SENATE BILL NO. 508

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A BILL FOR AN ACT ENTITLED: “AN ACT REVISING ALTERNATIVE FUEL INCOME TAX LAWS; PROVIDING AN INCOME TAX CREDIT FOR BIOFUEL PURCHASED FOR USE BY AN INDIVIDUAL OR A BUSINESS IN THE TAXPAYER'S VEHICLES AND EQUIPMENT; PROVIDING AN INCOME TAX CREDIT FOR RETAILERS SELLING CERTAIN BIODIESEL BLENDS PRODUCED IN MONTANA; PROVIDING INCOME TAX CREDITS FOR PROPERTY USED FOR THE PRODUCTION, BLENDING, AND STORAGE OF BIODIESEL OR BIOLUBRICANT; PROVIDING DEFINITIONS; ESTABLISHING REPORTING REQUIREMENTS; AMENDING SECTION 15-30-2303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.”

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

NEW SECTION. **Section 1. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Biodiesel" has the meaning provided in 15-70-401.

(2) "Biodiesel blend" means a blend of biodiesel and petroleum diesel fuel that is at least 2% biodiesel.

(3) "Biofuel" means liquid fuel derived from organic matter intended for use as transportation fuel. The term includes but is not limited to biodiesel, biodiesel blends, ethanol, and ethanol-blended gasoline.

(4) "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.

(5) "Fuel retailer" means a taxpayer engaged in the business of selling fuel to the public.

NEW SECTION. **Section 2. Biofuel use tax credit -- purpose -- definitions.** (1) Pursuant to 5-4-104, the purpose of this credit is to promote the use of biofuels due to the higher economic and societal costs of petroleum gasoline and diesel fuels.

(2) (a) An individual taxpayer who purchases biofuel from biofuel producers or biofuel distributors or at retail for use in the taxpayer's vehicles and equipment after December 31, 2023, is entitled to claim a tax credit against taxes imposed by Title 15, chapter 30, in the tax year.

(b) Subject to subsection (5), the credit is equal to the cost of the biofuel purchased, not to exceed $500.

(c) The credit may not be refunded and may not be carried forward or carried back.

(3) The credit may be claimed only for biodiesel blends that contain more than the state minimum requirement of biodiesel if a minimum requirement is in effect. The credit for the purchase of a biodiesel blend must be calculated according to the following schedule:

(a) for a biodiesel blend that contains at least 2% biodiesel but less than 5%, the credit is equal to 0.02 times the total cost of the biodiesel blend purchased; and

(b) for a biodiesel blend that contains at least 5% biodiesel but less than 10%, the credit is equal to 0.05 times the total cost of the biodiesel blend purchased.

(4) A taxpayer shall keep records of biodiesel purchases in order to substantiate the claimed tax credit.

NEW SECTION. **Section 3. Biofuel use tax credit.** (1) (a) Subject to the provisions of [section 2] and this section, a corporation, a small business corporation as defined in 15-30-3301, a partnership, or a limited liability company as defined in 35-8-102 carrying on a trade or business is allowed the credit provided for in [section 2] against the taxes due under Title 15, chapters 30 and 31.

(b) The credit may be claimed only by a corporation, a small business corporation, or a partnership, or a limited liability company that employs fewer than 16 employees.

(2) If the credit allowed under this section is claimed, the amount of the deduction allowed or allowable under this chapter for the amount that qualifies for the credit must be reduced by the dollar amount of the credit allowed.

(3) The credit must be attributed to shareholders, partners, or members of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes.

NEW SECTION. **Section 4. Montana-made biofuel tax credit -- purpose -- definitions.** (1) There is a credit against the taxes imposed by Title 15, chapters 30 and 31 for the sale of Montana-made biofuel. The credit may be claimed by a fuel retailer and is equal to $1 for each gallon sold of biodiesel blend produced in the state that contains at least 5% biodiesel.

(2) The credit may not be refunded and may not be carried forward or carried back.

(3) A fuel retailer shall keep records of biodiesel purchases in order to substantiate the claimed tax credit.

(4) The purpose of this credit is to promote the sale of biofuels produced in this state due to the higher economic and societal costs of petroleum gasoline and diesel fuels.

NEW SECTION. **Section 5. Biodiesel or biolubricant production facility tax credit.** (1) An individual, a corporation, a small business corporation as defined in 15-30-3301, or a partnership may receive a credit against taxes imposed by Title 15, chapters 30 and 31, for the costs of investments in depreciable property for constructing a facility, equipping a facility, or both in the state 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 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 credits for all years that may be claimed for a facility under this section 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:

(a) The depreciable property for which the credit is claimed must begin operating before January 1, 2029.

(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 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 allowable under this section that is not completely used by the taxpayer in the tax year in which the credit was initially taken may be carried forward 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 where 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 production of biodiesel or biolubricant for a period of 12 continuous months within 5 years 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.

NEW SECTION. **Section 6. Oilseed crush facility tax credit.** (1) An individual, a corporation, a small business corporation as defined in 15-30-3301, or a partnership may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the costs of investments in depreciable property in the state that is used primarily for crushing oilseed crops for the purposes of producing biodiesel 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 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 credits for all years that may be claimed for a facility under this section is 15% of the costs described in subsection (1), up to a total of $500,000.

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

(a) The depreciable property for which the credit is claimed must begin to be used for the purposes described in subsection (1) before January 1, 2029.

(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 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 allowable under this section that is not completely used by the taxpayer in the tax year in which the credit is initially claimed may be carried forward 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 where 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 production of biodiesel or biolubricant for a period of 12 continuous months within 5 years 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.

NEW SECTION. **Section 7. Biodiesel blending and storage tax credit.** (1) An individual, a corporation, a small business corporation as defined in 15-3-3301, or a partnership may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the 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 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 credits for all years that may be claimed by a special fuel distributor under this section is 15% of the costs described in subsection (1), up to a total of $52,500.

(b) The total amount of the credits for all years that may be claimed by an owner or operator of a motor fuel outlet under this section is 15% of the costs described in subsection (1), up to a total of $7,500.

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

(a) The investment must be for depreciable property used primarily to blend petroleum diesel with biodiesel made entirely from Montana-produced 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 allowable under this section that is not completely used by the taxpayer in the tax year in which the credit is initially claimed may be carried forward 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 the blending of biodiesel with petroleum diesel for sale for a period of 12 continuous months within 5 years 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) The department of revenue shall report to the revenue interim committee biennially, in accordance with 5-11-210, 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.

Section 8. Section 15-30-2303, MCA, is amended to read:

"**15-30-2303. Tax credits subject to review by interim committee.** (1) The following tax credits must be reviewed during the biennium commencing July 1, 2019, and during each biennium commencing 10 years thereafter:

(a) the credit for contractor's gross receipts provided for in 15-50-207; and

(b) the credit for elderly homeowners and renters provided for in 15-30-2337 through 15-30-2341.

(2) The following tax credits must be reviewed during the biennium commencing July 1, 2021, and during each biennium commencing 10 years thereafter:

(a) the credit for donations to an educational improvement account provided for in 15-30-2334, 15-30-3110, and 15-31-158; and

(b) the credit for donations to a student scholarship organization provided for in 15-30-2335, 15-30-3111, and 15-31-159.

(3) The following tax credits must be reviewed during the biennium commencing July 1, 2023, and during each biennium commencing 10 years thereafter:

(a) the credit for infrastructure use fees provided for in 17-6-316;

(b) the credit for contributions to a qualified endowment provided for in 15-30-2327 through 15-30-2329, 15-31-161, and 15-31-162; and

(c) the credit for property to recycle or manufacture using recycled material provided for in Title 15, chapter 32, part 6.

(4) The following tax credits must be reviewed during the biennium commencing July 1, 2025, and during each biennium commencing 10 years thereafter:

(a) the credit for preservation of historic buildings provided for in 15-30-2342 and 15-31-151;

(b) the credit for unlocking state lands provided for in 15-30-2380;

(c) the job growth incentive tax credit provided for in 15-30-2361 and 15-31-175; ~~and~~

(d) the credit for trades education and training provided for in 15-30-2359 and 15-31-174~~.~~;

(e) the biofuel use credit provided for in [sections 2 and 3];

(f) the Montana-made biofuel credit provided for in [section 4];

(g) the biodiesel or biolubricant production facility credit provided for in [section 5];

(h) the oilseed crush facility credit provided for in [section 6]; and

(i) the biodiesel blending and storage credit provided for in [section 7].

(5) The following tax credits must be reviewed during the biennium commencing July 1, 2027, and during each biennium commencing 10 years thereafter:

(a) the credit for hiring a registered apprentice or veteran apprentice provided for in 15-30-2357 and 15-31-173;

(b) the earned income tax credit provided for in 15-30-2318; and

(c) the media production and postproduction credits provided for in 15-31-1007 and 15-31-1009.

(6) The revenue interim committee shall review the tax credits scheduled for review and make recommendations in accordance with 5-11-210 at the conclusion of the full review to the legislature about whether to eliminate or revise the credits. The committee shall also review any tax credit with an expiration date or termination date that is not listed in this section in the biennium before the credit is scheduled to expire or terminate.

(7) The revenue interim committee shall review the credits using the following criteria:

(a) whether the credit changes taxpayer decisions, including whether the credit rewards decisions that may have been made regardless of the existence of the tax credit;

(b) to what extent the credit benefits some taxpayers at the expense of other taxpayers;

(c) whether the credit has out-of-state beneficiaries;

(d) the timing of costs and benefits of the credit and how long the credit is effective;

(e) any adverse impacts of the credit or its elimination and whether the benefits of continuance or elimination outweigh adverse impacts; and

(f) the extent to which benefits of the credit affect the larger economy. (Subsection (4)(d) terminates December 31, 2026--sec. 7, Ch. 248, L. 2021; subsection (4)(c) terminates December 31, 2028--sec. 24(1), Ch. 550, L. 2021.)"

NEW SECTION. **Section 9. Codification instruction.** (1) [Sections 1 through 7] are intended to be codified as new part in Title 15, chapter 32, and the provisions of Title 15, chapter 32, apply to [sections 1 through 7].

NEW SECTION. **Section 10. Effective date.** [This act] is effective January 1, 2024.

NEW SECTION. **Section 11. Applicability.** [This act] applies to tax years beginning after December 31, 2023.

NEW SECTION. **Section 12. Termination.** [Sections 1 through 8] terminate December 31, 2028.

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