

3345

2011-2012 Regular Sessions

I N S E N A T E

February 17, 2011

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, subdivision (a) as amended by section  
3 1 of part A of chapter 57 of the laws of 2010, is renumbered section 35  
4 and amended to read as follows:

5 S 35. Biofuel production credit. (a) General. A taxpayer subject to  
6 tax under article nine, nine-A or twenty-two of this chapter shall be  
7 allowed a credit against such tax pursuant to the provisions referenced  
8 in subdivision (d) of this section. The credit (or pro rata share of  
9 earned credit in the case of a partnership) for each gallon of biofuel  
10 produced at a biofuel plant on or after January first, two thousand six  
11 shall equal fifteen cents per gallon, OR TWENTY-FIVE CENTS PER GALLON  
12 FOR THE PRODUCTION OF CELLULOSIC ETHANOL, after the production of the  
13 first forty thousand gallons per year presented to market. The credit  
14 under this section shall be capped at two and one-half million dollars  
15 per taxpayer per taxable year for up to no more than four consecutive  
16 taxable years per biofuel plant. If the taxpayer is a partner in a part-  
17 nership or shareholder of a New York S corporation, then the cap imposed  
18 by the preceding sentence shall be applied at the entity level, so that  
19 the aggregate credit allowed to all the partners or shareholders of each  
20 such entity in the taxable year does not exceed two and one-half million  
21 dollars.

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

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

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1 (1) "Biofuel" means a fuel which includes biodiesel and ethanol. The  
2 term "biodiesel" shall mean a fuel comprised exclusively of mono-alkyl  
3 esters of long chain fatty acids derived from vegetable oils or animal  
4 fats, designated B100, which meets the specifications of American Socie-  
5 ty of Testing and Materials designation D 6751-02. The term "ethanol"  
6 shall mean ethyl alcohol manufactured in the United States and its  
7 territories and sold (i) for fuel use and which has been rendered unfit  
8 for beverage use in a manner and which is produced at a facility  
9 approved by the federal bureau of alcohol, tobacco and firearms for the  
10 production of ethanol for fuel, or (ii) as denatured ethanol used by  
11 blenders and refiners which has been rendered unfit for beverage use.  
12 The term "biofuel" may also include any other standard approved by the  
13 New York state energy and research development authority.

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

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

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

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

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

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

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

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

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

51 S 3. This act shall take effect immediately.