

9525--A

I N A S S E M B L Y

May 6, 2014

Introduced by M. of A. RUSSELL -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the biofuel production credit for the production of cellulosic ethanol, densified biofuel and renewable fuel oil

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, is renumbered section 42.
3 S 2. Subdivisions (a) and (b) of section 42 of the tax law, subdivision
4 sion (a) as amended by section 1 of part K of chapter 59 of the laws of
5 2012 and subdivision (b) as added by section 1 of part X of chapter 62
6 of the laws of 2006, such section as renumbered by section one of this
7 act, are amended to read as follows:
8 (a) General. A taxpayer subject to tax under article nine, nine-A or
9 twenty-two of this chapter shall be allowed a credit against such tax
10 pursuant to the provisions referenced in subdivision (d) of this
11 section. The credit (or pro rata share of earned credit in the case of a
12 partnership) for each gallon of LIQUID biofuel produced at a biofuel
13 plant on or after January first, two thousand six shall equal fifteen
14 cents per gallon, OR TWENTY-FIVE CENTS PER GALLON FOR PRODUCTION OF
15 CELLULOSIC ETHANOL OR RENEWABLE FUEL OIL after the production of the
16 first forty thousand gallons per year presented to market. THE CREDIT
17 FOR EACH BONE DRY TON OF DENSIFIED BIOFUEL PRODUCED AT A BIOFUEL PLANT
18 ON OR AFTER JANUARY FIRST, TWO THOUSAND SIX SHALL EQUAL FIFTEEN DOLLARS
19 PER BONE DRY TON AFTER THE PRODUCTION OF THE FIRST TEN THOUSAND TONS PER
20 YEAR PRESENTED TO MARKET. The credit under this section shall be capped
21 at [two and one-half] TEN million dollars per taxpayer per taxable year
22 for up to no more than [four] TEN consecutive taxable years per biofuel
23 plant. If the taxpayer is a partner in a partnership or shareholder of a
24 New York S corporation, then the cap imposed by the preceding sentence
25 shall be applied at the entity level, so that the aggregate credit
26 allowed to all the partners or shareholders of each such entity in the

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

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1 taxable year does not exceed [two and one-half] TEN million dollars. The
2 tax credit allowed pursuant to this section shall apply to taxable years
3 beginning before January first, two thousand twenty.

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

6 (1) "Biofuel" means a fuel which includes biodiesel [and], ethanol,
7 DENSIFIED BIOFUEL AND RENEWABLE FUEL OIL. The term "biodiesel" shall
8 mean a fuel comprised exclusively of mono-alkyl esters of long chain
9 fatty acids derived from vegetable oils or animal fats, designated B100,
10 which meets the specifications of American Society of Testing and Mate-
11 rials designation D 6751-02. The term "ethanol" shall mean ethyl alcohol
12 manufactured in the United States and its territories and sold (i) for
13 fuel use and which has been rendered unfit for beverage use in a manner
14 and which is produced at a facility approved by the federal bureau of
15 alcohol, tobacco and firearms for the production of ethanol for fuel, or
16 (ii) as denatured ethanol used by blenders and refiners which has been
17 rendered unfit for beverage use. The term "biofuel" may also include
18 any other standard approved by the New York state energy and research
19 development authority. THE TERM "RENEWABLE FUEL OIL" SHALL MEAN A FUEL
20 COMPRISED OF ANY NON-FOOD BIOMASS BASED FEEDSTOCK THAT CAN BE USED AS A
21 FULL OR PARTIAL SUBSTITUTE FOR TRADITIONAL PETROLEUM FUELS.

22 (2) "CELLULOSIC ETHANOL" MEANS THE PRODUCTION OF ETHANOL FROM LIGNO-
23 CELLULOSIC BIOMASS FEEDSTOCKS, INCLUDING CELLULOSIC COMPONENTS OF SEPA-
24 RATED FOOD WASTE AS DEFINED IN TABLE 1 OF C.F.R. S 80.1426 AND BY-PRO-
25 DUCTS FROM AGRICULTURAL WASTE, THAT ARE ALTERED THROUGH ACTIVITIES
26 REFERENCED IN SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE OF
27 SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW. SUCH
28 LIGNOCELLULOSIC BIOMASS FEEDSTOCKS MAY INCLUDE, BUT ARE NOT NECESSARILY
29 LIMITED TO, SWITCHGRASSES OR WILLOWS, AGRICULTURAL AND FORESTRY RESIDUES
30 AS DEFINED IN TABLE 1 OF C.F.R. S 80.1426, CLEAN WOOD AND WOOD WASTES,
31 PULP AND PAPER MILL WASTES OR EXTRACTS, AND NON-RECYCLABLE PAPER. ANY
32 QUESTION AS TO WHETHER ANY FEEDSTOCK QUALIFIES UNDER THIS SECTION SHALL
33 BE DETERMINED BY THE PRESIDENT OF THE NEW YORK STATE ENERGY AND RESEARCH
34 DEVELOPMENT AUTHORITY.

35 (3) "DENSIFIED BIOFUEL" MEANS A SOLID FUEL DERIVED BY THE MECHANICAL
36 DENSIFICATION AND REFINING OF BIOMASS SOURCED FROM WOODY OR AGRICULTURAL
37 FEEDSTOCKS.

38 (4) "Biofuel plant" means a commercial facility located in New York
39 state at which one or more biofuels are produced. FOR THE PURPOSES OF
40 THIS SECTION, ANY COMMERCIAL FACILITY WHERE CELLULOSIC ETHANOL, RENEWA-
41 BLE FUEL OIL OR DENSIFIED BIOFUEL IS PRODUCED SHALL BE CONSIDERED A
42 SEPARATE BIOFUEL PLANT.

43 S 3. Section 187-c of the tax law, as amended by section 2 of part K
44 of chapter 59 of the laws of 2012, is amended to read as follows:

45 S 187-c. Biofuel production credit. A taxpayer shall be allowed a
46 credit to be computed as provided in section [twenty-eight] FORTY-TWO of
47 this chapter, [as added by part X of chapter sixty-two of the laws of
48 two thousand six,] against the tax imposed by this article. Provided,
49 however, that the amount of such credit allowed against the tax imposed
50 by section one hundred eighty-four of this article shall be the excess
51 of the amount of such credit over the amount of any credit allowed by
52 this section against the tax imposed by section one hundred eighty-three
53 of this article. In no event shall the credit under this section be
54 allowed in an amount which will reduce the tax payable to less than the
55 applicable minimum tax fixed by section one hundred eighty-three or one
56 hundred eighty-five of this article. If, however, the amount of the

credit allowed under this section for any taxable year reduces the tax to such amount, 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 chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

S 4. Section 187-c of the tax law, as amended by section 15 of part S of chapter 59 of the laws of 2014, is amended to read as follows:

S 187-c. Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section [twenty-eight] FORTY-TWO of this chapter, [as added by part X of chapter sixty-two of the laws of two thousand six,] against the tax imposed by this article. Provided, however, that the amount of such credit allowed against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three of this article. If, however, the amount of the credit allowed under this section for any taxable year reduces the tax to such amount, 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 chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

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

38. Biofuel production credit. A taxpayer shall be allowed a credit, to be computed as provided in section [twenty-eight] FORTY-TWO of this chapter, [as added by part X of chapter sixty-two of the laws of two thousand six,] against the tax imposed by this article. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year 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 credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year 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, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

S 6. Subdivision 24 of section 210-b of the tax law, as added by section 17 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

24. Biofuel production credit. [(a) General.] A taxpayer shall be allowed a credit, to be computed as provided in section [twenty-eight] FORTY-TWO of this chapter [added as part X of chapter sixty-two of the laws of two thousand six], against the tax imposed by this article. The

1 credit allowed under this subdivision for any taxable year shall not
2 reduce the tax due for such year to less than the fixed dollar minimum
3 amount prescribed in paragraph (d) of subdivision one of section two
4 hundred ten of this article. However, if the amount of credit allowed
5 under this subdivision for any taxable year reduces the tax to such
6 amount or if the taxpayer otherwise pays tax based on the fixed dollar
7 minimum amount, any amount of credit thus not deductible in such taxable
8 year shall be treated as an overpayment of tax to be credited or
9 refunded in accordance with the provisions of section one thousand
10 eighty-six of this chapter. Provided, however, the provisions of
11 subsection (c) of section one thousand eighty-eight of this chapter
12 notwithstanding, no interest shall be paid thereon. The tax credit
13 allowed pursuant to this section shall apply to taxable years beginning
14 before January first, two thousand twenty.

15 S 7. Subsection (jj) of section 606 of the tax law, as amended by
16 section 4 of part K of chapter 59 of the laws of 2012, is amended to
17 read as follows:

18 (jj) Biofuel production credit. A taxpayer shall be allowed a credit
19 to be computed as provided in section [twenty-eight] FORTY-TWO of this
20 chapter, [as added by part X of chapter sixty-two of the laws of two
21 thousand six,] against the tax imposed by this article. If the amount of
22 the credit allowed under this subsection for any taxable year shall
23 exceed the taxpayer's tax for such year, the excess shall be treated as
24 an overpayment of tax to be credited or refunded in accordance with the
25 provisions of section six hundred eighty-six of this article, provided,
26 however, that no interest shall be paid thereon. The tax credit allowed
27 pursuant to this section shall apply to taxable years beginning before
28 January first, two thousand twenty.

29 S 8. This act shall take effect immediately, except that section four
30 of this act shall take effect on the same date and in the same manner as
31 section 15 of part S of chapter 59 of the laws of 2014 takes effect;
32 section six of this act shall take effect on the same date and in the
33 same manner as section 17 of part A of chapter 59 of the laws of 2014
34 takes effect; and provided, however, that the amendments to subdivision
35 38 of section 210 of the tax law made by section five of this act, shall
36 not affect the repeal of such subdivision and shall be deemed repealed
37 therewith.