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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

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 (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
27 taxable year does not exceed [two and one-half] TEN million dollars. The

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

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

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

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

21 (2) "CELLULOSIC ETHANOL" MEANS THE PRODUCTION OF ETHANOL FROM LIGNO-
22 CELLULOSIC BIOMASS FEEDSTOCKS NOT USED FOR FOOD PRODUCTION, INCLUDING
23 BY-PRODUCTS FROM AGRICULTURAL WASTE, THAT ARE ALTERED THROUGH ACTIVITIES
24 REFERENCED IN SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE OF
25 SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW. SUCH
26 LIGNOCELLULOSIC BIOMASS FEEDSTOCKS MAY INCLUDE, BUT ARE NOT NECESSARILY
27 LIMITED TO, SWITCHGRASSES OR WILLOWS, AGRICULTURAL AND FORESTRY RESI-
28 DUES, CLEAN WOOD AND WOOD WASTES, PULP AND PAPER MILL WASTES OR
29 EXTRACTS, AND NON-RECYCLABLE PAPER. ANY QUESTION AS TO WHETHER ANY
30 FEEDSTOCK QUALIFIES UNDER THIS SECTION SHALL BE DETERMINED BY THE PRESI-
31 DENT OF THE NEW YORK STATE ENERGY AND RESEARCH DEVELOPMENT AUTHORITY.

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

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

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

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

1 hundred eighty-six of this chapter. Provided, however, the provisions of
2 subsection (c) of section one thousand eighty-eight of this chapter
3 notwithstanding, no interest shall be paid thereon. The tax credit
4 allowed pursuant to this section shall apply to taxable years beginning
5 before January first, two thousand twenty.

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

8 S 187-c. Biofuel production credit. A taxpayer shall be allowed a
9 credit to be computed as provided in section [twenty-eight] FORTY-TWO of
10 this chapter, [as added by part X of chapter sixty-two of the laws of
11 two thousand six,] against the tax imposed by this article. Provided,
12 however, that the amount of such credit allowed against the tax imposed
13 by section one hundred eighty-four of this article shall be the excess
14 of the amount of such credit over the amount of any credit allowed by
15 this section against the tax imposed by section one hundred eighty-three
16 of this article. In no event shall the credit under this section be
17 allowed in an amount which will reduce the tax payable to less than the
18 applicable minimum tax fixed by section one hundred eighty-three of this
19 article. If, however, the amount of the credit allowed under this
20 section for any taxable year reduces the tax to such amount, the excess
21 shall be treated as an overpayment of tax to be credited or refunded in
22 accordance with the provisions of section six hundred eighty-six of this
23 chapter. Provided, however, the provisions of subsection (c) of section
24 one thousand eighty-eight of this chapter notwithstanding, no interest
25 shall be paid thereon. The tax credit allowed pursuant to this section
26 shall apply to taxable years beginning before January first, two thou-
27 sand twenty.

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

31 38. Biofuel production credit. A taxpayer shall be allowed a credit,
32 to be computed as provided in section [twenty-eight] FORTY-TWO of this
33 chapter, [as added by part X of chapter sixty-two of the laws of two
34 thousand six,] against the tax imposed by this article. The credit
35 allowed under this subdivision for any taxable year shall not reduce the
36 tax due for such year to less than the higher of the amounts prescribed
37 in paragraphs (c) and (d) of subdivision one of this section. However,
38 if the amount of credit allowed under this subdivision for any taxable
39 year reduces the tax to such amount, any amount of credit thus not
40 deductible in such taxable year shall be treated as an overpayment of
41 tax to be credited or refunded in accordance with the provisions of
42 section one thousand eighty-six of this chapter. Provided, however, the
43 provisions of subsection (c) of section one thousand eighty-eight of
44 this chapter notwithstanding, no interest shall be paid thereon. The tax
45 credit allowed pursuant to this section shall apply to taxable years
46 beginning before January first, two thousand twenty.

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

50 24. Biofuel production credit. [(a) General.] A taxpayer shall be
51 allowed a credit, to be computed as provided in section [twenty-eight]
52 FORTY-TWO of this chapter [added as part X of chapter sixty-two of the
53 laws of two thousand six], against the tax imposed by this article. The
54 credit allowed under this subdivision for any taxable year shall not
55 reduce the tax due for such year to less than the fixed dollar minimum
56 amount prescribed in paragraph (d) of subdivision one of section two

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

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

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

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