STATE OF NEW YORK

389--A

2017-2018 Regular Sessions

IN ASSEMBLY

January 9, 2017

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to biofuel production credit for production of cellulosic ethanol

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 28 of the tax law, as added by section 1 of part X of chapter 62 of the laws of 2006, subdivision (a) as amended by section 1 of part K of chapter 59 of the laws of 2012, subdivision (d) as amended by section 46 of part A of chapter 59 of the laws of 2014, is renumbered section 28-a and amended to read as follows:

§ 28-a. Biofuel production credit. (a) General. A taxpayer subject to tax under article nine, nine-A or twenty-two of this chapter shall be allowed a credit against such tax pursuant to the provisions referenced in subdivision (d) of this section. The credit (or pro rata share of earned credit in the case of a partnership) for each gallon of biofuel produced at a biofuel plant on or after January first, two thousand six shall equal fifteen cents per gallon **or twenty-five cents per gallon for production of cellulosic ethanol** after the production of the first forty thousand gallons per year presented to market. The credit under this section shall be capped at two and one-half million dollars per taxpayer per taxable year for up to no more than four consecutive taxable years per biofuel plant. If the taxpayer is a partner in a partnership or shareholder of a New York S corporation, then the cap imposed by the preceding sentence shall be applied at the entity level, so that the aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed two and one-half million

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

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dollars. The tax credit allowed 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. 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. 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) **"Cellulosic ethanol" means the production of ethanol from lignocellulosic biomass feedstocks not used for food production that are altered through activities referenced in subparagraph five of paragraph (b) of subdivision one of section thirty-one hundred two-e of the public authorities law. Such lignocellulosic biomass feedstocks may include, but are not necessarily limited to, switchgrasses or willows, agricultural and forestry residues, clean wood and wood wastes, pulp and paper mill wastes or extracts, and non-recyclable paper. Any question as to whether any feedstock qualifies under this paragraph shall be determined by the president of the New York state energy and research development authority in consultation with the commissioner of environmental conservation and the commissioner of agriculture and markets.**

(3) "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 cellulosic ethanol is produced shall be considered a separate biofuel plant.**

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

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

(1) Article 9: Section 187-c.

(2) Article 9-A: Section 210-B, subdivision 24.

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

§ 2. 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:

§ 187-c. Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section [~~twenty-eight~~] **twenty-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 eight-

y-three 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.

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

24. Biofuel production credit. (a) General. A taxpayer shall be allowed a credit, to be computed as provided in section [~~twenty-eight~~] twenty-eight-a of this chapter [~~added as part X of chapter sixty-two of the laws of two thousand six~~], against the tax imposed by this article. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand 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.

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

(jj) Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section [~~twenty-eight~~] twenty-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. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, 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 article, provided, however, that 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.

§ 5. This act shall take effect immediately.