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I N S E N A T E

May 15, 2014

Introduced by Sen. GIPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to biofuel production credit for production of biomethane

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 28 of the tax law, as added by section 1 of part X
2 of chapter 62 of the laws of 2006, is renumbered section 38-a.

3 S 2. Subdivisions (a) and (b) of section 38-a of the tax law, subdivi-
4 sion (a) as amended by section 1 of part K of chapter 59 of the laws of
5 2012, subdivision (b) as added by section 1 of part X of chapter 62 of
6 the laws of 2006, such section as renumbered by section one of this act,
7 are amended to read as follows:

8 (a) General. A taxpayer subject to tax under article nine, nine-A or
9 twenty-two of this chapter shall be allowed a credit against such tax
10 pursuant to the provisions referenced in subdivision (d) of this
11 section. The credit (or pro rata share of earned credit in the case of a
12 partnership) for each gallon of biofuel produced at a biofuel plant on
13 or after January first, two thousand six shall equal fifteen cents per
14 gallon OR TWENTY-FIVE CENTS PER GALLON FOR PRODUCTION OF BIOMETHANE
15 after the production of the first forty thousand gallons per year
16 presented to market. The credit under this section shall be capped at
17 two and one-half million dollars per taxpayer per taxable year for up to
18 no more than four consecutive taxable years per biofuel plant. If the
19 taxpayer is a partner in a partnership or shareholder of a New York S
20 corporation, then the cap imposed by the preceding sentence shall be
21 applied at the entity level, so that the aggregate credit allowed to all
22 the partners or shareholders of each such entity in the taxable year
23 does not exceed two and one-half million dollars. The tax credit allowed
24 pursuant to this section shall apply to taxable years beginning before
25 January first, two thousand twenty.

26 (b) Definitions. For the purpose of this section, the following terms
27 shall have the following meanings:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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(1) "Biofuel" means a fuel which includes biodiesel [and], ethanol OR BIOMETHANE.

(2) The term "biodiesel" shall mean a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of American Society of Testing and Materials designation D 6751-02.

(3) The term "ethanol" shall mean ethyl alcohol manufactured in the United States and its territories and sold (i) for fuel use and which has been rendered unfit for beverage use in a manner and which is produced at a facility approved by the federal bureau of alcohol, tobacco and firearms for the production of ethanol for fuel, or (ii) as denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use. The term "biofuel" may also include any other standard approved by the New York state energy and research development authority.

[(2)] (4) THE TERM "BIOMETHANE" SHALL MEAN BIOGASES THAT ARE EMITTED AS ORGANIC WASTES THAT BREAK DOWN IN AIRLESS ENVIRONMENTS. BIOMETHANE IS PRODUCED FROM A VARIETY OF BIOMASS AND/OR BIOGAS SOURCES, INCLUDING LANDFILL GAS, SOLID WASTE, MUNICIPAL WASTEWATER AND AGRICULTURAL MANURE VIA AIRLESS TANKS CALLED ANAEROBIC DIGESTERS. IT CAN ALSO BE PRODUCED FROM OTHER SOURCES SUCH AS FORESTRY AND AGRICULTURAL WASTE THROUGH THE PROCESS OF THERMAL GASIFICATION AND METHANATION, ALTHOUGH THESE TECHNOLOGIES ARE NOT YET WIDELY USED. BIOMETHANE IS A RENEWABLE FUEL, EASILY DISTRIBUTED THROUGH EXISTING INFRASTRUCTURE AND IS SUITABLE FOR APPLICATIONS FROM LIGHT-DUTY VEHICLES TO HEAVY-DUTY FREIGHT TRUCKS.

(5) "Biofuel plant" means a commercial facility located in New York state at which one or more biofuels are produced. FOR THE PURPOSES OF THIS SECTION, ANY COMMERCIAL FACILITY WHERE BIOMETHANE IS PRODUCED SHALL BE CONSIDERED A SEPARATE BIOFUEL PLANT.

S 3. Section 187-c of the tax law, as amended by section 2 of part K of chapter 59 of the laws of 2012, is amended to read as follows:

S 187-c. Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section [twenty-eight] THIRTY-EIGHT-A of this chapter, [as added by part X of chapter sixty-two of the laws of two thousand six,] against the tax imposed by this article. Provided, however, that the amount of such credit allowed against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three or one hundred eighty-five of this article. If, however, the amount of the credit allowed under this section for any taxable year reduces the tax to such amount, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

S 4. Section 187-c of the tax law, as amended by section 15 of part S of chapter 59 of the laws of 2014, is amended to read as follows:

S 187-c. Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section [twenty-eight] THIRTY-EIGHT-A of this chapter, [as added by part X of chapter sixty-two

1 of the laws of two thousand six,] against the tax imposed by this arti-
2 cle. Provided, however, that the amount of such credit allowed against
3 the tax imposed by section one hundred eighty-four of this article shall
4 be the excess of the amount of such credit over the amount of any credit
5 allowed by this section against the tax imposed by section one hundred
6 eighty-three of this article. In no event shall the credit under this
7 section be allowed in an amount which will reduce the tax payable to
8 less than the applicable minimum tax fixed by section one hundred eight-
9 y-three of this article. If, however, the amount of the credit allowed
10 under this section for any taxable year reduces the tax to such amount,
11 the excess shall be treated as an overpayment of tax to be credited or
12 refunded in accordance with the provisions of section six hundred eight-
13 y-six of this chapter. Provided, however, the provisions of subsection
14 (c) of section one thousand eighty-eight of this chapter notwithstand-
15 ing, no interest shall be paid thereon. The tax credit allowed pursuant
16 to this section shall apply to taxable years beginning before January
17 first, two thousand twenty.

18 S 5. Subdivision 38 of section 210 of the tax law, as amended by
19 section 3 of part K of chapter 59 of the laws of 2012, is amended to
20 read as follows:

21 38. Biofuel production credit. A taxpayer shall be allowed a credit,
22 to be computed as provided in section [twenty-eight] THIRTY-EIGHT-A of
23 this chapter, [as added by part X of chapter sixty-two of the laws of
24 two thousand six,] against the tax imposed by this article. The credit
25 allowed under this subdivision for any taxable year shall not reduce the
26 tax due for such year to less than the higher of the amounts prescribed
27 in paragraphs (c) and (d) of subdivision one of this section. However,
28 if the amount of credit allowed under this subdivision for any taxable
29 year reduces the tax to such amount, any amount of credit thus not
30 deductible in such taxable year shall be treated as an overpayment of
31 tax to be credited or refunded in accordance with the provisions of
32 section one thousand eighty-six of this chapter. Provided, however, the
33 provisions of subsection (c) of section one thousand eighty-eight of
34 this chapter notwithstanding, no interest shall be paid thereon. The tax
35 credit allowed pursuant to this section shall apply to taxable years
36 beginning before January first, two thousand twenty.

37 S 6. Subsection (jj) of section 606 of the tax law, as amended by
38 section 4 of part K of chapter 59 of the laws of 2012, is amended to
39 read as follows:

40 (jj) Biofuel production credit. A taxpayer shall be allowed a credit
41 to be computed as provided in section [twenty-eight] THIRTY-EIGHT-A of
42 this chapter, [as added by part X of chapter sixty-two of the laws of
43 two thousand six,] against the tax imposed by this article. If the
44 amount of the credit allowed under this subsection for any taxable year
45 shall exceed the taxpayer's tax for such year, the excess shall be
46 treated as an overpayment of tax to be credited or refunded in accord-
47 ance with the provisions of section six hundred eighty-six of this arti-
48 cle, provided, however, that no interest shall be paid thereon. The tax
49 credit allowed pursuant to this section shall apply to taxable years
50 beginning before January first, two thousand twenty.

51 S 7. Subdivision 24 of section 210-B of the tax law, as added by
52 section 17 of part A of chapter 59 of the laws of 2014, is amended to
53 read as follows:

54 24. Biofuel production credit. (a) General. A taxpayer shall be
55 allowed a credit, to be computed as provided in section [twenty-eight]
56 THIRTY-EIGHT-A of this chapter [added as part X of chapter sixty-two of

1 the laws of two thousand six,] against the tax imposed by this article.
2 The credit allowed under this subdivision for any taxable year shall not
3 reduce the tax due for such year to less than the fixed dollar minimum
4 amount prescribed in paragraph (d) of subdivision one of section two
5 hundred ten of this article. However, if the amount of credit allowed
6 under this subdivision for any taxable year reduces the tax to such
7 amount or if the taxpayer otherwise pays tax based on the fixed dollar
8 minimum amount, any amount of credit thus not deductible in such taxable
9 year shall be treated as an overpayment of tax to be credited or
10 refunded in accordance with the provisions of section one thousand
11 eighty-six of this chapter. Provided, however, the provisions of
12 subsection (c) of section one thousand eighty-eight of this chapter
13 notwithstanding, no interest shall be paid thereon. The tax credit
14 allowed pursuant to this section shall apply to taxable years beginning
15 before January first, two thousand twenty.

16 S 8. This act shall take effect immediately; provided however that the
17 amendments to section 187-c of the tax law made by section four of this
18 act shall take effect on the same date as section 15 of part S of chap-
19 ter 59 of the laws of 2014 takes effect; provided, further, that the
20 amendments to subdivision 38 of section 210 of the tax law made by
21 section five of this act shall not affect the repeal of such subdivision
22 and shall be deemed repealed therewith; provided, further that the
23 amendment to subdivision 24 of section 210-b of the tax law shall take
24 effect on the same date and same manner as section 17 of part A of chap-
25 ter 59 of the laws of 2014, takes effect.