

8072

2015-2016 Regular Sessions

I N   A S S E M B L Y

June 5, 2015

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Introduced by M. of A. WALKER -- read once and referred to the Committee  
on Ways and Means

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 ASSEM-  
BLY, 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  
24    pursuant to this section shall apply to taxable years beginning before  
25    January first, two thousand twenty.

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

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(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.

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

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

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

24 (jj) Biofuel production credit. A taxpayer shall be allowed a credit  
25 to be computed as provided in section [twenty-eight] THIRTY-EIGHT-A of  
26 this chapter, [as added by part X of chapter sixty-two of the laws of  
27 two thousand six,] against the tax imposed by this article. If the  
28 amount of the credit allowed under this subsection for any taxable year  
29 shall exceed the taxpayer's tax for such year, the excess shall be  
30 treated as an overpayment of tax to be credited or refunded in accord-  
31 ance with the provisions of section six hundred eighty-six of this arti-  
32 cle, provided, however, that no interest shall be paid thereon. The tax  
33 credit allowed pursuant to this section shall apply to taxable years  
34 beginning before January first, two thousand twenty.

35 S 6. Subdivision 24 of section 210-B of the tax law, as added by  
36 section 17 of part A of chapter 59 of the laws of 2014, is amended to  
37 read as follows:

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

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