

# STATE OF NEW YORK

1417

2017-2018 Regular Sessions

## IN ASSEMBLY

January 12, 2017

Introduced by M. of A. JENNE, SKARTADOS, PALMESANO, FITZPATRICK -- read once and referred to the Committee on Ways and Means

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 43.

3 § 2. Subdivisions (a) and (b) of section 43 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

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

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shall be applied at the entity level, so that the aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed ~~two and one-half~~ ten million dollars. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

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

(1) "Biofuel" means a fuel which includes biodiesel ~~[and]~~, ethanol, densified biofuel and renewable fuel oil. The term "biodiesel" shall mean a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of American Society of Testing and Materials designation D 6751-02. The term "ethanol" shall mean ethyl alcohol manufactured in the United States and its territories and sold (i) for fuel use and which has been rendered unfit for beverage use in a manner and which is produced at a facility approved by the federal bureau of alcohol, tobacco and firearms for the production of ethanol for fuel, or (ii) as denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use. The term "biofuel" may also include any other standard approved by the New York state energy and research development authority. The term "renewable fuel oil" shall mean a fuel comprised of any non-food biomass based feedstock that can be used as a full or partial substitute for traditional petroleum fuels.

(2) "Cellulosic ethanol" means the production of ethanol from ligno-cellulosic biomass feedstocks, including cellulosic components of separated food waste as defined in table 1 of C.F.R. § 80.1426 and by-products from agricultural waste, that are altered through activities referenced in subparagraph five of paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law. Such lignocellulosic biomass feedstocks may include, but are not necessarily limited to, switchgrasses or willows, agricultural and forestry residues as defined in table 1 of C.F.R. § 80.1426, clean wood and wood wastes, pulp and paper mill wastes or extracts, and non-recyclable paper. Any question as to whether any feedstock qualifies under this section shall be determined by the president of the New York state energy and research development authority.

(3) "Densified biofuel" means a solid fuel derived by the mechanical densification and refining of biomass sourced from woody or agricultural feedstocks.

(4) "Biofuel plant" means a commercial facility located in New York state at which one or more biofuels are produced. For the purposes of this section, any commercial facility where cellulosic ethanol, renewable fuel oil or densified biofuel is produced shall be considered a separate biofuel plant.

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

§ 187-c. Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section ~~[twenty-eight]~~ forty-three 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

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

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

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

33 § 5. Subdivision 24 of section 210-B of the tax law, as added by  
34 section 17 of part A of chapter 59 of the laws of 2014, is amended to  
35 read as follows:

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

54 § 6. Subsection (jj) of section 606 of the tax law, as amended by  
55 section 4 of part K of chapter 59 of the laws of 2012, is amended to  
56 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-three 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 § 7. This act shall take effect immediately.