiesel production producing biodiesel, biolubricants, or co-products associated with the production of biodiesel or biolubricants OR BIOLUBRICANT.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of each item of property purchased to crush oilseed only in the year in which the property was purchased costs described in subsection (1) incurred in the 2 tax years before the facility begins crushing oilseed or in any tax year in which the facility is crushing oilseed.

(3) The total amount of the credit credits for all years that may be claimed for a facility under this section for investments in depreciable property is 15% of the cost of the property costs described in subsection (1), up to a total of \$500,000\_ for property invested in a facility. The credit must be claimed in the tax year in which the facility begins processing oilseed or manufacturing a product from oilseed.

(4) The following requirements must also be met for a taxpayer to be entitled to a tax credit for investment in property to crush oilseed under this section:

(a) The investment must be for depreciable property used primarily to crush oilseed or to manufacture

~~a product from oilseed and must be operating before January 1, 2010. The depreciable property for which the credit is claimed must begin to be used for the purposes described in subsection (1) before January 1, 2015.~~

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that crushes oilseed or that manufactures a product from crushed oilseed.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and, except for the 2 tax-year period claimed in subsection (2), must have been processing oilseed or manufacturing a product from oilseed using the depreciable property for the purposes described in subsection (1) during the tax year for which the credit is claimed and during each year for which the credit is carried forward.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit ~~otherwise~~ allowable under this section that is not completely used by the taxpayer in the tax year in which the credit is initially claimed may ~~not~~ be carried forward ~~to offset for credit against~~ a taxpayer's tax liability for any succeeding tax year until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year in which the facility in which the depreciable property is installed is not crushing oilseed or beyond the seventh tax year after the tax year for which the credit was initially claimed. If a facility in which property is installed and for which a credit is claimed ceases ~~operations~~ PRODUCTION OF BIODIESEL OR BIOLUBRICANT FOR A PERIOD OF 12 CONTINUOUS MONTHS within 5 years ~~of~~ after the initial claiming of a credit under this section or within 5 years after a year in which the credit was carried forward, the credit is subject to recapture. The person claiming the credit is liable for the total amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to crush oilseed or to manufacture a product from oilseed. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) FOR THE PURPOSES OF THIS SECTION, "BIOLUBRICANT" MEANS A COMMERCIAL OR INDUSTRIAL PRODUCT,

OTHER THAN FOOD OR FEED, THAT IS COMPOSED IN WHOLE OR IN SUBSTANTIAL PART OF BIOLOGICAL PRODUCTS, RENEWABLE DOMESTIC AGRICULTURAL MATERIALS, INCLUDING PLANT, ANIMAL, OR MARINE MATERIALS, OR FORESTRY MATERIALS AND THAT IS USED IN PLACE OF A PETROLEUM-BASED LUBRICANT."

**Section 2.** Section 15-32-702, MCA, is amended to read:

**"15-32-702. Biodiesel OR BIOLUBRICANT production facility tax credit.** (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the ~~cost~~ costs of investments in depreciable property for constructing and OR equipping a facility, OR BOTH, in Montana to be used for biodiesel OR BIOLUBRICANT production.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the ~~cost of construction of the facility and for each item of property purchased to produce biodiesel only in the year in which the facility is in production~~ costs described in subsection (1) incurred in the 2 tax years before the facility begins producing biodiesel OR BIOLUBRICANT or in any tax year in which the facility is producing biodiesel OR BIOLUBRICANT.

(3) The ~~total~~ amount of the credit credits for all years that may be claimed for a facility under this section for investments in depreciable property is 15% of the cost of the facility or the property installed in the facility. ~~The credit must be claimed in the tax year in which the facility begins production~~ is 15% of the costs described in subsection (1).

(4) The following requirements must also be met for a taxpayer to be entitled to a tax credit under this section ~~for investment in property to manufacture biodiesel:~~

(a) ~~The investment must be for depreciable property used primarily to manufacture biodiesel and must be~~ The depreciable property for which the credit is claimed must begin operating before January 1, 2010 2015.

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that manufactures biodiesel OR BIOLUBRICANT.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and, except for the 2 tax-year period claimed in subsection (2), must have been manufacturing producing biodiesel OR BIOLUBRICANT during the tax year for which the credit is claimed and during each year in which the credit is carried forward.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit ~~otherwise~~ allowable under this section that is not completely used by the taxpayer in the tax year in which the credit was initially taken may ~~not~~ be carried forward ~~to offset~~ for credit against a taxpayer's tax liability for any succeeding tax year until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year in which the facility in which the depreciable property is installed is not producing biodiesel OR BIOLUBRICANT or beyond the seventh tax year after the tax year for which the credit was initially claimed. If a facility for which a credit is claimed ceases ~~operations~~ PRODUCTION OF BIODIESEL OR BIOLUBRICANT FOR A PERIOD OF 12 CONTINUOUS MONTHS within 5 years ~~of~~ after the initial claiming of a credit under this section or within 5 years after a year in which the credit was carried forward, the credit is subject to recapture. The person claiming the credit is liable for the total amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel OR BIOLUBRICANT production facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) As used in this section, THE FOLLOWING DEFINITIONS APPLY:

(A) "biodiesel" "BIODIESEL" has the meaning provided in 15-70-301.

(B) "BIOLUBRICANT" HAS THE MEANING PROVIDED IN 15-32-701(9)."

**Section 3.** Section 15-32-703, MCA, is amended to read:

**"15-32-703. Biodiesel blending and storage tax credit -- recapture -- report to interim committee.**

(1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the ~~cost of storage and blending equipment to be used for~~ costs of investments in depreciable property used for storing or blending biodiesel with petroleum diesel for sale.

(2) Subject to subsection (4), a special fuel distributor or an owner or operator of a motor fuel outlet qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the ~~cost of installing storage and blending equipment only in the year in which~~ costs described in subsection (1) incurred in

the 2 tax years before the taxpayer begins blending biodiesel fuel for sale or in any tax year in which the taxpayer is blending biodiesel fuel for sale.

(3) (a) The total amount of the credit credits for all years that may be claimed by a distributor under this section ~~for investments in depreciable property~~ is 15% of the cost of the storage and blending equipment costs described in subsection (1), up to a total of \$52,500. ~~The amount of the credit may not exceed \$52,500. The credit must be claimed in the tax year in which the distributor begins blending biodiesel for sale.~~

(b) The total amount of the credit credits for all years that may be claimed by an owner or operator of a motor fuel outlet under this section ~~for investments in depreciable property~~ is 15% of the cost of the storage and blending equipment costs described in subsection (1), up to a total of \$7,500. ~~The amount of the credit may not exceed \$7,500. The credit must be claimed in the tax year in which the retailer begins blending of biodiesel for fuel.~~

(4) The following requirements must also be met in order for a taxpayer to be entitled to a tax credit for investment in property to blend biodiesel under this section:

(a) The investment must be for depreciable property used primarily to blend petroleum diesel with biodiesel made entirely from Montana-produced ingredients with petroleum diesel FEEDSTOCKS.

(b) Sales of biodiesel must be at least 2% of the taxpayer's total diesel sales by the end of the third year following the initial tax year in which the credit is initially claimed.

(c) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that blends biodiesel.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(d) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(c), and, except for the 2 tax-year period claimed in subsection (2), must have been blending biodiesel during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit ~~otherwise~~ allowable under this section that is not completely used by the taxpayer in the tax year in which the credit is initially claimed may ~~not be carried forward to offset a taxpayer's tax liability for any succeeding tax year~~ for credit against the taxpayer's tax liability for any succeeding tax year until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year

in which the facility is not blending biodiesel or storing biodiesel for blending or beyond the seventh tax year after the tax year for which the credit was initially claimed. If a facility for which a credit is claimed ceases ~~operations~~ BLENDING OF BIODIESEL WITH PETROLEUM DIESEL FOR SALE FOR A PERIOD OF 12 CONTINUOUS MONTHS within 5 years ~~of the~~ after the initial claiming of a credit under this section or within 5 years after a year in which the credit was carried forward or if the taxpayer claiming the credit fails to satisfy the conditions of subsection (4)(b), the total credit is subject to recapture. The person claiming the credit is liable for the total amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel blending facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) As used in this section, "biodiesel" has the meaning provided in 15-70-301.

(10) ~~Beginning after January 1, 2006, the~~ The department shall report to the revenue and transportation interim committee at least once each year regarding the number and type of taxpayers claiming the credit under this section, the total amount of the credit claimed, and the department's cost associated with administering the credit."

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to investments in depreciable property made after December 31, 2004.

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