

4563--A

2013-2014 Regular Sessions

I N S E N A T E

April 10, 2013

Introduced by Sens. YOUNG, GIPSON, O'MARA, RITCHIE, VALESKY -- (at request of the Legislative Commission on Rural Resources) -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the biofuel production credit for the production of cellulosic ethanol, densified biofuel and renewable fuel oil

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 42.
3 S 2. Subdivisions (a) and (b) of section 42 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 and subdivision (b) as added by section 1 of part X of chapter 62
6 of the laws of 2006, such section as renumbered by section one of this
7 act, 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 LIQUID biofuel produced at a biofuel
13 plant on or after January first, two thousand six shall equal fifteen
14 cents per gallon, OR TWENTY-FIVE CENTS PER GALLON FOR PRODUCTION OF
15 CELLULOSIC ETHANOL OR RENEWABLE FUEL OIL after the production of the
16 first forty thousand gallons per year presented to market. THE CREDIT
17 FOR EACH BONE DRY TON OF DENSIFIED BIOFUEL PRODUCED AT A BIOFUEL PLANT
18 ON OR AFTER JANUARY FIRST, TWO THOUSAND SIX SHALL EQUAL FIFTEEN DOLLARS

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

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1 PER BONE DRY TON AFTER THE PRODUCTION OF THE FIRST TEN THOUSAND TONS PER
2 YEAR PRESENTED TO MARKET. The credit under this section shall be capped
3 at [two and one-half] TEN million dollars per taxpayer per taxable year
4 for up to no more than [four] TEN consecutive taxable years per biofuel
5 plant. If the taxpayer is a partner in a partnership or shareholder of a
6 New York S corporation, then the cap imposed by the preceding sentence
7 shall be applied at the entity level, so that the aggregate credit
8 allowed to all the partners or shareholders of each such entity in the
9 taxable year does not exceed [two and one-half] TEN million dollars. The
10 tax credit allowed pursuant to this section shall apply to taxable years
11 beginning before January first, two thousand twenty.

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

14 (1) "Biofuel" means a fuel which includes biodiesel [and], ethanol,
15 DENSIFIED BIOFUEL AND RENEWABLE FUEL OIL. The term "biodiesel" shall
16 mean a fuel comprised exclusively of mono-alkyl esters of long chain
17 fatty acids derived from vegetable oils or animal fats, designated B100,
18 which meets the specifications of American Society of Testing and Mate-
19 rials designation D 6751-02. The term "ethanol" shall mean ethyl alcohol
20 manufactured in the United States and its territories and sold (i) for
21 fuel use and which has been rendered unfit for beverage use in a manner
22 and which is produced at a facility approved by the federal bureau of
23 alcohol, tobacco and firearms for the production of ethanol for fuel, or
24 (ii) as denatured ethanol used by blenders and refiners which has been
25 rendered unfit for beverage use. The term "biofuel" may also include
26 any other standard approved by the New York state energy and research
27 development authority. THE TERM "RENEWABLE FUEL OIL" SHALL MEAN A FUEL
28 COMPRISED OF ANY NON-FOOD BIOMASS BASED FEEDSTOCK THAT CAN BE USED AS A
29 FULL OR PARTIAL SUBSTITUTE FOR TRADITIONAL PETROLEUM FUELS.

30 (2) "CELLULOSIC ETHANOL" MEANS THE PRODUCTION OF ETHANOL FROM LIGNO-
31 CELLULOSIC BIOMASS FEEDSTOCKS NOT USED FOR FOOD PRODUCTION, INCLUDING
32 BY-PRODUCTS FROM AGRICULTURAL WASTE, THAT ARE ALTERED THROUGH ACTIVITIES
33 REFERENCED IN SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE OF
34 SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW. SUCH
35 LIGNOCELLULOSIC BIOMASS FEEDSTOCKS MAY INCLUDE, BUT ARE NOT NECESSARILY
36 LIMITED TO, SWITCHGRASSES OR WILLOWS, AGRICULTURAL AND FORESTRY RESI-
37 DUES, CLEAN WOOD AND WOOD WASTES, PULP AND PAPER MILL WASTES OR
38 EXTRACTS, AND NON-RECYCLABLE PAPER. ANY QUESTION AS TO WHETHER ANY
39 FEEDSTOCK QUALIFIES UNDER THIS SECTION SHALL BE DETERMINED BY THE PRESI-
40 DENT OF THE NEW YORK STATE ENERGY AND RESEARCH DEVELOPMENT AUTHORITY.

41 (3) "DENSIFIED BIOFUEL" MEANS A SOLID FUEL DERIVED BY THE MECHANICAL
42 DENSIFICATION AND REFINING OF BIOMASS SOURCED FROM WOODY OR AGRICULTURAL
43 FEEDSTOCKS.

44 (4) "Biofuel plant" means a commercial facility located in New York
45 state at which one or more biofuels are produced. FOR THE PURPOSES OF
46 THIS SECTION, ANY COMMERCIAL FACILITY WHERE CELLULOSIC ETHANOL, RENEWA-
47 BLE FUEL OIL OR DENSIFIED BIOFUEL IS PRODUCED SHALL BE CONSIDERED A
48 SEPARATE BIOFUEL PLANT.

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

51 S 187-c. Biofuel production credit. A taxpayer shall be allowed a
52 credit to be computed as provided in section [twenty-eight] FORTY-TWO of
53 this chapter, [as added by part X of chapter sixty-two of the laws of
54 two thousand six,] against the tax imposed by this article. Provided,
55 however, that the amount of such credit allowed against the tax imposed
56 by section one hundred eighty-four of this article shall be the excess

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

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

17 S 187-c. Biofuel production credit. A taxpayer shall be allowed a
18 credit to be computed as provided in section [twenty-eight] FORTY-TWO of
19 this chapter, [as added by part X of chapter sixty-two of the laws of
20 two thousand six,] against the tax imposed by this article. Provided,
21 however, that the amount of such credit allowed against the tax imposed
22 by section one hundred eighty-four of this article shall be the excess
23 of the amount of such credit over the amount of any credit allowed by
24 this section against the tax imposed by section one hundred eighty-three
25 of this article. In no event shall the credit under this section be
26 allowed in an amount which will reduce the tax payable to less than the
27 applicable minimum tax fixed by section one hundred eighty-three of this
28 article. If, however, the amount of the credit allowed under this
29 section for any taxable year reduces the tax to such amount, the excess
30 shall be treated as an overpayment of tax to be credited or refunded in
31 accordance with the provisions of section six hundred eighty-six of this
32 chapter. Provided, however, the provisions of subsection (c) of section
33 one thousand eighty-eight of this chapter notwithstanding, no interest
34 shall be paid thereon. The tax credit allowed pursuant to this section
35 shall apply to taxable years beginning before January first, two thou-
36 sand twenty.

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

40 38. Biofuel production credit. A taxpayer shall be allowed a credit,
41 to be computed as provided in section [twenty-eight] FORTY-TWO of this
42 chapter, [as added by part X of chapter sixty-two of the laws of two
43 thousand six,] against the tax imposed by this article. The credit
44 allowed under this subdivision for any taxable year shall not reduce the
45 tax due for such year to less than the higher of the amounts prescribed
46 in paragraphs (c) and (d) of subdivision one of this section. However,
47 if the amount of credit allowed under this subdivision for any taxable
48 year reduces the tax to such amount, any amount of credit thus not
49 deductible in such taxable year shall be treated as an overpayment of
50 tax to be credited or refunded in accordance with the provisions of
51 section one thousand eighty-six of this chapter. Provided, however, the
52 provisions of subsection (c) of section one thousand eighty-eight of
53 this chapter notwithstanding, no interest shall be paid thereon. The tax
54 credit allowed pursuant to this section shall apply to taxable years
55 beginning before January first, two thousand twenty.

1 S 6. Subdivision 24 of section 210-b of the tax law, as added by
2 section 17 of part A of chapter 59 of the laws of 2014, is amended to
3 read as follows:

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

22 S 7. Subsection (jj) of section 606 of the tax law, as amended by
23 section 4 of part K of chapter 59 of the laws of 2012, is amended to
24 read as follows:

25 (jj) Biofuel production credit. A taxpayer shall be allowed a credit
26 to be computed as provided in section [twenty-eight] FORTY-TWO of this
27 chapter, [as added by part X of chapter sixty-two of the laws of two
28 thousand six,] against the tax imposed by this article. If the amount of
29 the credit allowed under this subsection for any taxable year shall
30 exceed the taxpayer's tax for such year, the excess shall be treated as
31 an overpayment of tax to be credited or refunded in accordance with the
32 provisions of section six hundred eighty-six of this article, provided,
33 however, that no interest shall be paid thereon. The tax credit allowed
34 pursuant to this section shall apply to taxable years beginning before
35 January first, two thousand twenty.

36 S 8. This act shall take effect immediately, except that section four
37 of this act shall take effect on the same date and in the same manner as
38 section 15 of part S of chapter 59 of the laws of 2014 takes effect;
39 section six of this act shall take effect on the same date and in the
40 same manner as section 17 of part A of chapter 59 of the laws of 2014
41 takes effect; and provided, however, that the amendments to subdivision
42 38 of section 210 of the tax law made by section five of this act, shall
43 not affect the repeal of such subdivision and shall be deemed repealed
44 therewith.