

4563--B

2013-2014 Regular Sessions

I N S E N A T E

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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 -- 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

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

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

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

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

32 (2) "CELLULOSIC ETHANOL" MEANS THE PRODUCTION OF ETHANOL FROM LIGNO-
33 CELLULOSIC BIOMASS FEEDSTOCKS, INCLUDING CELLULOSIC COMPONENTS OF SEPA-
34 RATED FOOD WASTE AS DEFINED IN TABLE 1 OF C.F.R. S 80.1426 AND BY-PRO-
35 DUCTS FROM AGRICULTURAL WASTE, THAT ARE ALTERED THROUGH ACTIVITIES
36 REFERENCED IN SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE OF
37 SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW. SUCH
38 LIGNOCELLULOSIC BIOMASS FEEDSTOCKS MAY INCLUDE, BUT ARE NOT NECESSARILY
39 LIMITED TO, SWITCHGRASSES OR WILLOWS, AGRICULTURAL AND FORESTRY RESIDUES
40 AS DEFINED IN TABLE 1 OF C.F.R. S 80.1426, CLEAN WOOD AND WOOD WASTES,
41 PULP AND PAPER MILL WASTES OR EXTRACTS, AND NON-RECYCLABLE PAPER. ANY
42 QUESTION AS TO WHETHER ANY FEEDSTOCK QUALIFIES UNDER THIS SECTION SHALL
43 BE DETERMINED BY THE PRESIDENT OF THE NEW YORK STATE ENERGY AND RESEARCH
44 DEVELOPMENT AUTHORITY.

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

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

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

55 S 187-c. Biofuel production credit. A taxpayer shall be allowed a
56 credit to be computed as provided in section [twenty-eight] FORTY-TWO of

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

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

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

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

44 38. Biofuel production credit. A taxpayer shall be allowed a credit,
45 to be computed as provided in section [twenty-eight] FORTY-TWO of this
46 chapter, [as added by part X of chapter sixty-two of the laws of two
47 thousand six,] against the tax imposed by this article. The credit
48 allowed under this subdivision for any taxable year shall not reduce the
49 tax due for such year to less than the higher of the amounts prescribed
50 in paragraphs (c) and (d) of subdivision one of this section. However,
51 if the amount of credit allowed under this subdivision for any taxable
52 year reduces the tax to such amount, any amount of credit thus not
53 deductible in such taxable year shall be treated as an overpayment of
54 tax to be credited or refunded in accordance with the provisions of
55 section one thousand eighty-six of this chapter. Provided, however, the
56 provisions of subsection (c) of section one thousand eighty-eight of

1 this chapter notwithstanding, no interest shall be paid thereon. The tax
2 credit allowed pursuant to this section shall apply to taxable years
3 beginning before January first, two thousand twenty.

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

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

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

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

39 S 8. This act shall take effect immediately, except that section four
40 of this act shall take effect on the same date and in the same manner as
41 section 15 of part S of chapter 59 of the laws of 2014 takes effect;
42 section six of this act shall take effect on the same date and in the
43 same manner as section 17 of part A of chapter 59 of the laws of 2014
44 takes effect; and provided, however, that the amendments to subdivision
45 38 of section 210 of the tax law made by section five of this act, shall
46 not affect the repeal of such subdivision and shall be deemed repealed
47 therewith.