

4025

2013-2014 Regular Sessions

I N S E N A T E

March 5, 2013

Introduced by Sens. MAZIARZ, GOLDEN, BONACIC, FUSCHILLO, HANNON, LATIMER, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law and the tax law, in relation to establishing the retail filling station emergency generating tax credit

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

1 Section 1. The public service law is amended by adding a new section
2 73 to read as follows:
3 S 73. COORDINATION WITH CERTAIN PROVISIONS OF THE TAX LAW. THE DEPART-
4 MENT MAY REQUEST FROM THE DEPARTMENT OF TAXATION AND FINANCE A LIST OF
5 RETAIL FILLING STATIONS THAT HAVE BEEN GRANTED A RETAIL FILLING STATION
6 EMERGENCY GENERATING SYSTEM TAX CREDIT AS SUCH CREDIT IS DESCRIBED IN
7 SUBDIVISION FORTY-SIX OF SECTION TWO HUNDRED TEN OF THE TAX LAW. THE
8 LIST SHALL INCLUDE THE LOCATION OF THE FILLING STATION RECEIVING THE
9 CREDIT, A DESCRIPTION OF THE EMERGENCY GENERATING SYSTEM TO WHICH THE
10 CREDIT RELATES, THE AMOUNT OF THE CREDIT, AND THE TAX YEAR FOR WHICH THE
11 CREDIT WAS GRANTED.
12 S 2. Section 210 of the tax law is amended by adding a new subdivision
13 46 to read as follows:
14 46. RETAIL FILLING STATION EMERGENCY GENERATING SYSTEM TAX CREDIT. (A)
15 ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ENGAGED IN THE BUSINESS OF SELL-
16 ING MOTOR FUEL OR DIESEL MOTOR FUEL AT RETAIL SHALL BE ALLOWED A CREDIT,
17 TO BE COMPUTED AS PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION, AGAINST
18 THE TAX IMPOSED BY THIS ARTICLE FOR THE PURCHASE AND INSTALLATION OF AN
19 EMERGENCY BACK-UP GENERATOR OR A RENEWABLE EMERGENCY GENERATING SYSTEM
20 THAT IS CAPABLE OF PROVIDING EMERGENCY POWER TO FUEL PUMPS AT A FILLING
21 STATION OWNED BY THE TAXPAYER THAT IS LOCATED IN THIS STATE. A TAXPAYER
22 MAY CLAIM CREDIT PURSUANT TO THIS SUBDIVISION FOR EACH EMERGENCY BACK-UP
23 GENERATOR OR RENEWABLE EMERGENCY GENERATING SYSTEM INSTALLED AT A FILL-

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

LBD08915-01-3

ING STATION OWNED BY THE TAXPAYER THAT IS LOCATED IN THIS STATE; PROVIDED, HOWEVER, THAT THE TAXPAYER SHALL NOT CLAIM MORE THAN ONE CREDIT FOR ANY ONE FILLING STATION.

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

(1) "AT RETAIL" SHALL MEAN A FILLING STATION WHERE SUCH FUEL IS STORED PRIMARILY FOR SALE BY DELIVERY DIRECTLY INTO THE ORDINARY FUEL TANK CONNECTED WITH THE ENGINE OF A MOTOR VEHICLE TO BE CONSUMED IN THE OPERATION OF SUCH MOTOR VEHICLE OR WHERE SUCH FUEL IS STORED PRIMARILY FOR SALE BY DELIVERY DIRECTLY INTO THE ORDINARY FUEL TANK CONNECTED WITH THE ENGINE OF A VESSEL TO BE CONSUMED IN THE OPERATION OF SUCH VESSEL.

(2) "DIESEL MOTOR FUEL" SHALL HAVE THE SAME MEANING AS THE TERM HIGHWAY DIESEL MOTOR FUEL AS DEFINED IN SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

(3) "FILLING STATION" SHALL MEAN ANY PREMISES WHEREON THE RETAIL SALE OF MOTOR FUELS IS CONDUCTED AS THE PRINCIPAL BUSINESS.

(4) "RENEWABLE EMERGENCY GENERATING SYSTEM" SHALL MEAN A GENERATING SYSTEM POWERED BY A RENEWABLE ENERGY TECHNOLOGY, INCLUDING BUT NOT LIMITED TO SOLAR, WIND OR FUEL CELL, OPERATING IN CONCERT WITH AN ENERGY STORAGE DEVICE, INCLUDING BUT NOT LIMITED TO A BATTERY STORAGE DEVICE OR DEVICES, FLYWHEEL OR SIMILAR DEVICE.

(5) "EMERGENCY BACK-UP GENERATOR" SHALL MEAN A BACK-UP GENERATING SYSTEM, OTHER THAN A RENEWABLE EMERGENCY GENERATING SYSTEM, THAT IS CAPABLE OF PROVIDING EMERGENCY POWER TO FUEL PUMPS AT A FILLING STATION.

(6) "MOTOR FUEL" SHALL HAVE THE SAME MEANING AS IN SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

(C) AMOUNT OF CREDIT. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE LESSER OF (I) THE COST TO PURCHASE AND INSTALL AN EMERGENCY BACK-UP GENERATOR OR A RENEWABLE EMERGENCY GENERATING SYSTEM, AS APPLICABLE AT A FILLING STATION LOCATED IN THIS STATE MINUS ANY AMOUNTS FOR SUCH PURCHASE OR INSTALLATION THAT WERE DEDUCTED BY THE TAXPAYER FOR FEDERAL PURPOSES, OR (II) FIVE THOUSAND DOLLARS IN THE CASE OF AN EMERGENCY BACK-UP GENERATOR, OR FIFTEEN THOUSAND DOLLARS IN THE CASE OF A RENEWABLE EMERGENCY GENERATING SYSTEM.

(D) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR WILL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPH (C) 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 WILL 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 WILL BE PAID THEREON.

S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxv) to read as follows:

(XXXV) RETAIL FILLING STATION	AMOUNT OF CREDIT UNDER
EMERGENCY GENERATING	SUBDIVISION FORTY-SIX OF SECTION
SYSTEM TAX CREDIT	TWO HUNDRED TEN OF THIS CHAPTER
UNDER SUBSECTION (VV)	

S 4. Section 606 of the tax law is amended by adding a new subsection (vv) to read as follows:

(VV) RETAIL FILLING STATION EMERGENCY GENERATING SYSTEM TAX CREDIT.

(1) ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ENGAGED IN THE BUSINESS OF

1 SELLING MOTOR FUEL OR DIESEL MOTOR FUEL AT RETAIL SHALL BE ALLOWED A
2 CREDIT, TO BE COMPUTED AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
3 AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR THE PURCHASE AND INSTALLA-
4 TION OF AN EMERGENCY BACK-UP GENERATOR OR A RENEWABLE EMERGENCY GENERAT-
5 ING SYSTEM THAT IS CAPABLE OF PROVIDING EMERGENCY POWER TO FUEL PUMPS AT
6 A FILLING STATION OWNED BY THE TAXPAYER THAT IS LOCATED IN THIS STATE. A
7 TAXPAYER MAY CLAIM CREDIT PURSUANT TO THIS SUBSECTION FOR EACH EMERGENCY
8 BACK-UP GENERATOR OR RENEWABLE EMERGENCY GENERATING SYSTEM INSTALLED AT
9 A FILLING STATION OWNED BY THE TAXPAYER THAT IS LOCATED IN THIS STATE;
10 PROVIDED, HOWEVER, THAT THE TAXPAYER SHALL NOT CLAIM MORE THAN ONE CRED-
11 IT FOR ANY ONE FILLING STATION.

12 (2) DEFINITIONS. FOR PURPOSES OF THIS SUBSECTION, THE FOLLOWING DEFI-
13 NITIONS SHALL APPLY:

14 (A) "AT RETAIL" SHALL MEAN A FILLING STATION WHERE SUCH FUEL IS STORED
15 PRIMARILY FOR SALE BY DELIVERY DIRECTLY INTO THE ORDINARY FUEL TANK
16 CONNECTED WITH THE ENGINE OF A MOTOR VEHICLE TO BE CONSUMED IN THE OPER-
17 ATION OF SUCH MOTOR VEHICLE OR WHERE SUCH FUEL IS STORED PRIMARILY FOR
18 SALE BY DELIVERY DIRECTLY INTO THE ORDINARY FUEL TANK CONNECTED WITH THE
19 ENGINE OF A VESSEL TO BE CONSUMED IN THE OPERATION OF SUCH VESSEL.

20 (B) "DIESEL MOTOR FUEL" SHALL HAVE THE SAME MEANING AS THE TERM HIGH-
21 WAY DIESEL MOTOR FUEL AS DEFINED IN SECTION TWO HUNDRED EIGHTY-TWO OF
22 THIS CHAPTER.

23 (C) "FILLING STATION" SHALL MEAN ANY PREMISES WHEREON THE RETAIL SALE
24 OF MOTOR FUELS IS CONDUCTED AS THE PRINCIPAL BUSINESS.

25 (D) "RENEWABLE EMERGENCY GENERATING SYSTEM" SHALL MEAN A GENERATING
26 SYSTEM POWERED BY A RENEWABLE ENERGY TECHNOLOGY, INCLUDING BUT NOT
27 LIMITED TO SOLAR, WIND OR FUEL CELL, OPERATING IN CONCERT WITH AN ENERGY
28 STORAGE DEVICE, INCLUDING BUT NOT LIMITED TO A BATTERY STORAGE DEVICE OR
29 DEVICES, FLYWHEEL OR SIMILAR DEVICE.

30 (E) "EMERGENCY BACK-UP GENERATOR" SHALL MEAN A BACK-UP GENERATING
31 SYSTEM, OTHER THAN A RENEWABLE EMERGENCY GENERATING SYSTEM, THAT IS
32 CAPABLE OF PROVIDING EMERGENCY POWER TO FUEL PUMPS AT A FILLING STATION.

33 (F) "MOTOR FUEL" SHALL HAVE THE SAME MEANING AS IN SECTION TWO HUNDRED
34 EIGHTY-TWO OF THIS CHAPTER.

35 (3) AMOUNT OF CREDIT. THE AMOUNT OF CREDIT SHALL BE EQUAL TO THE LESS-
36 ER OF (I) THE COST TO PURCHASE AND INSTALL AN EMERGENCY BACK-UP GENERA-
37 TOR OR A RENEWABLE EMERGENCY GENERATING SYSTEM, AS APPLICABLE AT A FILL-
38 ING STATION LOCATED IN THIS STATE MINUS ANY AMOUNTS FOR SUCH PURCHASE OR
39 INSTALLATION THAT WERE DEDUCTED BY THE TAXPAYER FOR FEDERAL PURPOSES, OR
40 (II) FIVE THOUSAND DOLLARS IN THE CASE OF AN EMERGENCY BACK-UP GENERA-
41 TOR, OR FIFTEEN THOUSAND DOLLARS IN THE CASE OF A RENEWABLE EMERGENCY
42 GENERATING SYSTEM.

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

49 S 5. This act shall take effect immediately and shall apply to all
50 taxable years beginning on and after January 1, 2013.