



H.B. 284

124th General Assembly
(As Introduced)

Reps. Faber, Grendell, Reinhard, Core, Manning, Husted, Gilb, Hagan, Hoops, Womer Benjamin, Young, Webster, Raga, Cates, Fessler

BILL SUMMARY

- Authorizes personal income and corporation franchise tax credits for Ohio-based producers of renewable fuels, including ethanol, biodiesel, or other fuels derived from agricultural products.
- The credit is nonrefundable, but may be carried forward for up to three years.
- The credit equals 20¢ per gallon, up to \$3 million per year per producer.
- To receive the credit, a producer must enter into an agreement with the Ohio Tax Credit Authority.

CONTENT AND OPERATION

Tax credit authorized for producing renewable fuels

The bill authorizes nonrefundable tax credits for producing renewable fuels in Ohio. The credits are authorized against the personal income tax (for producers organized as S corporations, partnerships, or limited liability companies) and against the corporation franchise tax.

"Renewable fuel"

(sec. 122.171(A))

The credit is granted for "renewable fuel": that is, ethanol, "biodiesel," or any other liquid fuel that is (1) produced in Ohio, (2) made in whole or in part from agricultural commodities, and (3) used as a source of energy for vehicles or structures.

Qualification for credit

(sec. 122.171 (A) and (C))

In order to be considered for the credit, a producer must satisfy the following conditions:

- It has a facility in Ohio at which it produced at least ten million gallons of renewable fuel in the 12 months before it files the application.
- It is financially sound, has a feasible plan for marketing the fuel, and is able to compete in the renewable energy or biomass market.
- The tax credit is a "major factor" in the producer's decision to construct, complete, or expand its facility.
- The political subdivision where the facility is located has agreed to provide "substantial" financial support for the project.

Amount of credit

(sec. 122.171(B))

The credit granted to a producer equals 20¢ per gallon of renewable fuel produced at the Ohio facility, but cannot exceed \$3 million per year. The credit may be granted for up to five years. The credit is nonrefundable, so it may not exceed the producer's net annual tax liability; however, if the credit does exceed the net tax liability, the excess amount may be carried over and applied to the producer's liability for the following three years.

Terms and conditions of agreement

(sec. 122.171(D))

To receive a credit, a fuel producer must enter into an agreement with the Ohio Tax Credit Authority. It must file an application with the authority on a form prescribed by the Director of Development. The Authority *may* authorize a tax credit agreement if the producer is qualified (see above). The agreement must include the following items:

- A description of the production facility and statements indicating the amount invested (or to be invested) in the facility and the period during which those investments are to be made.

- The term of the tax credit, the maximum annual credit, and the first year the credit is to be claimed.

The agreement also must do the following:

- Require the producer to maintain operations at the facility for at least twice the number of years for which the credit is granted.
- Require the producer to report annually on the production at the facility and on any other information required by the Director of Development in order to allow the Director to perform his duties in connection with the credit.
- Require the Director to review the producer's annual production reports, verify them, and issue a certificate to the producer for the production so verified.

Claiming the credit

(secs. 122.171(G), 5733.0610, 5733.98, 5747.058, and 5747.98)

Any producer receiving a tax credit certificate from the Director of Development must submit a copy of it to the Tax Commissioner. (But failure to submit the copy does not invalidate the claim for the credit.) The credit is to be claimed in a statutorily prescribed order that maximizes the total amount of credits a taxpayer may receive when they claim multiple kinds of tax credits.

Termination; recapture

(sec. 122.171(E) and (J))

If a producer fails to comply with the agreement, the Tax Credit Authority may terminate the agreement or may amend it to reduce the amount or term of the credit. Also, if the Director of Development determines that a producer is not complying with the agreement, the Director must notify the Authority, and the Authority must provide the producer the opportunity to explain the noncompliance. The Authority may require the producer to refund all or part of the credit. If the agreement does not provide otherwise, the amount refunded must be based on the amount of renewable fuel produced and the administrative costs resulting from noncompliance. The Authority may consider the effect of market conditions on the producer.

Upon determining the amount, if any, to be refunded, the Authority must certify that amount to the Tax Commissioner, and the Tax Commissioner must collect the refund by assessment in the manner provided for assessment of income

or franchise taxes, except that the assessment must be made within one year after the Authority certifies the refund to the Tax Commissioner.

Rulemaking

(sec. 122.171(H))

The Director of Development is required to adopt rules for administration of the tax credit, in consultation with the Tax Commissioner. The rules may require producers receiving the credit to pay fees to cover the administrative costs of the tax credit. The Director must submit copies of the proposed rules to the standing committees on economic development in each house at the same time public notice of the rules is provided.

Report on tax credits

(sec. 122.171(K))

Each year by March 31, the Director of Development must submit a report on the tax credit to the Governor and to the Speaker of the House and the President of the Senate. The report must indicate the number of agreements entered into during the preceding calendar year, a description of each project for which an agreement was entered into, and an update of the status of agreements previously entered into.

Privacy of producer information

(sec. 122.171(F))

Financial statements or other information submitted by a producer in connection with the tax credit are not public records under the public records law, but the information may be used by the Authority to issue public reports or in connection with court proceedings arising out of the agreements. The Authority must provide information to the Tax Commissioner, but the Tax Commissioner must maintain the confidentiality of the information.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-05-01	p. 626

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