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

8435

I N A S S E M B L Y

January 15, 2014

Introduced by M. of A. SWEENEY -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the tax law, in relation to bioheating fuel

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

Section 1. The environmental conservation law is amended by adding a new section 19-0327 to read as follows:

S 19-0327. BIOHEATING FUEL REQUIREMENTS.

(1) DEFINITIONS. FOR THE PURPOSE OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "BIODIESEL" SHALL MEAN A FUEL, DESIGNATED B100, THAT MEETS THE SPECIFICATIONS OF THE AMERICAN SOCIETY FOR TESTING AND MATERIALS DESIGNATION D6751 COMPOSED EXCLUSIVELY OF MONO-ALKYL ESTERS OF LONG CHAIN FATTY ACIDS DERIVED FROM FEEDSTOCK.

(B) "BIOHEATING FUEL" SHALL MEAN A FUEL COMPRISED OF BIODIESEL BLENDED WITH PETROLEUM HEATING OIL THAT MEETS THE SPECIFICATIONS OF THE AMERICAN SOCIETY FOR TESTING AND MATERIALS DESIGNATION D396 OR OTHER SPECIFICATIONS AS DETERMINED BY THE COMMISSIONER.

(C) "HEATING OIL" SHALL MEAN PETROLEUM OIL REFINED FOR THE PURPOSE OF USE AS FUEL FOR COMBUSTION IN A SPACE AND/OR WATER HEATING SYSTEM THAT MEETS THE SPECIFICATIONS OF THE AMERICAN SOCIETY FOR TESTING AND MATERIALS DESIGNATION D396 OR OTHER SPECIFICATIONS AS DETERMINED BY THE COMMISSIONER.

(D) "FEEDSTOCK" SHALL MEAN SOYBEAN OIL, OIL FROM ANNUAL COVER CROPS, ALGAL OIL, BIOGENIC WASTE OILS, FATS OR GREASES, OR NON-FOOD GRADE CORN OIL, PROVIDED THAT THE COMMISSIONER MAY, BY RULES AND REGULATIONS, MODIFY THE DEFINITION OF FEEDSTOCK BASED ON THE VEGETABLE OILS, ANIMAL FATS OR CELLULOSIC BIOMASS LISTED IN TABLE 1 OF 40 C.F.R. S 80.1426.

(2) ON AND AFTER OCTOBER FIRST, TWO THOUSAND FOURTEEN, ALL HEATING OIL SOLD FOR USE IN ANY BUILDING WITHIN THE COUNTIES OF NASSAU, ROCKLAND, SUFFOLK, WESTCHESTER AND THE COUNTIES OF THE CITY OF NEW YORK SHALL BE BIOHEATING FUEL THAT CONTAINS AT LEAST TWO PERCENT BIODIESEL.

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

LBD13517-01-4

(3) ON AND AFTER JULY FIRST, TWO THOUSAND FIFTEEN, ALL HEATING OIL SOLD FOR USE IN ANY BUILDING IN THE STATE SHALL BE BIOHEATING FUEL THAT CONTAINS AT LEAST TWO PERCENT BIODIESEL.

(4) THE GOVERNOR MAY, BY ISSUING AN EXECUTIVE ORDER, TEMPORARILY SUSPEND THE APPLICABILITY OF THIS SECTION AT ANY TIME BASED ON THE GOVERNOR'S DETERMINATION, AFTER CONSULTING WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY AND THE DEPARTMENT, THAT MEETING THE REQUIREMENT OF SUBDIVISION TWO OF THIS SECTION IS NOT FEASIBLE DUE TO LACK OF ADEQUATE SUPPLY OF BIODIESEL OR THAT MEETING THE REQUIREMENT WOULD RESULT IN UNDUE FINANCIAL HARDSHIP TO CONSUMERS.

(5) THE REQUIREMENTS OF THIS SECTION SHALL NOT: (A) PROHIBIT THE SALE AND USE OF BIOHEATING FUEL WITH THE SAME OR ANY GREATER PERCENTAGE OF BIODIESEL BLENDED WITH HEATING OIL, OR THE SALE AND USE OF ONE HUNDRED PERCENT BIODIESEL, FOR SPACE AND/OR WATER HEATING PURPOSES IN THE STATE; AND (B) PREEMPT ANY LAWS OF THE CITY OF NEW YORK WITH RESPECT TO MANDATED PERCENTAGE LEVELS OF BIODIESEL BLENDS WITH HEATING OIL PROVIDED THAT SUCH LAWS REQUIRE THE SAME OR GREATER PERCENTAGE OF BIODIESEL BLENDED WITH HEATING OIL AS REQUIRED BY THIS SECTION.

S 2. Paragraph 1 and subparagraph (b) of paragraph 2 of subdivision 39 of section 210 of the tax law, paragraph 1 as amended by chapter 591 of the laws of 2011 and subparagraph (b) of paragraph 2 as added by section 1 of part D of chapter 35 of the laws of 2006, are amended to read as follows:

(1) A taxpayer shall be allowed a credit against the tax imposed by this article. Such credit, to be computed as hereinafter provided, shall be allowed for [bioheat] BIOHEATING FUEL, used for space heating or hot water production for residential purposes within this state purchased on or after July first, two thousand six and before July first, two thousand seven and on or after January first, two thousand eight and before January first, two thousand seventeen. Such credit shall be $0.01 per percent of biodiesel per gallon of [bioheat] BIOHEATING FUEL, not to exceed twenty cents per gallon, purchased by such taxpayer, PROVIDED, HOWEVER:

(A) ON OR AFTER OCTOBER FIRST, TWO THOUSAND FOURTEEN, BIOHEATING FUEL USED WITHIN THE COUNTIES OF NASSAU, ROCKLAND, SUFFOLK, WESTCHESTER AND THE COUNTIES OF THE CITY OF NEW YORK, SHALL BE ELIGIBLE FOR THIS CREDIT ONLY FOR GALLONS OF BIOHEATING FUEL WHICH CONTAIN A MINIMUM OF FIVE PERCENT BIODIESEL AND THE AMOUNT OF SUCH CREDIT SHALL BE $.01 PER PERCENT, IN EXCESS OF TWO PERCENT, OF BIODIESEL PER GALLON OF BIOHEATING FUEL, NOT TO EXCEED EIGHTEEN CENTS PER GALLON, AND

(B) ON OR AFTER JULY FIRST, TWO THOUSAND FIFTEEN, BIOHEATING FUEL USED WITHIN THE STATE SHALL BE ELIGIBLE FOR THIS CREDIT ONLY FOR GALLONS OF BIOHEATING FUEL WHICH CONTAIN A MINIMUM OF FIVE PERCENT BIODIESEL AND THE AMOUNT OF SUCH CREDIT SHALL BE $.01 PER PERCENT, IN EXCESS OF TWO PERCENT, OF BIODIESEL PER GALLON OF BIOHEATING FUEL, NOT TO EXCEED EIGHTEEN CENTS PER GALLON.

(b) ["Bioheat"] "BIOHEATING FUEL" shall mean a fuel comprised of biodiesel blended with conventional home heating oil, which meets the specifications of the American Society of Testing and Materials designation D 396 or D 975.

S 3. Paragraph 1 and subparagraph (b) of paragraph 2 of subsection (mm) of section 606 of the tax law, paragraph 1 as amended by chapter 193 of the laws of 2012 and subparagraph (b) of paragraph 2 as added by section 2 of part D of chapter 35 of the laws of 2006, are amended to read as follows:

(1) A taxpayer shall be allowed a credit against the tax imposed by this article. Such credit, to be computed as hereinafter provided, shall be allowed for [bioheat] BIOHEATING FUEL, used for space heating or hot water production for residential purposes within this state and purchased on or after July first, two thousand six and before July first, two thousand seven and on or after January first, two thousand eight and before January first, two thousand seventeen. Such credit shall be $0.01 per percent of biodiesel per gallon of [bioheat] BIOHEATING FUEL, not to exceed twenty cents per gallon, purchased by such taxpayer, PROVIDED, HOWEVER:

(A) ON OR AFTER OCTOBER FIRST, TWO THOUSAND FOURTEEN, BIOHEATING FUEL USED WITHIN THE COUNTIES OF NASSAU, ROCKLAND, SUFFOLK, WESTCHESTER AND THE COUNTIES OF THE CITY OF NEW YORK, SHALL BE ELIGIBLE FOR THIS CREDIT ONLY FOR GALLONS OF BIOHEATING FUEL WHICH CONTAIN A MINIMUM OF FIVE PERCENT BIODIESEL AND THE AMOUNT OF SUCH CREDIT SHALL BE $.01 PER PERCENT, IN EXCESS OF TWO PERCENT, OF BIODIESEL PER GALLON OF BIOHEATING FUEL, NOT TO EXCEED EIGHTEEN CENTS PER GALLON, AND

(B) ON OR AFTER JULY FIRST, TWO THOUSAND FIFTEEN, BIOHEATING FUEL USED WITHIN THE STATE SHALL BE ELIGIBLE FOR THIS CREDIT ONLY FOR GALLONS OF BIOHEATING FUEL WHICH CONTAIN A MINIMUM OF FIVE PERCENT BIODIESEL AND THE AMOUNT OF SUCH CREDIT SHALL BE $.01 PER PERCENT, IN EXCESS OF TWO PERCENT, OF BIODIESEL PER GALLON OF BIOHEATING FUEL, NOT TO EXCEED EIGHTEEN CENTS PER GALLON.

(b) ["Bioheat"] "BIOHEATING FUEL" shall mean a fuel comprised of biodiesel blended with conventional home heating oil, which meets the specifications of the American Society of Testing and Materials designation D 396 or D 975.

S 4. This act shall take effect immediately.