S T A T E   O F   N E W   Y O R K

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2009-2010 Regular Sessions

I N S E N A T E

January 26, 2009

Introduced by Sen. MARCELLINO -- 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 the alternative fuels credit

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

Section 1. Subsection (p) of section 606 of the tax law, as amended by section 16 of part W1 of chapter 109 of the laws of 2006, is amended to read as follows:

(p) Alternative fuels credit. (1) General. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for QUALIFIED HYBRID VEHICLES AND alternative fuel vehicle refueling property placed in service during the taxable year.

(2) Alternative fuel vehicle refueling property. The credit under this subsection for clean-fuel vehicle refueling property shall equal fifty percent of the cost of any such property

(A) which is located in this state and

(B) for which a credit is allowed under section thirty C of the internal revenue code [but not including alternative fuel vehicle refueling property relating to a qualified hybrid vehicle as such vehicle is defined in subparagraph (B) of paragraph three of this subsection].

(3) QUALIFIED HYBRID VEHICLE. THE CREDIT UNDER THIS SUBSECTION FOR QUALIFIED HYBRID VEHICLES SHALL BE DETERMINED AS FOLLOWS BASED ON THE BASELINE FUEL ECONOMY (COMBINED CITY AND HIGHWAY FUEL ECONOMY LABEL VALUE) FOR THE TWO THOUSAND FOUR MODEL YEAR BY VEHICLE TYPE AND SIZE FOR SUCH HYBRID VEHICLE, AS DETERMINED PURSUANT TO THE DESCRIPTION SET FORTH IN APPENDICES A AND F OF THE "LIGHT-DUTY AUTOMOTIVE TECHNOLOGY AND FUEL ECONOMY TRENDS: 1975 THROUGH 2004" (EPA420-R-04-001, APRIL 2004) BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

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

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(A) FIVE HUNDRED DOLLARS IF THE BASELINE FUEL ECONOMY OF SUCH HYBRID VEHICLE IS TEN PERCENT OR MORE BUT LESS THAN TWENTY PERCENT HIGHER THAN SUCH CLASS,

(B) ONE THOUSAND DOLLARS IF THE BASELINE FUEL ECONOMY OF SUCH HYBRID VEHICLE IS TWENTY PERCENT OR MORE BUT LESS THAN FORTY PERCENT HIGHER THAN SUCH VEHICLE TYPE,

(C) ONE THOUSAND FIVE HUNDRED DOLLARS IF THE BASELINE FUEL ECONOMY OF SUCH HYBRID VEHICLE IS FORTY PERCENT OR MORE BUT LESS THAN SIXTY PERCENT HIGHER THAN SUCH VEHICLE TYPE,

(D) TWO THOUSAND DOLLARS IF THE BASELINE FUEL ECONOMY OF SUCH HYBRID VEHICLE IS SIXTY PERCENT OR MORE BUT LESS THAN EIGHTY PERCENT HIGHER THAN SUCH VEHICLE TYPE, AND

(E) TWO THOUSAND FIVE HUNDRED DOLLARS IF THE BASELINE FUEL ECONOMY OF SUCH HYBRID VEHICLE IS EIGHTY PERCENT OR MORE THAN SUCH VEHICLE TYPE.

FOR ALL CARS AND LIGHT TRUCKS, THE CREDIT SHALL BE BASED ON THE VEHICLE TYPE AND SIZE, AS DETERMINED PURSUANT TO THE VEHICLE CLASSIFICATION DESCRIPTION SET FORTH IN APPENDIX A OF THE "LIGHT-DUTY AUTOMOTIVE TECHNOLOGY AND FUEL ECONOMY TRENDS: 1975 THROUGH 2004" (EPA420-R-04-001, APRIL 2004) BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. BASELINE FUEL ECONOMY FOR EACH VEHICLE TYPE AND SIZE SHALL BE BASED UPON TWO THOUSAND SIX MODEL YEAR VEHICLES IN APPENDIX F OF SUCH REPORT. THE BASELINE FUEL ECONOMY VALUES SHALL BE THE ADJUSTED UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FUEL ECONOMY LABEL VALUES FOR COMBINED CITY AND HIGHWAY DRIVING, NOT THE UNADJUSTED VALUES USED FOR CORPORATE AVERAGE FUEL ECONOMY PURPOSES. THE BASELINE FUEL ECONOMY VALUES FOR EACH VEHICLE TYPE AND SIZE ARE LISTED AS FOLLOWS:

VEHICLE TYPE AND SIZE	BASELINE FUEL ECONOMY VALUE
SMALL CAR	25.9
MID-SIZE CAR	24.3
LARGE CAR	22.2
SMALL WAGON	26.2
MID-SIZE WAGON	22.9
LARGE WAGON	18.9
MID-SIZE VAN	20.4
LARGE VAN	16.2
SMALL SUV	21.8
MID-SIZE SUV	19.2
LARGE SUV	16.3
SMALL PICKUP	19.5
MID-SIZE PICKUP	19.0
LARGE PICKUP	16.5

FOR PURPOSES OF THIS PARAGRAPH, CAR SHALL HAVE THE SAME MEANING AS PASSENGER AUTOMOBILE AS DEFINED IN TITLE 49, SUBTITLE VI, PART C, CHAPTER 329, SECTION 32901, PARAGRAPH (A), SUBPARAGRAPH 16 OF THE UNITED STATES CODE, AND LIGHT TRUCK SHALL HAVE THE SAME MEANING AS LIGHT TRUCK AS DEFINED IN PARAGRAPH (A) OF SECTION 523.5 OF PART 523 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS.

THE COMMISSIONER IS HEREBY AUTHORIZED TO REQUEST, AS NEEDED, A WRITTEN REPORT FROM THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION DETAILING: (I) WHICH MOTOR VEHICLES (IDENTIFIED BY SIZE, TYPE, CONFIGURATION, MAKE, MODEL AND MODEL YEAR) MEET THE REQUIREMENTS OF A QUALIFIED HYBRID VEHICLE AS DEFINED IN SUBPARAGRAPH (B) OF PARAGRAPH FOUR OF THIS SUBSECTION; AND (II) FOR EACH MODEL OF MOTOR VEHICLE THAT SO QUALIFIES, THE AMOUNT OF THE CREDIT ALLOWED FOR SUCH QUALIFIED HYBRID VEHICLE UNDER THIS PARAGRAPH IDENTIFIED BY SIZE, TYPE, CONFIGURATION, MAKE,

MODEL AND MODEL YEAR. SUCH REPORT SHALL INCLUDE DOCUMENTATION SUBSTANTIATING THE DETERMINATIONS MADE IN SUCH REPORT, WHICH REPORT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL PROVIDE TO THE COMMISSIONER, AFTER CONSULTATION WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, NO LATER THAN THIRTY DAYS AFTER RECEIVING THE COMMISSIONER'S REQUEST.

(4) Definitions. (A) The term "alternative fuel vehicle refueling property" means any such property which is qualified within the meaning of section thirty C of the internal revenue code[, but such term shall not include alternative fuel vehicle refueling property relating to a qualified hybrid vehicle as such vehicle is defined in subparagraph (B) of this paragraph].

(B) The term "qualified hybrid vehicle" means a motor vehicle[, as defined in section one hundred twenty-five of the vehicle and traffic law,,] that:

(i) draws propulsion energy from ONBOARD SOURCES OF STORED ENERGY, WHICH ARE both:

(a) an internal combustion [engine (]or heat engine [that uses] USING combustible fuel[)]; and

(b) [an] A RECHARGEABLE energy storage [device] SYSTEM; and

(ii) employs a regenerative vehicle braking system that recovers waste energy to charge such energy storage device[.]; AND

(III) IS CERTIFIED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO MEET THE ABOVE CRITERIA.

[(4)] (5) Carryovers. If the amount of credit allowable under this subsection shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

[(5)] (6) Credit recapture. (A) Vehicles.

(i) If, within three full years from the date a qualified hybrid vehicle or a vehicle of which alternative fuel vehicle property is a part is placed in service, such qualified hybrid vehicle or vehicle of which alternative fuel vehicle property is a part ceases to be qualified, a recapture amount must be added back in the tax year in which such cessation occurs.

(ii) Cessation of qualification. [(I)] A qualified hybrid vehicle ceases to be qualified if

(a) it is modified by the taxpayer so that it no longer meets the requirements of a qualified hybrid vehicle as defined in subparagraph (B) of paragraph [three] FOUR of this subsection.

(b) the taxpayer receiving the credit under this subsection sells or disposes of the vehicle and knows or has reason to know that the vehicle will be so modified.

(B) Alternative fuel vehicle refueling property. (i) If, at any time before the end of its recovery period, alternative fuel vehicle refueling property ceases to be qualified, a recapture amount must be added back in the year in which such cessation occurs.

(ii) Cessation of qualification. Clean-fuel vehicle refueling property ceases to be qualified if

(I) the property no longer qualifies as property described in section thirty C of the internal revenue code, or

(II) fifty percent or more of the use of the property in a taxable year is other than in a trade or business in this state, or

(III) the taxpayer receiving the credit under this subsection sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in item (I) or (II) of this clause.

(iii) Recapture amount. The recapture amount is equal to the credit allowable under this subsection multiplied by a fraction, the numerator of which is the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year, and the denominator of which is the total recovery period.

[(6)] (7) Termination. The credit allowed by paragraph two of this subsection shall not apply in taxable years beginning after December thirty-first, two thousand ten.

S 2. This act shall take effect January 1, 2010, provided that the commissioner of taxation and finance shall be authorized on and after the date this act shall have become a law to adopt and amend any rules or regulations and issue any procedures, forms or instructions necessary to implement the provisions of this act on its effective date.