

6070

2015-2016 Regular Sessions

I N   A S S E M B L Y

March 11, 2015

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Introduced by M. of A. ENGLEBRIGHT, COLTON, LIFTON, SCHIMEL, CRESPO,  
GOTTFRIED, GALEF, ROSENTHAL, ARROYO, COOK, SIMON, STIRPE -- Multi-  
Sponsored by -- M. of A. SOLAGES, THIELE -- 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. The environmental conservation law is amended by adding a  
2     new section 19-0327 to read as follows:  
3     S 19-0327. BIOHEATING FUEL REQUIREMENTS.  
4     (1) DEFINITIONS. FOR THE PURPOSE OF THIS SECTION, THE FOLLOWING TERMS  
5     SHALL HAVE THE FOLLOWING MEANINGS:  
6     (A) "BIODIESEL" SHALL MEAN A FUEL, DESIGNATED B100, THAT MEETS THE  
7     SPECIFICATIONS OF THE AMERICAN SOCIETY FOR TESTING AND MATERIALS DESIG-  
8     NATION D6751 COMPOSED EXCLUSIVELY OF MONO-ALKYL ESTERS OF LONG CHAIN  
9     FATTY ACIDS DERIVED FROM FEEDSTOCK.  
10    (B) "BIOHEATING FUEL" SHALL MEAN A FUEL COMPRISED OF BIODIESEL BLENDED  
11    WITH PETROLEUM HEATING OIL THAT MEETS THE SPECIFICATIONS OF THE AMERICAN  
12    SOCIETY FOR TESTING AND MATERIALS DESIGNATION D396 OR OTHER SPECIFICA-  
13    TIONS AS DETERMINED BY THE COMMISSIONER.  
14    (C) "HEATING OIL" SHALL MEAN PETROLEUM OIL REFINED FOR THE PURPOSE OF  
15    USE AS FUEL FOR COMBUSTION IN A SPACE AND/OR WATER HEATING SYSTEM THAT  
16    MEETS THE SPECIFICATIONS OF THE AMERICAN SOCIETY FOR TESTING AND MATERI-  
17    ALS DESIGNATION D396 OR OTHER SPECIFICATIONS AS DETERMINED BY THE  
18    COMMISSIONER.  
19    (D) "FEEDSTOCK" SHALL MEAN SOYBEAN OIL, OIL FROM ANNUAL COVER CROPS,  
20    ALGAL OIL, BIOGENIC WASTE OILS, FATS OR GREASES, OR NON-FOOD GRADE CORN  
21    OIL, PROVIDED THAT THE COMMISSIONER MAY, BY RULES AND REGULATIONS, MODI-  
22    FY THE DEFINITION OF FEEDSTOCK BASED ON THE VEGETABLE OILS, ANIMAL FATS  
23    OR CELLULOSIC BIOMASS LISTED IN TABLE 1 OF 40 C.F.R. S 80.1426.

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

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(2) ON AND AFTER OCTOBER FIRST, TWO THOUSAND FIFTEEN, 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.

(3) ON AND AFTER JULY FIRST, TWO THOUSAND SIXTEEN, 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 (a) and subparagraph (ii) of paragraph (b) of subdivision 25 of section 210-B of the tax law, as added by section 17 of part A of chapter 59 of the laws of 2014, are amended to read as follows:

(a) General. 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 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:

(I) ON OR AFTER OCTOBER FIRST, TWO THOUSAND FIFTEEN, 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

(II) ON OR AFTER JULY FIRST, TWO THOUSAND SIXTEEN, 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.

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

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

18 (B) ON OR AFTER JULY FIRST, TWO THOUSAND SIXTEEN, BIOHEATING FUEL USED  
19 WITHIN THE STATE SHALL BE ELIGIBLE FOR THIS CREDIT ONLY FOR GALLONS OF  
20 BIOHEATING FUEL WHICH CONTAIN A MINIMUM OF FIVE PERCENT BIODIESEL AND  
21 THE AMOUNT OF SUCH CREDIT SHALL BE \$.01 PER PERCENT, IN EXCESS OF TWO  
22 PERCENT, OF BIODIESEL PER GALLON OF BIOHEATING FUEL, NOT TO EXCEED EIGH-  
23 TEEN CENTS PER GALLON.

24 (b) ["Bioheat"] "BIOHEATING FUEL" shall mean a fuel comprised of biod-  
25 iesel blended with conventional home heating oil, which meets the spec-  
26 ifications of the American Society of Testing and Materials designation  
27 D 396 or D 975.

28 S 4. This act shall take effect on the twentieth day after it shall  
29 have become a law.