

2437

2015-2016 Regular Sessions

I N   S E N A T E

January 23, 2015

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Introduced by Sen. PARKER -- 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 biofuel production credit for production of biomethane

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 38-a.  
3     S 2. Subdivisions (a) and (b) of section 38-a of the tax law, subdivi-  
4 sion (a) as amended by section 1 of part K of chapter 59 of the laws of  
5 2012, subdivision (b) as added by section 1 of part X of chapter 62 of  
6 the laws of 2006, such section as renumbered by section one of this act,  
7 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 biofuel produced at a biofuel plant on  
13 or after January first, two thousand six shall equal fifteen cents per  
14 gallon OR TWENTY-FIVE CENTS PER GALLON FOR PRODUCTION OF BIOMETHANE  
15 after the production of the first forty thousand gallons per year  
16 presented to market. The credit under this section shall be capped at  
17 two and one-half million dollars per taxpayer per taxable year for up to  
18 no more than four consecutive taxable years per biofuel plant. If the  
19 taxpayer is a partner in a partnership or shareholder of a New York S  
20 corporation, then the cap imposed by the preceding sentence shall be  
21 applied at the entity level, so that the aggregate credit allowed to all  
22 the partners or shareholders of each such entity in the taxable year  
23 does not exceed two and one-half million dollars. The tax credit allowed

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

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pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

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

(1) "Biofuel" means a fuel which includes biodiesel [and], ethanol OR BIOMETHANE.

(2) The term "biodiesel" shall mean a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of American Society of Testing and Materials designation D 6751-02.

(3) The term "ethanol" shall mean ethyl alcohol manufactured in the United States and its territories and sold (i) for fuel use and which has been rendered unfit for beverage use in a manner and which is produced at a facility approved by the federal bureau of alcohol, tobacco and firearms for the production of ethanol for fuel, or (ii) as denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use. The term "biofuel" may also include any other standard approved by the New York state energy and research development authority.

[(2)] (4) THE TERM "BIOMETHANE" SHALL MEAN BIOGASES THAT ARE EMITTED AS ORGANIC WASTES THAT BREAK DOWN IN AIRLESS ENVIRONMENTS. BIOMETHANE IS PRODUCED FROM A VARIETY OF BIOMASS AND/OR BIOGAS SOURCES, INCLUDING LANDFILL GAS, SOLID WASTE, MUNICIPAL WASTEWATER AND AGRICULTURAL MANURE VIA AIRLESS TANKS CALLED ANAEROBIC DIGESTERS. IT CAN ALSO BE PRODUCED FROM OTHER SOURCES SUCH AS FORESTRY AND AGRICULTURAL WASTE THROUGH THE PROCESS OF THERMAL GASIFICATION AND METHANATION, ALTHOUGH THESE TECHNOLOGIES ARE NOT YET WIDELY USED. BIOMETHANE IS A RENEWABLE FUEL, EASILY DISTRIBUTED THROUGH EXISTING INFRASTRUCTURE AND IS SUITABLE FOR APPLICATIONS FROM LIGHT-DUTY VEHICLES TO HEAVY-DUTY FREIGHT TRUCKS.

(5) "Biofuel plant" means a commercial facility located in New York state at which one or more biofuels are produced. FOR THE PURPOSES OF THIS SECTION, ANY COMMERCIAL FACILITY WHERE BIOMETHANE IS PRODUCED SHALL BE CONSIDERED A SEPARATE BIOFUEL PLANT.

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

S 187-c. Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section [twenty-eight] THIRTY-EIGHT-A of this chapter, [as added by part X of chapter sixty-two of the laws of two thousand six,] against the tax imposed by this article. Provided, however, that the amount of such credit allowed against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three or one hundred eighty-five of this article. If, however, the amount of the credit allowed under this section for any taxable year reduces the tax to such amount, 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 chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

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

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

23 S 5. Subsection (jj) of section 606 of the tax law, as amended by  
24 section 4 of part K of chapter 59 of the laws of 2012, is amended to  
25 read as follows:

26 (jj) Biofuel production credit. A taxpayer shall be allowed a credit  
27 to be computed as provided in section [twenty-eight] THIRTY-EIGHT-A of  
28 this chapter, [as added by part X of chapter sixty-two of the laws of  
29 two thousand six,] against the tax imposed by this article. If the  
30 amount of the credit allowed under this subsection for any taxable year  
31 shall exceed the taxpayer's tax for such year, the excess shall be  
32 treated as an overpayment of tax to be credited or refunded in accord-  
33 ance with the provisions of section six hundred eighty-six of this arti-  
34 cle, provided, however, that 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 6. Subdivision 24 of section 210-B of the tax law, as added by  
38 section 17 of part A of chapter 59 of the laws of 2014, is amended to  
39 read as follows:

40 24. Biofuel production credit. (a) General. A taxpayer shall be  
41 allowed a credit, to be computed as provided in section [twenty-eight]  
42 THIRTY-EIGHT-A of this chapter [added as part X of chapter sixty-two of  
43 the laws of two thousand six,] against the tax imposed by this article.  
44 The credit allowed under this subdivision for any taxable year shall not  
45 reduce the tax due for such year to less than the fixed dollar minimum  
46 amount prescribed in paragraph (d) of subdivision one of section two  
47 hundred ten of this article. However, if the amount of credit allowed  
48 under this subdivision for any taxable year reduces the tax to such  
49 amount or if the taxpayer otherwise pays tax based on the fixed dollar  
50 minimum amount, any amount of credit thus not deductible in such taxable  
51 year shall be treated as an overpayment of tax to be credited or  
52 refunded in accordance with the provisions of section one thousand  
53 eighty-six of this chapter. Provided, however, the provisions of  
54 subsection (c) of section one thousand eighty-eight of this chapter  
55 notwithstanding, no interest shall be paid thereon. The tax credit

1 allowed pursuant to this section shall apply to taxable years beginning  
2 before January first, two thousand twenty.  
3 S 7. This act shall take effect immediately; provided however that the  
4 amendments to section 187-c of the tax law made by section four of this  
5 act shall take effect on the same date as section 15 of part S of chap-  
6 ter 59 of the laws of 2014 takes effect; provided, further that the  
7 amendment to subdivision 24 of section 210-B of the tax law made by  
8 section six of this act shall take effect on the same date and same  
9 manner as section 17 of part A of chapter 59 of the laws of 2014, takes  
10 effect.