

# STATE OF NEW YORK

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389--A

2017-2018 Regular Sessions

## IN ASSEMBLY

January 9, 2017

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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:

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, subdivision (d) as  
4 amended by section 46 of part A of chapter 59 of the laws of 2014, is  
5 renumbered section 28-a and amended to read as follows:  
6 § 28-a. Biofuel production credit. (a) General. A taxpayer subject to  
7 tax under article nine, nine-A or twenty-two of this chapter shall be  
8 allowed a credit against such tax pursuant to the provisions referenced  
9 in subdivision (d) of this section. The credit (or pro rata share of  
10 earned credit in the case of a partnership) for each gallon of biofuel  
11 produced at a biofuel plant on or after January first, two thousand six  
12 shall equal fifteen cents per gallon or twenty-five cents per gallon for  
13 production of cellulosic ethanol after the production of the first forty  
14 thousand gallons per year presented to market. The credit under this  
15 section shall be capped at two and one-half million dollars per taxpayer  
16 per taxable year for up to no more than four consecutive taxable years  
17 per biofuel plant. If the taxpayer is a partner in a partnership or  
18 shareholder of a New York S corporation, then the cap imposed by the  
19 preceding sentence shall be applied at the entity level, so that the  
20 aggregate credit allowed to all the partners or shareholders of each  
21 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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1 dollars. The tax credit allowed pursuant to this section shall apply to  
2 taxable years beginning before January first, two thousand twenty.

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

5 (1) "Biofuel" means a fuel which includes biodiesel and ethanol. The  
6 term "biodiesel" shall mean a fuel comprised exclusively of mono-alkyl  
7 esters of long chain fatty acids derived from vegetable oils or animal  
8 fats, designated B100, which meets the specifications of American Socie-  
9 ty of Testing and Materials designation D 6751-02. The term "ethanol"  
10 shall mean ethyl alcohol manufactured in the United States and its  
11 territories and sold (i) for fuel use and which has been rendered unfit  
12 for beverage use in a manner and which is produced at a facility  
13 approved by the federal bureau of alcohol, tobacco and firearms for the  
14 production of ethanol for fuel, or (ii) as denatured ethanol used by  
15 blenders and refiners which has been rendered unfit for beverage use.  
16 The term "biofuel" may also include any other standard approved by the  
17 New York state energy and research development authority.

18 (2) "Cellulosic ethanol" means the production of ethanol from ligno-  
19 cellulosic biomass feedstocks not used for food production that are  
20 altered through activities referenced in subparagraph five of paragraph  
21 (b) of subdivision one of section thirty-one hundred two-e of the public  
22 authorities law. Such lignocellulosic biomass feedstocks may include,  
23 but are not necessarily limited to, switchgrasses or willows, agricul-  
24 tural and forestry residues, clean wood and wood wastes, pulp and paper  
25 mill wastes or extracts, and non-recyclable paper. Any question as to  
26 whether any feedstock qualifies under this paragraph shall be determined  
27 by the president of the New York state energy and research development  
28 authority in consultation with the commissioner of environmental conser-  
29 vation and the commissioner of agriculture and markets.

30 (3) "Biofuel plant" means a commercial facility located in New York  
31 state at which one or more biofuels are produced. For the purposes of  
32 this section, any commercial facility where cellulosic ethanol is  
33 produced shall be considered a separate biofuel plant.

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

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

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

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

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

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

46 § 187-c. Biofuel production credit. A taxpayer shall be allowed a  
47 credit to be computed as provided in section ~~[twenty-eight]~~ twenty-  
48 eight-a of this chapter, ~~[as added by part X of chapter sixty-two of the~~  
49 ~~laws of two thousand six,~~] against the tax imposed by this article.  
50 Provided, however, that the amount of such credit allowed against the  
51 tax imposed by section one hundred eighty-four of this article shall be  
52 the excess of the amount of such credit over the amount of any credit  
53 allowed by this section against the tax imposed by section one hundred  
54 eighty-three of this article. In no event shall the credit under this  
55 section be allowed in an amount which will reduce the tax payable to  
56 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.