

3375

2009-2010 Regular Sessions

I N S E N A T E

March 17, 2009

Introduced by Sen. KRUGER -- 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, is renumbered section 30 and amended
3 to read as follows:

4 S 30. Biofuel production credit. (a) General. A taxpayer subject to
5 tax under article nine, nine-A or twenty-two of this chapter shall be
6 allowed a credit against such tax pursuant to the provisions referenced
7 in subdivision (d) of this section. The credit (or pro rata share of
8 earned credit in the case of a partnership) for each gallon of biofuel
9 produced at a biofuel plant on or after January first, two thousand six
10 shall equal fifteen cents per gallon, OR TWENTY-FIVE CENTS PER GALLON
11 FOR THE PRODUCTION OF CELLULOSIC ETHANOL, after the production of the
12 first forty thousand gallons per year presented to market. The credit
13 under this section shall be capped at two and one-half million dollars
14 per taxpayer per taxable year for up to no more than four consecutive
15 taxable years per biofuel plant.

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

18 (1) "Biofuel" means a fuel which includes biodiesel and ethanol. The
19 term "biodiesel" shall mean a fuel comprised exclusively of mono-alkyl
20 esters of long chain fatty acids derived from vegetable oils or animal
21 fats, designated B100, which meets the specifications of American Society
22 of Testing and Materials designation D 6751-02. The term "ethanol"
23 shall mean ethyl alcohol manufactured in the United States and its
24 territories and sold (i) for fuel use and which has been rendered unfit

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

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1 for beverage use in a manner and which is produced at a facility
2 approved by the federal bureau of alcohol, tobacco and firearms for the
3 production of ethanol for fuel, or (ii) as denatured ethanol used by
4 blenders and refiners which has been rendered unfit for beverage use.
5 The term "biofuel" may also include any other standard approved by the
6 New York state energy and research development authority.

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

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

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

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

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

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

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

33 S 2. Subsection (jj) of section 606 of the tax law, as added by
34 section 5 of part X of chapter 62 of the laws of 2006, is amended to
35 read as follows:

36 (jj) Biofuel production credit. A taxpayer shall be allowed a credit
37 to be computed as provided in section [twenty-eight] THIRTY of this
38 chapter, against the tax imposed by this article. If the amount of the
39 credit allowed under this subsection for any taxable year shall exceed
40 the taxpayer's tax for such year, the excess shall be treated as an
41 overpayment of tax to be credited or refunded in accordance with the
42 provisions of section six hundred eighty-six of this article, provided,
43 however, that no interest shall be paid thereon.

44 S 3. This act shall take effect immediately.