

2744

2015-2016 Regular Sessions

I N S E N A T E

January 28, 2015

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the tax law, in relation to bioheating fuel

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

1 Section 1. The environmental conservation law is amended by adding a
2 new section 19-0327 to read as follows:

3 S 19-0327. BIOHEATING FUEL REQUIREMENTS.

4 (1) DEFINITIONS. FOR THE PURPOSE OF THIS SECTION, THE FOLLOWING TERMS
5 SHALL HAVE THE FOLLOWING MEANINGS:

6 (A) "BIODIESEL" SHALL MEAN A FUEL, DESIGNATED B100, THAT MEETS THE
7 SPECIFICATIONS OF THE AMERICAN SOCIETY FOR TESTING AND MATERIALS DESIGNATION D6751 COMPOSED EXCLUSIVELY OF MONO-ALKYL ESTERS OF LONG CHAIN
8 FATTY ACIDS DERIVED FROM FEEDSTOCK.

9 (B) "BIOHEATING FUEL" SHALL MEAN A FUEL COMPRISED OF BIODIESEL BLENDED
10 WITH PETROLEUM HEATING OIL THAT MEETS THE SPECIFICATIONS OF THE AMERICAN
11 SOCIETY FOR TESTING AND MATERIALS DESIGNATION D396 OR OTHER SPECIFICATIONS AS DETERMINED BY THE COMMISSIONER.

12 (C) "HEATING OIL" SHALL MEAN PETROLEUM OIL REFINED FOR THE PURPOSE OF
13 USE AS FUEL FOR COMBUSTION IN A SPACE AND/OR WATER HEATING SYSTEM THAT
14 MEETS THE SPECIFICATIONS OF THE AMERICAN SOCIETY FOR TESTING AND MATERIALS DESIGNATION D396 OR OTHER SPECIFICATIONS AS DETERMINED BY THE
15 COMMISSIONER.

16 (D) "FEEDSTOCK" SHALL MEAN SOYBEAN OIL, OIL FROM ANNUAL COVER CROPS,
17 ALGAL OIL, BIOGENIC WASTE OILS, FATS OR GREASES, OR NON-FOOD GRADE CORN
18 OIL, PROVIDED THAT THE COMMISSIONER MAY, BY RULES AND REGULATIONS, MODIFY THE DEFINITION OF FEEDSTOCK BASED ON THE VEGETABLE OILS, ANIMAL FATS
19 OR CELLULOSIC BIOMASS LISTED IN TABLE 1 OF 40 C.F.R. S 80.1426.

20 (2) ON AND AFTER OCTOBER FIRST, TWO THOUSAND FIFTEEN, ALL HEATING OIL
21 SOLD FOR USE IN ANY BUILDING WITHIN THE COUNTIES OF NASSAU, ROCKLAND,
22
23
24
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EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 SUFFOLK, WESTCHESTER AND THE COUNTIES OF THE CITY OF NEW YORK SHALL BE
2 BIOHEATING FUEL THAT CONTAINS AT LEAST TWO PERCENT BIODIESEL.

3 (3) ON AND AFTER JULY FIRST, TWO THOUSAND SIXTEEN, ALL HEATING OIL
4 SOLD FOR USE IN ANY BUILDING IN THE STATE SHALL BE BIOHEATING FUEL THAT
5 CONTAINS AT LEAST TWO PERCENT BIODIESEL.

6 (4) THE GOVERNOR MAY, BY ISSUING AN EXECUTIVE ORDER, TEMPORARILY
7 SUSPEND THE APPLICABILITY OF THIS SECTION AT ANY TIME BASED ON THE
8 GOVERNOR'S DETERMINATION, AFTER CONSULTING WITH THE NEW YORK STATE ENER-
9 GY RESEARCH AND DEVELOPMENT AUTHORITY AND THE DEPARTMENT, THAT MEETING
10 THE REQUIREMENT OF SUBDIVISION TWO OF THIS SECTION IS NOT FEASIBLE DUE
11 TO LACK OF ADEQUATE SUPPLY OF BIODIESEL OR THAT MEETING THE REQUIREMENT
12 WOULD RESULT IN UNDUE FINANCIAL HARDSHIP TO CONSUMERS.

13 (5) THE REQUIREMENTS OF THIS SECTION SHALL NOT: (A) PROHIBIT THE SALE
14 AND USE OF BIOHEATING FUEL WITH THE SAME OR ANY GREATER PERCENTAGE OF
15 BIODIESEL BLENDED WITH HEATING OIL, OR THE SALE AND USE OF ONE HUNDRED
16 PERCENT BIODIESEL, FOR SPACE AND/OR WATER HEATING PURPOSES IN THE STATE;
17 AND (B) PREEMPT ANY LAWS OF THE CITY OF NEW YORK WITH RESPECT TO
18 MANDATED PERCENTAGE LEVELS OF BIODIESEL BLENDS WITH HEATING OIL PROVIDED
19 THAT SUCH LAWS REQUIRE THE SAME OR GREATER PERCENTAGE OF BIODIESEL
20 BLENDED WITH HEATING OIL AS REQUIRED BY THIS SECTION.

21 S 2. Paragraph (a) and subparagraph (ii) of paragraph (b) of subdivi-
22 sion 25 of section 210-B of the tax law, as added by section 17 of part
23 A of chapter 59 of the laws of 2014, are amended to read as follows:

24 (a) General. A taxpayer shall be allowed a credit against the tax
25 imposed by this article. Such credit, to be computed as hereinafter
26 provided, shall be allowed for [bioheat] BIOHEATING FUEL, used for space
27 heating or hot water production for residential purposes within this
28 state purchased before January first, two thousand seventeen. Such cred-
29 it shall be \$0.01 per percent of biodiesel per gallon of [bioheat]
30 BIOHEATING FUEL, not to exceed twenty cents per gallon, purchased by
31 such taxpayer, PROVIDED, HOWEVER:

32 (I) ON OR AFTER OCTOBER FIRST, TWO THOUSAND FIFTEEN, BIOHEATING FUEL
33 USED WITHIN THE COUNTIES OF NASSAU, ROCKLAND, SUFFOLK, WESTCHESTER AND
34 THE COUNTIES OF THE CITY OF NEW YORK, SHALL BE ELIGIBLE FOR THIS CREDIT
35 ONLY FOR GALLONS OF BIOHEATING FUEL WHICH CONTAIN A MINIMUM OF FIVE
36 PERCENT BIODIESEL AND THE AMOUNT OF SUCH CREDIT SHALL BE \$.01 PER
37 PERCENT, IN EXCESS OF TWO PERCENT, OF BIODIESEL PER GALLON OF BIOHEATING
38 FUEL, NOT TO EXCEED EIGHTEEN CENTS PER GALLON, AND

39 (II) ON OR AFTER JULY FIRST, TWO THOUSAND SIXTEEN, BIOHEATING FUEL
40 USED WITHIN THE STATE SHALL BE ELIGIBLE FOR THIS CREDIT ONLY FOR GALLONS
41 OF BIOHEATING FUEL WHICH CONTAIN A MINIMUM OF FIVE PERCENT BIODIESEL AND
42 THE AMOUNT OF SUCH CREDIT SHALL BE \$.01 PER PERCENT, IN EXCESS OF TWO
43 PERCENT, OF BIODIESEL PER GALLON OF BIOHEATING FUEL, NOT TO EXCEED EIGH-
44 TEEN CENTS PER GALLON.

45 (ii) ["Bioheat"] "BIOHEATING FUEL" shall mean a fuel comprised of
46 biodiesel blended with conventional home heating oil, which meets the
47 specifications of the American Society of Testing and Materials desig-
48 nation D 396 or D 975.

49 S 3. Paragraph 1 and subparagraph (b) of paragraph 2 of subsection
50 (mm) of section 606 of the tax law, paragraph 1 as amended by chapter
51 193 of the laws of 2012 and subparagraph (b) of paragraph 2 as added by
52 section 2 of part D of chapter 35 of the laws of 2006, are amended to
53 read as follows:

54 (1) A taxpayer shall be allowed a credit against the tax imposed by
55 this article. Such credit, to be computed as hereinafter provided, shall
56 be allowed for [bioheat] BIOHEATING FUEL, used for space heating or hot

1 water production for residential purposes within this state and
2 purchased on or after July first, two thousand six and before July
3 first, two thousand seven and on or after January first, two thousand
4 eight and before January first, two thousand seventeen. Such credit
5 shall be \$0.01 per percent of biodiesel per gallon of [bioheat] BIOHEAT-
6 ING FUEL, not to exceed twenty cents per gallon, purchased by such
7 taxpayer, PROVIDED, HOWEVER:

8 (A) ON OR AFTER OCTOBER FIRST, TWO THOUSAND FIFTEEN, BIOHEATING FUEL
9 USED WITHIN THE COUNTIES OF NASSAU, ROCKLAND, SUFFOLK, WESTCHESTER AND
10 THE COUNTIES OF THE CITY OF NEW YORK, SHALL BE ELIGIBLE FOR THIS CREDIT
11 ONLY FOR GALLONS OF BIOHEATING FUEL WHICH CONTAIN A MINIMUM OF FIVE
12 PERCENT BIODIESEL AND THE AMOUNT OF SUCH CREDIT SHALL BE \$.01 PER
13 PERCENT, IN EXCESS OF TWO PERCENT, OF BIODIESEL PER GALLON OF BIOHEATING
14 FUEL, NOT TO EXCEED EIGHTEEN CENTS PER GALLON, AND

15 (B) ON OR AFTER JULY FIRST, TWO THOUSAND SIXTEEN, BIOHEATING FUEL USED
16 WITHIN THE STATE SHALL BE ELIGIBLE FOR THIS CREDIT ONLY FOR GALLONS OF
17 BIOHEATING FUEL WHICH CONTAIN A MINIMUM OF FIVE PERCENT BIODIESEL AND
18 THE AMOUNT OF SUCH CREDIT SHALL BE \$.01 PER PERCENT, IN EXCESS OF TWO
19 PERCENT, OF BIODIESEL PER GALLON OF BIOHEATING FUEL, NOT TO EXCEED EIGH-
20 TEEN CENTS PER GALLON.

21 (b) ["Bioheat"] "BIOHEATING FUEL" shall mean a fuel comprised of biod-
22 iesel blended with conventional home heating oil, which meets the spec-
23 ifications of the American Society of Testing and Materials designation
24 D 396 or D 975.

25 S 4. This act shall take effect immediately.