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

7132--C

2011-2012 Regular Sessions

I N A S S E M B L Y

April 13, 2011

Introduced by M. of A. HEVESI -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to providing a tax credit to farmers who purchase biodiesel fuel for the operation of their farm equipment

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

Section 1. Section 210 of the tax law is amended by adding a new subdivision 45 to read as follows:

45. CREDIT FOR BIODIESEL FUEL USED IN FARMING EQUIPMENT. (A) ALLOWANCE OF CREDIT. A TAXPAYER THAT IS A BUSINESS PRINCIPALLY ENGAGED IN FARMING, AS SUCH TERM IS DEFINED IN PARAGRAPH NINETEEN OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS CHAPTER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR THE PURCHASE OF QUALIFIED BIODIESEL FUEL TO BE USED IN FARMING EQUIPMENT IN THIS STATE. SUCH CREDIT SHALL BE $0.01 PER PERCENT OF BIODIESEL PER GALLON OF QUALIFIED BIODIESEL FUEL, NOT TO EXCEED TWENTY CENTS PER GALLON, PURCHASED BY SUCH TAXPAYER DURING THE TAXABLE YEAR AND USED IN FARMING EQUIPMENT.

(B) FOR PURPOSES OF THIS SUBDIVISION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(1) "BIODIESEL" SHALL MEAN A FUEL COMPRISED EXCLUSIVELY OF MONOALKYL ESTERS OF LONG CHAIN FATTY ACIDS DERIVED FROM VEGETABLE OILS OR ANIMAL FATS, DESIGNATED B100, WHICH MEETS THE SPECIFICATIONS OF AMERICAN SOCIETY OF TESTING AND MATERIALS DESIGNATION D 6751.

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

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(2) "QUALIFIED BIODIESEL" SHALL MEAN A FUEL THAT IS A MIXTURE OF BIODIESEL AND DIESEL MOTOR FUEL.

(C) APPLICATION OF CREDIT. IN NO EVENT SHALL THE CREDIT HEREIN PROVIDED FOR BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID ON SUCH REFUND, NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER.

S 2. Section 606 of the tax law is amended by adding a new subsection (uu) to read as follows:

(UU) CREDIT FOR BIODIESEL FUEL USED IN FARMING EQUIPMENT. (1) ALLOWANCE OF CREDIT. A TAXPAYER WHOSE FEDERAL GROSS INCOME FROM FARMING FOR THE TAXABLE YEAR IS AT LEAST TWO-THIRDS OF EXCESS FEDERAL GROSS INCOME SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR THE PURCHASE OF QUALIFIED BIODIESEL FUEL TO BE USED IN FARMING EQUIPMENT IN THIS STATE. SUCH CREDIT SHALL BE $0.01 PER PERCENT OF BIODIESEL PER GALLON OF QUALIFIED BIODIESEL FUEL, NOT TO EXCEED TWENTY CENTS PER GALLON, PURCHASED BY SUCH TAXPAYER DURING THE TAXABLE YEAR AND USED IN FARMING EQUIPMENT.

(2) DEFINITIONS. FOR PURPOSES OF THIS SUBSECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "EXCESS FEDERAL GROSS INCOME" MEANS THE AMOUNT OF FEDERAL GROSS INCOME FROM ALL SOURCES FOR THE TAXABLE YEAR REDUCED BY THE SUM (NOT TO EXCEED THIRTY THOUSAND DOLLARS) OF THOSE ITEMS INCLUDED IN FEDERAL GROSS INCOME WHICH CONSIST OF (I) EARNED INCOME, (II) PENSION PAYMENTS, INCLUDING SOCIAL SECURITY PAYMENTS, (III) INTEREST, AND (IV) DIVIDENDS. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "EARNED INCOME" SHALL MEAN WAGES, SALARIES, TIPS AND OTHER EMPLOYEE COMPENSATION, AND THOSE ITEMS OF GROSS INCOME WHICH ARE INCLUDIBLE IN THE COMPUTATION OF NET EARNINGS FROM SELF-EMPLOYMENT. FOR THE PURPOSES OF THIS PARAGRAPH, PAYMENTS FROM THE STATE'S FARMLAND PROTECTION PROGRAM, ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND MARKETS, SHALL BE INCLUDED AS FEDERAL GROSS INCOME FROM FARMING.

(B) "BIODIESEL" MEANS A FUEL COMPRISED EXCLUSIVELY OF MONOALKYL ESTERS OF LONG CHAIN FATTY ACIDS DERIVED FROM VEGETABLE OILS OR ANIMAL FATS, DESIGNATED B100, WHICH MEETS THE SPECIFICATIONS OF AMERICAN SOCIETY OF TESTING AND MATERIALS DESIGNATION D 6751.

(C) "QUALIFIED BIODIESEL" MEANS A FUEL THAT IS A MIXTURE OF BIODIESEL AND DIESEL MOTOR FUEL.

(3) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

S 3. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2013.