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I N A S S E M B L Y

April 24, 2014

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Ways and Means

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 K of chapter 59 of the laws of 2012, is renumbered section
4 38-a and amended to read as follows:

5 S 38-a. 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 FOR
12 PRODUCTION OF CELLULOSIC ETHANOL after the production of the first forty
13 thousand gallons per year presented to market. The credit under this
14 section shall be capped at two and one-half million dollars per taxpayer
15 per taxable year for up to no more than four consecutive taxable years
16 per biofuel plant. If the taxpayer is a partner in a partnership or
17 shareholder of a New York S corporation, then the cap imposed by the
18 preceding sentence shall be applied at the entity level, so that the
19 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. The tax credit allowed pursuant to this section shall apply to
22 taxable years beginning before January first, two thousand twenty.

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

25 (1) "Biofuel" means a fuel which includes biodiesel and ethanol. The
26 term "biodiesel" shall mean a fuel comprised exclusively of mono-alkyl
27 esters of long chain fatty acids derived from vegetable oils or animal
28 fats, designated B100, which meets the specifications of American Socie-

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

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1 ty of Testing and Materials designation D 6751-02. The term "ethanol"
2 shall mean ethyl alcohol manufactured in the United States and its
3 territories and sold (i) for fuel use and which has been rendered unfit
4 for beverage use in a manner and which is produced at a facility
5 approved by the federal bureau of alcohol, tobacco and firearms for the
6 production of ethanol for fuel, or (ii) as denatured ethanol used by
7 blenders and refiners which has been rendered unfit for beverage use.
8 The term "biofuel" may also include any other standard approved by the
9 New York state energy and research development authority.

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

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

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

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

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

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

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

36 S 2. Section 187-c of the tax law, as amended by section 2 of part K
37 of chapter 59 of the laws of 2012, is amended to read as follows:

38 S 187-c. Biofuel production credit. A taxpayer shall be allowed a
39 credit to be computed as provided in section [twenty-eight]
40 THIRTY-EIGHT-A of this chapter, [as added by part X of chapter sixty-two
41 of the laws of two thousand six,] against the tax imposed by this arti-
42 cle. Provided, however, that the amount of such credit allowed against
43 the tax imposed by section one hundred eighty-four of this article shall
44 be the excess of the amount of such credit over the amount of any credit
45 allowed by this section against the tax imposed by section one hundred
46 eighty-three of this article. In no event shall the credit under this
47 section be allowed in an amount which will reduce the tax payable to
48 less than the applicable minimum tax fixed by section one hundred eight-
49 y-three or one hundred eighty-five of this article. If, however, the
50 amount of the credit allowed under this section for any taxable year
51 reduces the tax to such amount, the excess shall be treated as an over-
52 payment of tax to be credited or refunded in accordance with the
53 provisions of section six hundred eighty-six of this chapter. Provided,
54 however, the provisions of subsection (c) of section one thousand eight-
55 y-eight of this chapter notwithstanding, no interest shall be paid ther-

1 eon. The tax credit allowed pursuant to this section shall apply to
2 taxable years beginning before January first, two thousand twenty.

3 S 3. Subdivision 38 of section 210 of the tax law, as amended by
4 section 3 of part K of chapter 59 of the laws of 2012, is amended to
5 read as follows:

6 38. Biofuel production credit. A taxpayer shall be allowed a credit,
7 to be computed as provided in section [twenty-eight] THIRTY-EIGHT-A of
8 this chapter, [as added by part X of chapter sixty-two of the laws of
9 two thousand six,] against the tax imposed by this article. The credit
10 allowed under this subdivision for any taxable year shall not reduce the
11 tax due for such year to less than the higher of the amounts prescribed
12 in paragraphs (c) and (d) of subdivision one of this section. However,
13 if the amount of credit allowed under this subdivision for any taxable
14 year reduces the tax to such amount, any amount of credit thus not
15 deductible in such taxable year shall be treated as an overpayment of
16 tax to be credited or refunded in accordance with the provisions of
17 section one thousand eighty-six of this chapter. Provided, however, the
18 provisions of subsection (c) of section one thousand eighty-eight of
19 this chapter notwithstanding, no interest shall be paid thereon. The tax
20 credit allowed pursuant to this section shall apply to taxable years
21 beginning before January first, two thousand twenty.

22 S 4. Subsection (jj) of section 606 of the tax law, as amended by
23 section 4 of part K of chapter 59 of the laws of 2012, is amended to
24 read as follows:

25 (jj) Biofuel production credit. A taxpayer shall be allowed a credit
26 to be computed as provided in section [twenty-eight] THIRTY-EIGHT-A of
27 this chapter, [as added by part X of chapter sixty-two of the laws of
28 two thousand six,] against the tax imposed by this article. If the
29 amount of the credit allowed under this subsection for any taxable year
30 shall exceed the taxpayer's tax for such year, the excess shall be
31 treated as an overpayment of tax to be credited or refunded in accord-
32 ance with the provisions of section six hundred eighty-six of this arti-
33 cle, provided, however, that no interest shall be paid thereon. The tax
34 credit allowed pursuant to this section shall apply to taxable years
35 beginning before January first, two thousand twenty.

36 S 5. This act shall take effect immediately.