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

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2013-2014 Regular Sessions

I N S E N A T E

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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:

Section 1. The public service law is amended by adding a new section 73 to read as follows:

S 73. COORDINATION WITH CERTAIN PROVISIONS OF THE TAX LAW. THE DEPARTMENT MAY REQUEST FROM THE DEPARTMENT OF TAXATION AND FINANCE A LIST OF RETAIL FILLING STATIONS THAT HAVE BEEN GRANTED A RETAIL FILLING STATION EMERGENCY GENERATING SYSTEM TAX CREDIT AS SUCH CREDIT IS DESCRIBED IN SUBDIVISION FORTY-SIX OF SECTION TWO HUNDRED TEN OF THE TAX LAW. THE LIST SHALL INCLUDE THE LOCATION OF THE FILLING STATION RECEIVING THE CREDIT, A DESCRIPTION OF THE EMERGENCY GENERATING SYSTEM TO WHICH THE CREDIT RELATES, THE AMOUNT OF THE CREDIT, AND THE TAX YEAR FOR WHICH THE CREDIT WAS GRANTED.

S 2. Section 210 of the tax law is amended by adding a new subdivision 46 to read as follows:

46. RETAIL FILLING STATION EMERGENCY GENERATING SYSTEM TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHO IS ENGAGED IN THE BUSINESS OF SELLING MOTOR FUEL OR DIESEL MOTOR FUEL AT RETAIL SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION, AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR THE PURCHASE AND INSTALLATION OF AN EMERGENCY BACK-UP GENERATOR OR A RENEWABLE EMERGENCY GENERATING SYSTEM THAT IS CAPABLE OF PROVIDING EMERGENCY POWER TO FUEL PUMPS AT A FILLING STATION OWNED BY THE TAXPAYER THAT IS LOCATED IN THIS STATE. A TAXPAYER MAY CLAIM CREDIT PURSUANT TO THIS SUBDIVISION FOR EACH EMERGENCY BACK-UP 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.

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

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

SELLING MOTOR FUEL OR DIESEL MOTOR FUEL AT RETAIL SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR THE PURCHASE AND INSTALLATION OF AN EMERGENCY BACK-UP GENERATOR OR A RENEWABLE EMERGENCY GENERATING SYSTEM THAT IS CAPABLE OF PROVIDING EMERGENCY POWER TO FUEL PUMPS AT A FILLING STATION OWNED BY THE TAXPAYER THAT IS LOCATED IN THIS STATE. A TAXPAYER MAY CLAIM CREDIT PURSUANT TO THIS SUBSECTION FOR EACH EMERGENCY BACK-UP GENERATOR OR RENEWABLE EMERGENCY GENERATING SYSTEM INSTALLED AT A FILLING 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.

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

(A) "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.

(B) "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.

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

(D) "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.

(E) "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.

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

(3) 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.

(4) 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 5. This act shall take effect immediately and shall apply to all taxable years beginning on and after January 1, 2013.