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I N   S E N A T E

February 1, 2016

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Introduced by Sens. RITCHIE, YOUNG, AKSHAR, BONACIC, O'MARA, 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

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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  
19    PER BONE DRY TON AFTER THE PRODUCTION OF THE FIRST TEN THOUSAND TONS PER  
20    YEAR PRESENTED TO MARKET. The credit under this section shall be capped  
21    at [two and one-half] TEN million dollars per taxpayer per taxable year  
22    for up to no more than [four] TEN consecutive taxable years per biofuel  
23    plant. If the taxpayer is a partner in a partnership or shareholder of a  
24    New York S corporation, then the cap imposed by the preceding sentence  
25    shall be applied at the entity level, so that the aggregate credit

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

LBD07660-04-6

1 allowed to all the partners or shareholders of each such entity in the  
2 taxable year does not exceed [two and one-half] TEN million dollars. The  
3 tax credit allowed pursuant to this section shall apply to taxable years  
4 beginning before January first, two thousand twenty.

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

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

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

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

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

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

46 S 187-c. Biofuel production credit. A taxpayer shall be allowed a  
47 credit to be computed as provided in section [twenty-eight] FORTY-TWO of  
48 this chapter, [as added by part X of chapter sixty-two of the laws of  
49 two thousand six,] against the tax imposed by this article. Provided,  
50 however, that the amount of such credit allowed against the tax imposed  
51 by section one hundred eighty-four of this article shall be the excess  
52 of the amount of such credit over the amount of any credit allowed by  
53 this section against the tax imposed by section one hundred eighty-three  
54 of this article. In no event shall the credit under this section be  
55 allowed in an amount which will reduce the tax payable to less than the  
56 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] FORTY-TWO 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 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 5. Subdivision 24 of section 210-b of the tax law, as added by section 17 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

24. Biofuel production credit. [(a) General.] A taxpayer shall be allowed a credit, to be computed as provided in section [twenty-eight] FORTY-TWO of this chapter [added as part X of chapter sixty-two of the laws of two thousand six], against the tax imposed by this article. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand 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 6. Subsection (jj) of section 606 of the tax law, as amended by section 4 of part K of chapter 59 of the laws of 2012, is amended to read as follows:

1 (jj) Biofuel production credit. A taxpayer shall be allowed a credit  
2 to be computed as provided in section [twenty-eight] FORTY-TWO of this  
3 chapter, [as added by part X of chapter sixty-two of the laws of two  
4 thousand six,] against the tax imposed by this article. If the amount of  
5 the credit allowed under this subsection for any taxable year shall  
6 exceed the taxpayer's tax for such year, the excess shall be treated as  
7 an overpayment of tax to be credited or refunded in accordance with the  
8 provisions of section six hundred eighty-six of this article, provided,  
9 however, that no interest shall be paid thereon. The tax credit allowed  
10 pursuant to this section shall apply to taxable years beginning before  
11 January first, two thousand twenty.

12 S 7. This act shall take effect immediately, except that section four  
13 of this act shall take effect on the same date and in the same manner as  
14 section 15 of part S of chapter 59 of the laws of 2014 takes effect.