

1 **CORPORATE FRANCHISE AND INCOME TAX**
2 **CREDITS FOR BIODIESEL FUEL**
3 **PRODUCTION**

4 2006 GENERAL SESSION
5 STATE OF UTAH

6 **Chief Sponsor: Michael E. Noel**

7 Senate Sponsor: _____
8

9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the Revenue and Taxation Code by creating two corporate franchise
12 and income tax credits for the production of biodiesel fuel.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ provides definitions;
- 16 ▶ creates a nonrefundable corporate franchise and income tax credit for:
- 17 • the machinery, equipment, or materials used to construct or remodel a biodiesel
18 production facility; and
- 19 • the production of biodiesel ~~H→~~ [that is distributed for use in Utah] ~~←H~~ ;
- 20 ▶ provides that the tax credits ~~H→~~ :
- 20a • ~~←H~~ may be carried forward for a three taxable-year period

21 under certain circumstances; ~~H→~~ [and]

21a • may not exceed a combined amount of \$250,000 per taxpayer in a taxable
21b year; and

21c ▶ grants the Air Quality Board rulemaking authority to establish standards for
21d biodiesel to qualify for the tax credits; and ~~←H~~

- 22 ▶ requires the State Tax Commission to make rules for:
- 23 • qualification for the tax credit; and
- 24 • verification of amounts of the tax credit claimed.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 This bill takes effect for taxable years beginning on or after January 1, 2007.

29 **Utah Code Sections Affected:**

29a **H→ AMENDS:**

29b **19-2-104, as last amended by Chapter 131, Laws of Utah 2003 ←H**

30 **ENACTS:**

31 **59-7-614.2, Utah Code Annotated 1953**

32

33 *Be it enacted by the Legislature of the state of Utah:*

33a **H→ Section 1. Section 19-2-104 is amended to read:**

33b **19-2-104. Powers of board.**

33c **(1) The board may make rules in accordance with Title 63, Chapter 46a, Utah Administrative**
33d **Rulemaking Act:**

33e **(a) regarding the control, abatement, and prevention of air pollution from all sources and the**
33f **establishment of the maximum quantity of air contaminants that may be emitted by any air**
33g **contaminant source;**

33h **(b) establishing air quality standards;**

33i **(c) requiring persons engaged in operations which result in air pollution to:**

33j **(i) install, maintain, and use emission monitoring devices, as the board finds necessary;**

33k **(ii) file periodic reports containing information relating to the rate, period of emission, and**
33l **composition of the air contaminant; and**

33m **(iii) provide access to records relating to emissions which cause or contribute to air pollution;**

33n **(d) implementing 15 U.S.C.A. 2601 et seq. Toxic Substances Control Act, Subchapter II -**

33o **Asbestos Hazard Emergency Response, and reviewing and approving asbestos management plans**
33p **submitted by local education agencies under that act;**

33q **(e) establishing a requirement for a diesel emission opacity inspection and maintenance**
33r **program for diesel-powered motor vehicles;**

33s **(f) implementing an operating permit program as required by and in conformity with Titles**
33t **IV and V of the federal Clean Air Act Amendments of 1990;**

33u **(g) establishing requirements for county emissions inspection and maintenance programs after**
33v **obtaining agreement from the counties that would be affected by the requirements;**

33w **(h) with the approval of the governor, implementing in air quality nonattainment areas**
33x **employer-based trip reduction programs applicable to businesses having more than 100 employees at a**
33y **single location and applicable to federal, state, and local governments to the extent necessary to attain**
33z **and maintain ambient air quality standards consistent with the state implementation plan and federal**
33aa **requirements under the standards set forth in Subsection (2); [and]**

33ab **(i) implementing lead-based paint remediation training, certification, and performance**
33ac **requirements in accordance with 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter**
33ad **IV -- Lead Exposure Reduction, Sections 402 and 406 [-] ; and**

33ae **(j) establishing standards for biodiesel to qualify for the tax credits created**

33af **H→ under Section 59-7-614.2.**

- 33ag (2) When implementing Subsection (1)(h) the board shall take into consideration:
- 33ah (a) the impact of the business on overall air quality; and
- 33ai (b) the need of the business to use automobiles in order to carry out its business purposes.
- 33aj (3) The board may:
- 33ak (a) hold hearings relating to any aspect of or matter in the administration of this chapter and
- 33al compel the attendance of witnesses and the production of documents and other evidence, administer
- 33am oaths and take testimony, and receive evidence as necessary;
- 33an (b) issue orders necessary to enforce the provisions of this chapter, enforce the orders by
- 33ao appropriate administrative and judicial proceedings, and institute judicial proceedings to secure
- 33ap compliance with this chapter;
- 33aq (c) settle or compromise any civil action initiated to compel compliance with this chapter and
- 33ar the rules made under this chapter;
- 33as (d) secure necessary scientific, technical, administrative, and operational services, including
- 33at laboratory facilities, by contract or otherwise;
- 33au (e) prepare and develop a comprehensive plan or plans for the prevention, abatement, and
- 33av control of air pollution in this state;
- 33aw (f) encourage voluntary cooperation by persons and affected groups to achieve the purposes of
- 33ax this chapter;
- 33ay (g) encourage local units of government to handle air pollution within their respective
- 33az jurisdictions on a cooperative basis and provide technical and consultative assistance to them;
- 33ba (h) encourage and conduct studies, investigations, and research relating to air contamination
- 33bb and air pollution and their causes, effects, prevention, abatement, and control;
- 33bc (i) determine by means of field studies and sampling the degree of air contamination and air
- 33bd pollution in all parts of the state;
- 33be (j) monitor the effects of the emission of air contaminants from motor vehicles on the quality
- 33bf of the outdoor atmosphere in all parts of this state and take appropriate action with respect to them;
- 33bg (k) collect and disseminate information and conduct educational and training programs
- 33bh relating to air contamination and air pollution;
- 33bi (l) advise, consult, contract, and cooperate with other agencies of the state, local governments,
- 33bj industries, other states, interstate or interlocal agencies, the federal government, and with interested
- 33bk persons or groups;
- 33bl (m) consult, upon request, with any person proposing to construct, install, or otherwise
- 33bm acquire an air contaminant source in the state concerning the efficacy of any proposed control
- 33bn device, or system for this source, or the air pollution problem which may be related to the source,
- 33bo device, or system, but a consultation does not relieve any person from compliance with this chapter,
- 33bp the rules adopted under it, or any other provision of law;
- 33bq (n) accept, receive, and administer grants or other funds or gifts from public and ←H



33br H→ private agencies, including the federal government, for the purpose of carrying out any of the
33bs functions of this chapter;
33bt (o) require the owner and operator of each new source which directly emits or has the
33bu potential to emit 100 tons per year or more of any air contaminant or the owner or operator of each
33bv existing source which by modification will increase emissions or have the potential of increasing
33bw emissions by 100 tons per year or more of any air contaminant, to pay a fee sufficient to cover the
33bx reasonable costs of:
33by (i) reviewing and acting upon the notice required under Section 19-2-108; and
33bz (ii) implementing and enforcing requirements placed on the sources by any approval order
33ca issued pursuant to notice, not including any court costs associated with any enforcement action;
33cb (p) assess and collect noncompliance penalties as required in Section 120 of the federal Clean
33cc Air Act, 42 U.S.C. Sec. 7420;
33cd (q) meet the requirements of federal air pollution laws;
33ce (r) establish work practice, certification, and clearance air sampling requirements for persons
33cf who:
33cg (i) contract for hire to conduct demolition, renovation, salvage, encapsulation work involving
33ch friable asbestos-containing materials, or asbestos inspections; or
33ci (ii) conduct work described in Subsection (3)(r)(i) in areas to which the general public has
33cj unrestrained access or in school buildings that are subject to the federal Asbestos Hazard Emergency
33ck Response Act of 1986;
33cl (iii) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq., Toxic
33cm Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or
33cn (iv) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et seq., Toxic
33co Substances Control Act, Subchapter IV -- Lead Exposure Reduction;
33cp (s) establish certification requirements for persons required under 15 U.S.C.A. 2601 et seq.,
33cq Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to be accredited
33cr as inspectors, management planners, abatement project designers, asbestos abatement contractors and
33cs supervisors, or asbestos abatement workers;
33ct (t) establish certification requirements for asbestos project monitors, which shall provide for
33cu experience-based certification of persons who, prior to establishment of the certification requirements,
33cv had received relevant asbestos training, as defined by rule, and had acquired at least 1,000 hours of
33cw experience as project monitors;
33cx (u) establish certification procedures and requirements for certification of the conversion of a
33cy motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the tax credit granted in
33cz Section 59-7-605 or 59-10-127;
33da (v) establish a program to certify private sector air quality permitting professionals
33db (AQPP), as described in Section 19-2-109.5; and
33dc (w) establish certification requirements for persons, required under 15 U.S.C.A. 2601 et seq.,
33dd Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited as inspectors, risk
33de assessors, supervisors, project designers, or abatement workers. ←H

33df (4) Any rules adopted under this chapter shall be consistent with provisions of federal laws, if
 33dg any, relating to control of motor vehicles or motor vehicle emissions.

33dh (5) Nothing in this chapter authorizes the board to require installation of or payment for any
 33di monitoring equipment by the owner or operator of a source if the owner or operator has installed or is
 33dj operating monitoring equipment that is equivalent to equipment which the board would require under
 33dk this section. ←H

34 Section H→ [±] 2 ←H . Section 59-7-614.2 is enacted to read:

35 59-7-614.2. Definitions -- Tax credits for biodiesel production facility or
 36 production of biodiesel -- Rulemaking authority.

37 (1) As used in this section:

38 (a) "Biodiesel" means a renewable diesel fuel derived from biomass that is H→ :

38a (i) ←H intended for

39 use in diesel engines H→ [:] ; and

39a (ii) meets standards established in rule by the Air Quality Board under Section

39b 19-2-104. ←H

40 (b) "Biodiesel production facility" means a system of apparatus and equipment if that
 41 system is:

42 (i) capable of producing biodiesel;

43 (ii) located in this state; and

44 (iii) primarily used to produce biodiesel.

45 (c) "Biomass" means:

46 (i) material from a plant or tree; or

47 (ii) other organic matter that is available on a renewable basis.

48 (2) Subject to Subsection (4)(a)(i), for taxable years beginning on or after January 1,

49 2007, a taxpayer that constructs or remodels a biodiesel production facility may claim a

50 nonrefundable tax credit equal to H→ [50%] 10% ←H of the purchase price of machinery,

50a equipment, or

51 materials:

52 (a) purchased by the taxpayer;

53 (b) subject to sales and use taxes under Chapter 12, Sales and Use Tax Act; and

54 (c) used to construct or remodel a biodiesel production facility.

55 (3) Subject to Subsection (4)(a)(ii), for taxable years beginning on or after January 1,

56 2007, a taxpayer that owns a biodiesel production facility may claim a nonrefundable tax



56a credit

57 of \$.25 for each gallon of biodiesel that is ~~H~~→ [;

58 ~~——(a)~~ ←~~H~~ produced at the biodiesel production facility ~~H~~→ [~~;~~and

59 ~~(b) distributed for use in this state~~ ←H .

60 (4) (a) (i) A tax credit under Subsection (2) may be claimed for the taxable year in
61 which the biodiesel production facility is completed and placed into service.

62 (ii) A tax credit under Subsection (3) may be claimed for the taxable year in which the
63 biodiesel is ~~H→ [distributed for use in Utah] produced ←H .~~

64 (b) If the amount of a tax credit under this section exceeds a taxpayer's tax liability
65 under this chapter for a taxable year, the amount of the tax credit exceeding the tax liability
66 may be carried forward for a time period that does not exceed the next three taxable years.

66a ~~H→ (c) The total amount of the credits claimed under this section in a taxable year may~~
66b ~~not exceed \$250,000 per taxpayer. ←H~~

67 (5) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah
68 Administrative Rulemaking Act, governing the information that is required from a taxpayer to
69 verify:

70 (a) qualification for the tax credit; and

71 (b) amounts of the tax credit claimed.

72 Section ~~H→ [2] 3 ←H .~~ Effective date.

73 This bill takes effect for taxable years beginning on or after January 1, 2007.

Legislative Review Note

as of 2-8-06 11:39 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0385

Corporate Franchise and Income Tax Credits for Biodiesel Fuel Production 21-Feb-06
8:45 AM

AMENDED NOTE

State Impact

Passage of this bill would have no impact on current revenues. There is a potential diversion of future income tax revenues.

Individual and Business Impact

This bill may benefit biodiesel fuel producers.

Office of the Legislative Fiscal Analyst