

4563

2013-2014 Regular Sessions

I N S E N A T E

April 10, 2013

Introduced by Sen. YOUNG -- (at request of the Legislative Commission on Rural Resources) -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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, subdivision (a) as amended by section
3 1 of part K of chapter 59 of the laws of 2012, is renumbered section 38
4 and amended to read as follows:
5 S 38. Biofuel production credit. (a) General. A taxpayer subject to
6 tax under article nine, nine-A or twenty-two of this chapter shall be
7 allowed a credit against such tax pursuant to the provisions referenced
8 in subdivision (d) of this section. The credit (or pro rata share of
9 earned credit in the case of a partnership) for each gallon of LIQUID
10 biofuel produced at a biofuel plant on or after January first, two thou-
11 sand six shall equal fifteen cents per gallon, OR TWENTY-FIVE CENTS PER
12 GALLON FOR PRODUCTION OF CELLULOSIC ETHANOL OR RENEWABLE FUEL OIL after
13 the production of the first forty thousand gallons per year presented to
14 market. THE CREDIT FOR EACH BONE DRY TON OF DENSIFIED BIOFUEL PRODUCED
15 AT A BIOFUEL PLANT ON OR AFTER JANUARY FIRST, TWO THOUSAND SIX SHALL
16 EQUAL FIFTEEN DOLLARS PER BONE DRY TON AFTER THE PRODUCTION OF THE FIRST
17 TEN THOUSAND TONS PER YEAR PRESENTED TO MARKET. The credit under this
18 section shall be capped at [two and one-half] TEN million dollars per
19 taxpayer per taxable year for up to no more than [four] TEN consecutive
20 taxable years per biofuel plant. If the taxpayer is a partner in a part-
21 nership or shareholder of a New York S corporation, then the cap imposed
22 by the preceding sentence shall be applied at the entity level, so that
23 the aggregate credit allowed to all the partners or shareholders of each

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

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

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

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

23 (2) "CELLULOSIC ETHANOL" MEANS THE PRODUCTION OF ETHANOL FROM LIGNO-
24 CELLULOSIC BIOMASS FEEDSTOCKS NOT USED FOR FOOD PRODUCTION, INCLUDING
25 BY-PRODUCTS 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 RESI-
30 DUES, CLEAN WOOD AND WOOD WASTES, PULP AND PAPER MILL WASTES OR
31 EXTRACTS, AND NON-RECYCLABLE PAPER. ANY QUESTION AS TO WHETHER ANY
32 FEEDSTOCK QUALIFIES UNDER THIS SECTION SHALL BE DETERMINED BY THE PRESI-
33 DENT OF THE NEW YORK STATE ENERGY AND RESEARCH DEVELOPMENT AUTHORITY.

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

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

42 (c) Reporting requirements. A taxpayer wishing to claim a credit under
43 this section shall annually certify to the commissioner (i) that biofuel
44 produced at the eligible biofuel plant meets all existing standards for
45 biofuel and (ii) the amount of biofuel produced at the eligible biofuel
46 plant during a taxable year.

47 (d) Cross-references. For application of the credit provided for in
48 this section, see the following provisions of this chapter:

49 (1) Article 9: Section 187-c.

50 (2) Article 9-A: Section 210, subdivision 38.

51 (3) Article 22: Section 606, subsections (i) and (jj).

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

54 S 187-c. Biofuel production credit. A taxpayer shall be allowed a
55 credit to be computed as provided in section [twenty-eight] THIRTY-EIGHT
56 of this chapter, [as added by part X of chapter sixty-two of the laws of

1 two thousand six,] against the tax imposed by this article. Provided,
2 however, that the amount of such credit allowed against the tax imposed
3 by section one hundred eighty-four of this article shall be the excess
4 of the amount of such credit over the amount of any credit allowed by
5 this section against the tax imposed by section one hundred eighty-three
6 of this article. In no event shall the credit under this section be
7 allowed in an amount which will reduce the tax payable to less than the
8 applicable minimum tax fixed by section one hundred eighty-three or one
9 hundred eighty-five of this article. If, however, the amount of the
10 credit allowed under this section for any taxable year reduces the tax
11 to such amount, the excess shall be treated as an overpayment of tax to
12 be credited or refunded in accordance with the provisions of section six
13 hundred eighty-six of this chapter. Provided, however, the provisions of
14 subsection (c) of section one thousand eighty-eight of this chapter
15 notwithstanding, no interest shall be paid thereon. The tax credit
16 allowed pursuant to this section shall apply to taxable years beginning
17 before January first, two thousand twenty.

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

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

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

40 (jj) Biofuel production credit. A taxpayer shall be allowed a credit
41 to be computed as provided in section [twenty-eight] THIRTY-EIGHT of
42 this chapter, [as added by part X of chapter sixty-two of the laws of
43 two thousand six,] against the tax imposed by this article. If the
44 amount of the credit allowed under this subsection for any taxable year
45 shall exceed the taxpayer's tax for such year, the excess shall be
46 treated as an overpayment of tax to be credited or refunded in accord-
47 ance with the provisions of section six hundred eighty-six of this arti-
48 cle, provided, however, that no interest shall be paid thereon. The tax
49 credit allowed pursuant to this section shall apply to taxable years
50 beginning before January first, two thousand twenty.

51 S 5. This act shall take effect immediately.