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

994

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the tax law, in relation to alternative fuel vehicle property tax credit

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

Section 1. Section 187-b of the tax law, as amended by section 14 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

S 187-b. Alternative fuels credit. 1. General. A taxpayer shall be allowed a credit, to be credited against the taxes imposed under sections one hundred eighty-three, one hundred eighty-four, [and] one hundred eighty-five AND FORMER SECTION ONE HUNDRED EIGHTY-SIX of this article. Such credit, to be computed as hereinafter provided, shall be allowed for ALTERNATIVE FUEL VEHICLE PROPERTY AND alternative fuel vehicle refueling property placed in service during the taxable year. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this article shall be the excess of the credit allowed by this section over the amount of such credit allowable against the tax imposed by section one hundred eighty-three of this article.

2. Alternative fuel vehicle refueling property. The credit under this section for alternative 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] FOUR of subsection (p) of section six hundred six of this chapter.

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

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2-A. ALTERNATIVE FUEL VEHICLE PROPERTY. THE CREDIT UNDER THIS SECTION FOR ALTERNATIVE FUEL VEHICLE PROPERTY SHALL EQUAL SIXTY PERCENT OF THE COST OF ANY SUCH PROPERTY WHICH IS INSTALLED IN OR MANUFACTURED AS PART OF A MOTOR VEHICLE WHICH IS REGISTERED IN THIS STATE; PROVIDED, HOWEVER, THE CREDIT WITH RESPECT TO ANY SUCH PROPERTY SHALL NOT EXCEED FIVE THOUSAND DOLLARS PER VEHICLE FOR VEHICLES WITH A GROSS VEHICLE WEIGHT RATING OF FOURTEEN THOUSAND POUNDS OR LESS AND TEN THOUSAND DOLLARS PER VEHICLE FOR ALL OTHER VEHICLES.

3. 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, PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS SECTION, ALTERNATIVE FUEL REFUELING PROPERTY SHALL ALSO INCLUDE A HOME REFUELING APPLIANCE OR PROPERTY DESIGNED FOR COMMERCIAL OR RESIDENTIAL USE, but shall not include alternative fuel vehicle refueling property relating to a qualified hybrid vehicle as such vehicle is defined in subparagraph (B) of paragraph [three] FOUR of subsection (p) of section six hundred six of this chapter.

(b) The term "qualified hybrid vehicle" shall have the same meaning as provided for under subparagraph (B) of paragraph [three] FOUR of subsection (p) of section six hundred six of this chapter.

(C) THE TERM "ALTERNATIVE FUEL VEHICLE PROPERTY" MEANS PROPERTY WHICH IS ACQUIRED FOR USE BY THE TAXPAYER AND NOT FOR RESALE, THE ORIGINAL USE OF WHICH COMMENCES WITH THE TAXPAYER AND WHICH IS EITHER:

(I) A MOTOR VEHICLE AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW WHICH IS PRODUCED BY AN ORIGINAL EQUIPMENT MANUFACTURER AND WHICH IS PROPELLED EXCLUSIVELY BY AN ALTERNATIVE FUEL, BUT ONLY TO THE EXTENT OF THE BASIS OF SUCH VEHICLE WHICH IS ATTRIBUTABLE TO AN ENGINE WHICH MAY USE SUCH FUEL, TO THE STORAGE OR DELIVERY TO THE ENGINE OF SUCH FUEL, OR TO THE EXHAUST OF GASES FROM COMBUSTION OF SUCH FUEL; OR

(II) PROPERTY INSTALLED ON A MOTOR VEHICLE AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW WHICH IS PROPELLED BY A FUEL WHICH IS NOT AN ALTERNATIVE FUEL, FOR PURPOSES OF PERMITTING SUCH VEHICLE TO BE PROPELLED EXCLUSIVELY BY AN ALTERNATIVE FUEL, PROVIDED, HOWEVER, SUCH QUALIFYING PROPERTY SHALL BE LIMITED TO AN ENGINE OR MODIFICATION THEREOF WHICH MAY USE AN ALTERNATIVE FUEL OR PROPERTY USED IN THE STORAGE OR DELIVERY TO THE ENGINE OF SUCH FUEL, OR THE EXHAUST OF GASES FROM COMBUSTION OF SUCH FUEL.

(D) THE TERM "ALTERNATIVE FUEL" MEANS NATURAL GAS, LIQUEFIED PETROLEUM GAS, HYDROGEN, FUEL CELL, ELECTRICITY, AND ANY OTHER FUEL WHICH IS AT LEAST EIGHTY-FIVE PERCENT, SINGLY OR IN COMBINATION, METHANOL, ETHANOL, ANY OTHER ALCOHOL, OR ETHER.

4. Carryovers. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three or one hundred eighty-five of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year 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. Credit recapture; Alternative fuel vehicle refueling property AND ALTERNATIVE FUEL VEHICLE PROPERTY.

(A) ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY. 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.

(i) Cessation of qualification. Alternative 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 a trade or business in this state; or

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

(ii) Recapture amount. The recapture amount is equal to the credit allowable under this section 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.

(B) ALTERNATIVE FUEL VEHICLES. (I) IF, WITHIN THREE FULL YEARS FROM THE DATE A VEHICLE OF WHICH ALTERNATIVE FUEL VEHICLE PROPERTY IS A PART IS PLACED IN SERVICE, SUCH VEHICLE CEASES TO BE QUALIFIED, A RECAPTURE AMOUNT MUST BE ADDED BACK IN THE TAX YEAR IN WHICH SUCH CESSATION OCCURS.

(II) CESSATION OF QUALIFICATION. ALTERNATIVE FUEL VEHICLE PROPERTY CEASES TO BE QUALIFIED IF

(I) THE VEHICLE OF WHICH IT IS A PART IS MODIFIED BY THE TAXPAYER SO THAT IT MAY NO LONGER BE PROPELLED BY AN ALTERNATIVE FUEL, OR

(II) THE VEHICLE OTHERWISE CEASES TO QUALIFY AS ALTERNATIVE FUEL VEHICLE PROPERTY AS DEFINED IN SUBDIVISION THREE OF THIS SECTION, OR

(III) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SECTION SELLS OR DISPOSES OF THE VEHICLE AND KNOWS OR HAS REASON TO KNOW THAT THE VEHICLE WILL BE USED IN A MANNER DESCRIBED IN THIS SUBPARAGRAPH.

(III) RECAPTURE AMOUNT. THE RECAPTURE AMOUNT IS EQUAL TO THE CREDIT ALLOWABLE UNDER THIS SECTION MULTIPLIED BY:

(I) ONE HUNDRED PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE FIRST FULL YEAR AFTER THE DATE THE PROPERTY IS PLACED IN SERVICE,

(II) SIXTY-SIX AND TWO-THIRDS PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE SECOND FULL YEAR AFTER THE DATE THE PROPERTY IS PLACED IN SERVICE, OR

(III) THIRTY-THREE AND ONE-THIRD PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE THIRD FULL YEAR AFTER THE DATE THE PROPERTY IS PLACED IN SERVICE.

6. Termination. The credit allowed by subdivision two of this section shall not apply in taxable years beginning after December thirty-first, two thousand ten.

S 2. Paragraph (c) of subdivision 24 of section 210 of the tax law, as amended by section 15 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(c) Definitions. 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 PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS SUBDIVISION, ALTERNATIVE FUEL REFUELING PROPERTY SHALL ALSO INCLUDE A HOME REFUELING APPLIANCE OR PROPERTY DESIGNED FOR COMMERCIAL OR RESIDENTIAL USE, but shall not include alternative fuel vehicle refueling property relating to a qualified hybrid vehicle as such vehicle is defined in subparagraph (B) of paragraph [three] FOUR of subsection (p) of section six hundred six of this chapter.

S 3. Section 210 of the tax law is amended by adding a new subdivision 24-a to read as follows:

24-A. ALTERNATIVE FUEL VEHICLE PROPERTY CREDIT. (A) GENERAL. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN THIS SUBDIVISION, AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR ALTERNATIVE FUEL VEHICLE PROPERTY PLACED IN SERVICE DURING THE TAXABLE YEAR.

(B) ALTERNATIVE FUEL VEHICLE PROPERTY TAX CREDIT. THE CREDIT UNDER THIS SUBDIVISION FOR ALTERNATIVE FUEL VEHICLE PROPERTY SHALL EQUAL SIXTY PERCENT OF THE COST OF ANY SUCH PROPERTY WHICH IS INSTALLED IN OR MANUFACTURED AS PART OF A MOTOR VEHICLE WHICH IS REGISTERED IN THIS STATE; PROVIDED, HOWEVER, THE CREDIT WITH RESPECT TO ANY SUCH PROPERTY SHALL NOT EXCEED FIVE THOUSAND DOLLARS PER VEHICLE FOR VEHICLES WITH A GROSS VEHICLE WEIGHT RATING OF FOURTEEN THOUSAND POUNDS OR LESS AND TEN THOUSAND DOLLARS PER VEHICLE FOR ALL OTHER VEHICLES.

(C) DEFINITIONS. (I) THE TERM "ALTERNATIVE FUEL VEHICLE PROPERTY" MEANS PROPERTY WHICH IS ACQUIRED FOR USE BY THE TAXPAYER AND NOT FOR RESALE, THE ORIGINAL USE OF WHICH COMMENCES WITH THE TAXPAYER AND WHICH IS EITHER:

(A) A MOTOR VEHICLE AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW WHICH IS PRODUCED BY AN ORIGINAL EQUIPMENT MANUFACTURER AND WHICH IS PROPELLED EXCLUSIVELY BY AN ALTERNATIVE FUEL, BUT ONLY TO THE EXTENT OF THE BASIS OF SUCH VEHICLE WHICH IS ATTRIBUTABLE TO AN ENGINE WHICH MAY USE SUCH FUEL, TO THE STORAGE OR DELIVERY TO THE ENGINE OF SUCH FUEL, OR TO THE EXHAUST OF GASES FROM COMBUSTION OF SUCH FUEL; OR

(B) PROPERTY INSTALLED ON A MOTOR VEHICLE AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW WHICH IS PROPELLED BY A FUEL WHICH IS NOT AN ALTERNATIVE FUEL, FOR PURPOSES OF PERMITTING SUCH VEHICLE TO BE PROPELLED EXCLUSIVELY BY AN ALTERNATIVE FUEL, PROVIDED, HOWEVER, SUCH QUALIFYING PROPERTY SHALL BE LIMITED TO AN ENGINE OR MODIFICATION THEREOF WHICH MAY USE AN ALTERNATIVE FUEL OR PROPERTY USED IN THE STORAGE OR DELIVERY TO THE ENGINE OF SUCH FUEL, OR THE EXHAUST OF GASES FROM COMBUSTION OF SUCH FUEL.

(II) THE TERM "ALTERNATIVE FUEL" MEANS NATURAL GAS, LIQUEFIED PETROLEUM GAS, HYDROGEN, FUEL CELL, ELECTRICITY, AND ANY OTHER FUEL WHICH IS AT LEAST EIGHTY-FIVE PERCENT, SINGLY OR IN COMBINATION, METHANOL, ETHANOL, ANY OTHER ALCOHOL, OR ETHER.

(D) CARRYOVERS. IN NO EVENT SHALL THE CREDIT UNDER THIS SUBDIVISION BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(E) CREDIT RECAPTURE. (I) IF, WITHIN THREE FULL YEARS FROM THE DATE A VEHICLE OF WHICH ALTERNATIVE FUEL VEHICLE PROPERTY IS A PART IS PLACED IN SERVICE, SUCH VEHICLE CEASES TO BE QUALIFIED, A RECAPTURE AMOUNT MUST BE ADDED BACK IN THE TAX YEAR IN WHICH SUCH CESSATION OCCURS.

(II) CESSATION OF QUALIFICATION. ALTERNATIVE FUEL VEHICLE PROPERTY CEASES TO BE QUALIFIED IF

(A) THE VEHICLE OF WHICH IT IS A PART IS MODIFIED BY THE TAXPAYER SO THAT IT MAY NO LONGER BE PROPELLED BY AN ALTERNATIVE FUEL, OR

(B) THE VEHICLE OTHERWISE CEASES TO QUALIFY AS ALTERNATIVE FUEL VEHICLE PROPERTY DEFINED IN PARAGRAPH (C) OF THIS SUBDIVISION, OR

(C) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SUBDIVISION SELLS OR DISPOSES OF THE VEHICLE AND KNOWS OR HAS REASON TO KNOW THAT THE PROPER-

TY WILL BE USED IN A MANNER DESCRIBED IN SUBPARAGRAPH (A) OR (B) OF THIS PARAGRAPH.

(III) RECAPTURE AMOUNT. THE RECAPTURE AMOUNT IS EQUAL TO THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION MULTIPLIED BY:

(A) ONE HUNDRED PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE FIRST FULL YEAR AFTER THE DATE THE PROPERTY IS PLACED IN SERVICE,

(B) SIXTY-SIX AND TWO-THIRDS PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE SECOND FULL YEAR AFTER THE DATE THE PROPERTY IS PLACED IN SERVICE, OR

(C) THIRTY-THREE AND ONE-THIRD PERCENT, IF THE CESSATION OF QUALIFICATION OCCURS WITHIN THE THIRD FULL YEAR AFTER THE DATE THE PROPERTY IS PLACED IN SERVICE.

S 4. Subsection (p) of section 606 of the tax law, as amended by section 16 of part W-l 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 alternative fuel vehicle refueling property AND ALTERNATIVE FUEL VEHICLE 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] FOUR of this subsection.

(3) ALTERNATIVE FUEL VEHICLE PROPERTY. THE CREDIT UNDER THIS SUBSECTION FOR ALTERNATIVE FUEL VEHICLE PROPERTY SHALL EQUAL SIXTY PERCENT OF THE COST OF ANY SUCH PROPERTY WHICH IS INSTALLED IN OR MANUFACTURED AS PART OF A MOTOR VEHICLE WHICH IS REGISTERED IN THIS STATE; PROVIDED, HOWEVER, THE CREDIT WITH RESPECT TO ANY SUCH PROPERTY SHALL NOT EXCEED FIVE THOUSAND DOLLARS PER VEHICLE FOR VEHICLES WITH A GROSS VEHICLE WEIGHT RATING OF FOURTEEN THOUSAND POUNDS OR LESS AND TEN THOUSAND DOLLARS PER VEHICLE FOR ALL OTHER VEHICLES.

(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, PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS SUBSECTION, ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY SHALL INCLUDE A HOME REFUELING APPLIANCE OR PROPERTY DESIGNED FOR COMMERCIAL OR RESIDENTIAL USE.

(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 both

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

(b) an energy storage device; and

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

(C) THE TERM "ALTERNATIVE FUEL VEHICLE PROPERTY" MEANS PROPERTY WHICH IS ACQUIRED FOR USE BY THE TAXPAYER AND NOT FOR RESALE, THE ORIGINAL USE OF WHICH COMMENCES WITH THE TAXPAYER AND WHICH IS EITHER:

(I) A MOTOR VEHICLE AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW WHICH IS PRODUCED BY AN ORIGINAL EQUIPMENT MANUFACTURER AND WHICH IS PROPELLED EXCLUSIVELY BY AN ALTERNATIVE FUEL, BUT ONLY TO THE EXTENT OF THE BASIS OF SUCH VEHICLE WHICH IS ATTRIBUTABLE TO AN ENGINE WHICH MAY USE SUCH FUEL, TO THE STORAGE OR DELIVERY TO THE ENGINE OF SUCH FUEL, OR TO THE EXHAUST OF GASES FROM COMBUSTION OF SUCH FUEL; OR

(II) PROPERTY INSTALLED ON A MOTOR VEHICLE AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW WHICH IS PROPELLED BY A FUEL WHICH IS NOT AN ALTERNATIVE FUEL, FOR PURPOSES OF PERMITTING SUCH VEHICLE TO BE PROPELLED EXCLUSIVELY BY AN ALTERNATIVE FUEL, PROVIDED, HOWEVER, SUCH QUALIFYING PROPERTY SHALL BE LIMITED TO AN ENGINE OR MODIFICATION THEREOF WHICH MAY USE AN ALTERNATIVE FUEL OR PROPERTY USED IN THE STORAGE OR DELIVERY TO THE ENGINE OF SUCH FUEL, OR THE EXHAUST OF GASES FROM COMBUSTION OF SUCH FUEL.

(D) THE TERM "ALTERNATIVE FUEL" MEANS NATURAL GAS, LIQUEFIED PETROLEUM GAS, HYDROGEN, FUEL CELL, ELECTRICITY, AND ANY OTHER FUEL WHICH IS AT LEAST EIGHTY-FIVE PERCENT, SINGLY OR IN COMBINATION, METHANOL, ETHANOL, ANY OTHER ALCOHOL, OR ETHER.

[(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 OR VEHICLE OF WHICH ALTERNATIVE FUEL VEHICLE PROPERTY IS A PART 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 OR ALTERNATIVE FUEL VEHICLE PROPERTY as defined in [subparagraph] SUBPARAGRAPHS (B) AND (C) RESPECTIVELY of paragraph [three] FOUR of this subsection[.]; OR

(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] ALTERNATIVE 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 prop-

erty 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 5. Section 1115 of the tax law is amended by adding a new subdivision (p) to read as follows:

(P) (1) THAT PORTION OF THE RECEIPTS FROM THE RETAIL SALE OF A NEW ALTERNATIVE FUEL VEHICLE WHICH IS ATTRIBUTABLE TO THE INCREMENTAL COST OF SUCH VEHICLE SHALL BE EXEMPT FROM THE TAX IMPOSED UNDER SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE AND THAT PORTION OF THE CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN FOR SUCH A VEHICLE WHICH IS ATTRIBUTABLE TO THE INCREMENTAL COST OF SUCH VEHICLE SHALL BE EXEMPT FROM THE COMPENSATING USE TAX IMPOSED UNDER SECTION ELEVEN HUNDRED TEN OF THIS ARTICLE, BUT ONLY WHERE THE INCREMENTAL COST IS SEPARATELY STATED IN THE WRITTEN CONTRACT, IF ANY, OR ON THE BILL RENDERED TO THE PURCHASER.

(2) RECEIPTS FROM THE SALE OF THE SERVICE OF INSTALLING TANGIBLE PERSONAL PROPERTY DESCRIBED IN PARAGRAPH THREE OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE AND OF TANGIBLE PERSONAL PROPERTY INSTALLED IN A MOTOR VEHICLE, AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW, RENDERED OR SOLD IN ORDER TO CONVERT SUCH A VEHICLE INTO AN ALTERNATIVE FUEL VEHICLE, AND CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN FOR SUCH SERVICE OR SUCH TANGIBLE PERSONAL PROPERTY RENDERED OR SOLD FOR SUCH PURPOSE, SHALL BE EXEMPT FROM TAX UNDER THIS ARTICLE.

(3) RECEIPTS FROM THE SALE OF THE SERVICE OF INSTALLING ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY AND FROM THE RETAIL SALE OF SUCH PROPERTY, AND CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN FOR SUCH SERVICE OR SUCH PROPERTY SHALL BE EXEMPT FROM TAX UNDER THIS ARTICLE.

(4) THE EXEMPTIONS FROM TAX PROVIDED IN THIS SUBDIVISION WITH RESPECT TO VEHICLES PROPELLED BY ELECTRICITY SHALL NOT APPLY TO THE TAX IMPOSED BY SECTION ELEVEN HUNDRED FIVE OR ELEVEN HUNDRED TEN OF THIS ARTICLE ON RECEIPTS FROM SUCH SALES TO, OR USE BY, A GAS CORPORATION OR AN ELECTRIC CORPORATION AS DEFINED IN SUBDIVISIONS ELEVEN AND THIRTEEN, RESPECTIVELY, OF SECTION TWO OF THE PUBLIC SERVICE LAW, OR A GAS AND ELECTRIC CORPORATION AS DESCRIBED IN SECTION SIXTY-FOUR OF THE PUBLIC SERVICE LAW, WHERE SUCH CORPORATIONS ARE SUBJECT TO THE SUPERVISION OF THE DEPARTMENT OF PUBLIC SERVICE.

(5) AS USED IN THIS SUBDIVISION:

(I) "ALTERNATIVE FUEL VEHICLE" MEANS A MOTOR VEHICLE, AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW WHICH IS PRODUCED BY AN ORIGINAL EQUIPMENT MANUFACTURER AND WHICH IS PROPELLED BY AN ALTERNATIVE FUEL, OR IS A DUAL FUEL VEHICLE;

(II) "ALTERNATIVE FUEL" MEANS NATURAL GAS, LIQUEFIED PETROLEUM GAS, HYDROGEN, FUEL CELL, ELECTRICITY, AND ANY OTHER FUEL WHICH IS AT LEAST EIGHTY-FIVE PERCENT, SINGLY OR IN COMBINATION, METHANOL, ETHANOL, ANY OTHER ALCOHOL, OR ETHER;

(III) "DUAL FUEL VEHICLE" MEANS A MOTOR VEHICLE THAT REQUIRES ONLY ELECTRICITY OR ALCOHOL, PROPANE, HYDROGEN OR NATURAL GAS AS ITS SOLE SOURCE OF POWER, AND THAT, WHEN IT IS NOT USING ONE OF SUCH SOURCES OF

POWER, IS ALSO CAPABLE OF USING GASOLINE OR DIESEL FUEL TO POWER SUCH VEHICLE;

(IV) "INCREMENTAL COST" MEANS THE INCREASED SALE PRICE OF AN ALTERNATIVE FUEL VEHICLE, ABOVE THE SALE PRICE OF A COMPARABLE MOTOR VEHICLE SIMILAR IN ALL OTHER RESPECTS BUT FOR THE EQUIPMENT NECESSARY TO RENDER IT AN ALTERNATIVE FUEL VEHICLE, WHICH INCREASED SALE PRICE IS ATTRIBUTABLE TO SUCH VEHICLE BEING EQUIPPED TO RENDER IT AN ALTERNATIVE FUEL VEHICLE;

(V) "NEW ALTERNATIVE FUEL VEHICLE" MEANS AN ALTERNATIVE FUEL VEHICLE WHICH IS SOLD OR PURCHASED FOR THE FIRST TIME AT RETAIL; AND

(VI) "ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY" MEANS PROPERTY:

(A) WHICH IS SUBJECT TO AN ALLOWANCE FOR DEPRECIATION;

(B) THE ORIGINAL USE OF WHICH BEGINS WITH THE PURCHASER; AND

(C) WHERE SUCH PROPERTY IS PREDOMINANTLY USED FOR:

(I) THE STORAGE OR DISPENSING OF ALCOHOL, NATURAL GAS, PROPANE OR HYDROGEN INTO THE FUEL TANK OF AN ALTERNATIVE FUEL VEHICLE PROPELLED BY SUCH FUEL, BUT ONLY IF THE STORAGE OR DISPENSING OF THE FUEL IS AT THE POINT WHERE SUCH FUEL IS DELIVERED INTO THE FUEL TANK OF SUCH A VEHICLE, OR

(II) THE RECHARGING OF AN ALTERNATIVE FUEL VEHICLE PROPELLED BY ELECTRICITY, BUT ONLY IF THE PROPERTY IS LOCATED AT THE POINT WHERE SUCH VEHICLE IS RECHARGED.

S 6. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2011, except that section five of this act shall take effect March 1, 2011.