

5806

2009-2010 Regular Sessions

I N A S S E M B L Y

February 20, 2009

Introduced by M. of A. SWEENEY, GALEF -- Multi-Sponsored by -- M. of A. LUPARDO -- read once and referred to the Committee on Ways and Means

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:

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

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

16 2. Alternative fuel vehicle refueling property. The credit under this
17 section for alternative fuel vehicle refueling property shall equal
18 fifty percent of the cost of any such property:

19 (a) which is located in this state; and

20 (b) for which a credit is allowed under section thirty C of the inter-
21 nal revenue code but not including alternative fuel vehicle refueling
22 property relating to a qualified hybrid vehicle as such vehicle is
23 defined in subparagraph (B) of paragraph [three] FOUR of subsection (p)
24 of section six hundred six of this chapter.

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

LBD02976-01-9

1 2-A. ALTERNATIVE FUEL VEHICLE PROPERTY. THE CREDIT UNDER THIS SECTION
2 FOR ALTERNATIVE FUEL VEHICLE PROPERTY SHALL EQUAL SIXTY PERCENT OF THE
3 COST OF ANY SUCH PROPERTY WHICH IS INSTALLED IN OR MANUFACTURED AS PART
4 OF A MOTOR VEHICLE WHICH IS REGISTERED IN THIS STATE; PROVIDED, HOWEVER,
5 THE CREDIT WITH RESPECT TO ANY SUCH PROPERTY SHALL NOT EXCEED FIVE THOU-
6 SAND DOLLARS PER VEHICLE FOR VEHICLES WITH A GROSS VEHICLE WEIGHT RATING
7 OF FOURTEEN THOUSAND POUNDS OR LESS AND TEN THOUSAND DOLLARS PER VEHICLE
8 FOR ALL OTHER VEHICLES.

9 3. Definitions. (a) The term "alternative fuel vehicle refueling prop-
10 erty" means any such property which is qualified within the meaning of
11 section thirty C of the internal revenue code, PROVIDED, HOWEVER, FOR
12 THE PURPOSES OF THIS SECTION, ALTERNATIVE FUEL REFUELING PROPERTY SHALL
13 ALSO INCLUDE A HOME REFUELING APPLIANCE OR PROPERTY DESIGNED FOR COMMER-
14 CIAL OR RESIDENTIAL USE, but shall not include alternative fuel vehicle
15 refueling property relating to a qualified hybrid vehicle as such vehi-
16 cle is defined in subparagraph (B) of paragraph [three] FOUR of
17 subsection (p) of section six hundred six of this chapter.

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

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

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

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

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

43 4. Carryovers. In no event shall the credit under this section be
44 allowed in an amount which will reduce the tax payable to less than the
45 applicable minimum tax fixed by section one hundred eighty-three or one
46 hundred eighty-five of this article. If, however, the amount of credit
47 allowable under this section for any taxable year reduces the tax to
48 such amount, any amount of credit not deductible in such taxable year
49 may be carried over to the following year or years and may be deducted
50 from the taxpayer's tax for such year or years.

51 5. Credit recapture; Alternative fuel vehicle refueling property AND
52 ALTERNATIVE FUEL VEHICLE PROPERTY.

53 (A) ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY. If, at any time
54 before the end of its recovery period, alternative fuel vehicle refuel-
55 ing property ceases to be qualified, a recapture amount must be added
56 back in the year in which such cessation occurs.

1 (i) Cessation of qualification. Alternative fuel vehicle refueling
2 property ceases to be qualified if:
3 (I) the property no longer qualifies as property described in section
4 thirty C of the internal revenue code; or
5 (II) fifty percent or more of the use of the property in a taxable
6 year is other than a trade or business in this state; or
7 (III) the taxpayer receiving the credit under this section sells or
8 disposes of the property and knows or has reason to know that the prop-
9 erty will be used in a manner described in this subparagraph.

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

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

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

22 (I) THE VEHICLE OF WHICH IT IS A PART IS MODIFIED BY THE TAXPAYER SO
23 THAT IT MAY NO LONGER BE PROPELLED BY AN ALTERNATIVE FUEL, OR
24 (II) THE VEHICLE OTHERWISE CEASES TO QUALIFY AS ALTERNATIVE FUEL VEHI-
25 CLE PROPERTY AS DEFINED IN SUBDIVISION THREE OF THIS SECTION, OR
26 (III) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SECTION SELLS OR
27 DISPOSES OF THE VEHICLE AND KNOWS OR HAS REASON TO KNOW THAT THE VEHICLE
28 WILL BE USED IN A MANNER DESCRIBED IN THIS SUBPARAGRAPH.

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

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

34 (II) SIXTY-SIX AND TWO-THIRDS PERCENT, IF THE CESSATION OF QUALIFICA-
35 TION OCCURS WITHIN THE SECOND FULL YEAR AFTER THE DATE THE PROPERTY IS
36 PLACED IN SERVICE, OR
37 (III) THIRTY-THREE AND ONE-THIRD PERCENT, IF THE CESSATION OF QUALI-
38 FICATION OCCURS WITHIN THE THIRD FULL YEAR AFTER THE DATE THE PROPERTY
39 IS PLACED IN SERVICE.

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

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

46 (c) Definitions. The term "alternative fuel vehicle refueling proper-
47 ty" means any such property which is qualified within the meaning of
48 section thirty C of the internal revenue code PROVIDED, HOWEVER, FOR THE
49 PURPOSES OF THIS SUBDIVISION, ALTERNATIVE FUEL REFUELING PROPERTY SHALL
50 ALSO INCLUDE A HOME REFUELING APPLIANCE OR PROPERTY DESIGNED FOR COMMER-
51 CIAL OR RESIDENTIAL USE, but shall not include alternative fuel vehicle
52 refueling property relating to a qualified hybrid vehicle as such vehi-
53 cle is defined in subparagraph (B) of paragraph [three] FOUR of
54 subsection (p) of section six hundred six of this chapter.

55 S 3. Section 210 of the tax law is amended by adding a new subdivision
56 24-a to read as follows:

1 24-A. ALTERNATIVE FUEL VEHICLE PROPERTY CREDIT. (A) GENERAL. A
2 TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN THIS
3 SUBDIVISION, AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR ALTERNATIVE
4 FUEL VEHICLE PROPERTY PLACED IN SERVICE DURING THE TAXABLE YEAR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 S 4. Subsection (p) of section 606 of the tax law, as amended by
15 section 16 of part W-1 of chapter 109 of the laws of 2006, is amended to
16 read as follows:

17 (p) Alternative fuels credit. (1) General. A taxpayer shall be allowed
18 a credit, to be computed as hereinafter provided, against the tax
19 imposed by this article, for alternative fuel vehicle refueling property
20 AND ALTERNATIVE FUEL VEHICLE PROPERTY placed in service during the taxa-
21 ble year.

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

25 (A) which is located in this state and

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

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

39 (4) Definitions. (A) The term "alternative fuel vehicle refueling
40 property" means any such property which is qualified within the meaning
41 of section thirty C of the internal revenue code, but such term shall
42 not include alternative fuel vehicle refueling property relating to a
43 qualified hybrid vehicle as such vehicle is defined in subparagraph (B)
44 of this paragraph, PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS
45 SUBSECTION, ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY SHALL INCLUDE A
46 HOME REFUELING APPLIANCE OR PROPERTY DESIGNED FOR COMMERCIAL OR RESIDEN-
47 TIAL USE.

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

51 (i) draws propulsion energy from both

52 (a) an internal combustion engine (or heat engine that uses combusti-
53 ble fuel); and

54 (b) an energy storage device; and

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

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

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

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

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

23 [(4)] (5) Carryovers. If the amount of credit allowable under this
24 subsection shall exceed the taxpayer's tax for such year, the excess may
25 be carried over to the following year or years and may be deducted from
26 the taxpayer's tax for such year or years.

27 [(5)] (6) Credit recapture. (A) Vehicles.

28 (i) If, within three full years from the date a qualified hybrid vehi-
29 cle or a vehicle of which alternative fuel vehicle property is a part is
30 placed in service, such qualified hybrid vehicle or vehicle of which
31 alternative fuel vehicle property is a part ceases to be qualified, a
32 recapture amount must be added back in the tax year in which such cessa-
33 tion occurs.

34 (ii) Cessation of qualification. (I) A qualified hybrid vehicle OR
35 VEHICLE OF WHICH ALTERNATIVE FUEL VEHICLE PROPERTY IS A PART ceases to
36 be qualified if

37 (a) it is modified by the taxpayer so that it no longer meets the
38 requirements of a qualified hybrid vehicle OR ALTERNATIVE FUEL VEHICLE
39 PROPERTY as defined in [subparagraph] SUBPARAGRAPHS (B) AND (C) RESPEC-
40 TIVELY of paragraph [three] FOUR of this subsection[.]; OR

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

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

48 (ii) Cessation of qualification. [Clean-fuel] ALTERNATIVE FUEL vehicle
49 refueling property ceases to be qualified if

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

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

54 (III) the taxpayer receiving the credit under this subsection sells or
55 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

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

3 (IV) "INCREMENTAL COST" MEANS THE INCREASED SALE PRICE OF AN ALTERNA-
4 TIVE FUEL VEHICLE, ABOVE THE SALE PRICE OF A COMPARABLE MOTOR VEHICLE
5 SIMILAR IN ALL OTHER RESPECTS BUT FOR THE EQUIPMENT NECESSARY TO RENDER
6 IT AN ALTERNATIVE FUEL VEHICLE, WHICH INCREASED SALE PRICE IS ATTRIBUT-
7 ABLE TO SUCH VEHICLE BEING EQUIPPED TO RENDER IT AN ALTERNATIVE FUEL
8 VEHICLE;

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

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

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

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

14 (C) WHERE SUCH PROPERTY IS PREDOMINANTLY USED FOR:

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

20 (II) THE RECHARGING OF AN ALTERNATIVE FUEL VEHICLE PROPELLED BY ELEC-
21 TRICITY, BUT ONLY IF THE PROPERTY IS LOCATED AT THE POINT WHERE SUCH
22 VEHICLE IS RECHARGED.

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