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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, 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 Investigations and Government Operations

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

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, subdivision (a) as amended by section  
3     1 of part K of chapter 59 of the laws of 2012, subdivision (d) as  
4     amended by section 46 of part A of chapter 59 of the laws of 2014, is  
5     renumbered section 42 and amended to read as follows:  
6     S 42. Biofuel production credit. (a) General. A taxpayer subject to  
7     tax under article nine, nine-A or twenty-two of this chapter shall be  
8     allowed a credit against such tax pursuant to the provisions referenced  
9     in subdivision (d) of this section. The credit (or pro rata share of  
10    earned credit in the case of a partnership) for each gallon of biofuel  
11    produced at a biofuel plant on or after January first, two thousand six  
12    shall equal fifteen cents per gallon OR TWENTY-FIVE CENTS PER GALLON FOR  
13    PRODUCTION OF CELLULOSIC ETHANOL after the production of the first forty  
14    thousand gallons per year presented to market. The credit under this  
15    section shall be capped at two and one-half million dollars per taxpayer  
16    per taxable year for up to no more than four consecutive taxable years  
17    per biofuel plant. If the taxpayer is a partner in a partnership or  
18    shareholder of a New York S corporation, then the cap imposed by the  
19    preceding sentence shall be applied at the entity level, so that the  
20    aggregate credit allowed to all the partners or shareholders of each  
21    such entity in the taxable year does not exceed two and one-half million  
22    dollars. The tax credit allowed pursuant to this section shall apply to  
23    taxable years beginning before January first, two thousand twenty.  
24    (b) Definitions. For the purpose of this section, the following terms  
25    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 (1) "Biofuel" means a fuel which includes biodiesel and ethanol. The  
2 term "biodiesel" shall mean a fuel comprised exclusively of mono-alkyl  
3 esters of long chain fatty acids derived from vegetable oils or animal  
4 fats, designated B100, which meets the specifications of American Socie-  
5 ty of Testing and Materials designation D 6751-02. The term "ethanol"  
6 shall mean ethyl alcohol manufactured in the United States and its  
7 territories and sold (i) for fuel use and which has been rendered unfit  
8 for beverage use in a manner and which is produced at a facility  
9 approved by the federal bureau of alcohol, tobacco and firearms for the  
10 production of ethanol for fuel, or (ii) as denatured ethanol used by  
11 blenders and refiners which has been rendered unfit for beverage use.  
12 The term "biofuel" may also include any other standard approved by the  
13 New York state energy and research development authority.

14 (2) "CELLULOSIC ETHANOL" MEANS THE PRODUCTION OF ETHANOL FROM LIGNO-  
15 CELLULOSIC BIOMASS FEEDSTOCKS NOT USED FOR FOOD PRODUCTION THAT ARE  
16 ALTERED THROUGH ACTIVITIES REFERENCED IN SUBPARAGRAPH FIVE OF PARAGRAPH  
17 (B) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC  
18 AUTHORITIES LAW. SUCH LIGNOCELLULOSIC BIOMASS FEEDSTOCKS MAY INCLUDE,  
19 BUT ARE NOT NECESSARILY LIMITED TO, SWITCHGRASSES OR WILLOWS, AGRICUL-  
20 TURAL AND FORESTRY RESIDUES, CLEAN WOOD AND WOOD WASTES, PULP AND PAPER  
21 MILL WASTES OR EXTRACTS, AND NON-RECYCLABLE PAPER. ANY QUESTION AS TO  
22 WHETHER ANY FEEDSTOCK QUALIFIES UNDER THIS PARAGRAPH SHALL BE DETERMINED  
23 BY THE PRESIDENT OF THE NEW YORK STATE ENERGY AND RESEARCH DEVELOPMENT  
24 AUTHORITY IN CONSULTATION WITH THE COMMISSIONER OF ENVIRONMENTAL CONSER-  
25 VATION AND THE COMMISSIONER OF AGRICULTURE AND MARKETS.

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

30 (c) Reporting requirements. A taxpayer wishing to claim a credit under  
31 this section shall annually certify to the commissioner (i) that biofuel  
32 produced at the eligible biofuel plant meets all existing standards for  
33 biofuel and (ii) the amount of biofuel produced at the eligible biofuel  
34 plant during a taxable year.

35 (d) Cross-references. For application of the credit provided for in  
36 this section, see the following provisions of this chapter:

37 (1) Article 9: Section 187-c.

38 (2) Article 9-A: Section 210-B, subdivision 24.

39 (3) Article 22: Section 606, subsections (i) and (jj).

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

42 S 187-c. Biofuel production credit. A taxpayer shall be allowed a  
43 credit to be computed as provided in section [twenty-eight] FORTY-TWO of  
44 this chapter, [as added by part X of chapter sixty-two of the laws of  
45 two thousand six,] against the tax imposed by this article. Provided,  
46 however, that the amount of such credit allowed against the tax imposed  
47 by section one hundred eighty-four of this article shall be the excess  
48 of the amount of such credit over the amount of any credit allowed by  
49 this section against the tax imposed by section one hundred eighty-three  
50 of this article. In no event shall the credit under this section be  
51 allowed in an amount which will reduce the tax payable to less than the  
52 applicable minimum tax fixed by section one hundred eighty-three or one  
53 hundred eighty-five of this article. If, however, the amount of the  
54 credit allowed under this section for any taxable year reduces the tax  
55 to such amount, the excess shall be treated as an overpayment of tax to  
56 be credited or refunded in accordance with the provisions of section six

1 hundred eighty-six of this chapter. Provided, however, the provisions of  
2 subsection (c) of section one thousand eighty-eight of this chapter  
3 notwithstanding, no interest shall be paid thereon. The tax credit  
4 allowed pursuant to this section shall apply to taxable years beginning  
5 before January first, two thousand twenty.

6 S 3. Section 187-c of the tax law, as amended by section 15 of part S  
7 of chapter 59 of the laws of 2014, is amended to read as follows:

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

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

31 24. Biofuel production credit. [(a) General.] A taxpayer shall be  
32 allowed a credit, to be computed as provided in section [twenty-eight]  
33 FORTY-TWO of this chapter [added as part X of chapter sixty-two of the  
34 laws of two thousand six], against the tax imposed by this article. The  
35 credit allowed under this subdivision for any taxable year shall not  
36 reduce the tax due for such year to less than the fixed dollar minimum  
37 amount prescribed in paragraph (d) of subdivision one of section two  
38 hundred ten of this article. However, if the amount of credit allowed  
39 under this subdivision for any taxable year reduces the tax to such  
40 amount or if the taxpayer otherwise pays tax based on the fixed dollar  
41 minimum amount, any amount of credit thus not deductible in such taxable  
42 year shall be treated as an overpayment of tax to be credited or  
43 refunded in accordance with the provisions of section one thousand  
44 eighty-six of this chapter. Provided, however, the provisions of  
45 subsection (c) of section one thousand eighty-eight of this chapter  
46 notwithstanding, no interest shall be paid thereon. The tax credit  
47 allowed pursuant to this section shall apply to taxable years beginning  
48 before January first, two thousand twenty.

49 S 5. Subsection (jj) of section 606 of the tax law, as amended by  
50 section 4 of part K of chapter 59 of the laws of 2012, is amended to  
51 read as follows:

52 (jj) Biofuel production credit. A taxpayer shall be allowed a credit  
53 to be computed as provided in section [twenty-eight] FORTY-TWO of this  
54 chapter, [as added by part X of chapter sixty-two of the laws of two  
55 thousand six,] against the tax imposed by this article. If the amount of  
56 the credit allowed under this subsection for any taxable year shall

1 exceed the taxpayer's tax for such year, the excess shall be treated as  
2 an overpayment of tax to be credited or refunded in accordance with the  
3 provisions of section six hundred eighty-six of this article, provided,  
4 however, that no interest shall be paid thereon. The tax credit allowed  
5 pursuant to this section shall apply to taxable years beginning before  
6 January first, two thousand twenty.

7 S 6. This act shall take effect immediately, except that section three  
8 of this act shall take effect on the same date and in the same manner as  
9 section 15 of part S of chapter 59 of the laws of 2014 takes effect.