

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:

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.