

# STATE OF NEW YORK

2635

2019-2020 Regular Sessions

## IN ASSEMBLY

January 24, 2019

Introduced by M. of A. CROUCH, BARCLAY, FINCH, McDONOUGH -- Multi-Sponsored by -- M. of A. HAWLEY, KOLB, THIELE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a tax credit for alternative energy systems and generating equipment

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

1 Section 1. The tax law is amended by adding a new section 24-b to read  
2 as follows:

3 § 24-b. Credit for alternative energy systems and generating equip-  
4 ment. (a) General. A taxpayer subject to tax under article nine-A, twen-  
5 ty-two or thirty-three of this chapter, whose business is not substan-  
6 tially engaged in the commercial generation, distribution, transmission  
7 or servicing of energy or energy products, and who employs one or more  
8 full-time employees, excluding general executive officers (in the case  
9 of a corporation), shall be allowed a credit against such tax, pursuant  
10 to the provisions referenced in subdivision (e) of this section. The  
11 credit shall be allowed for qualified expenditures which meet the eligi-  
12 bility criteria, if any, prescribed by the department, in consultation  
13 with the department of environmental conservation and the New York state  
14 energy research and development authority, disbursed in New York state.

15 (b) Definitions. For the purposes of this section: (1) The term  
16 "solar and wind energy system equipment" shall refer to a system which  
17 shall meet the eligibility requirements set by the department of envi-  
18 ronmental conservation and the New York state energy and research and  
19 development authority which serves as:

20 (i) solar electric generating equipment which shall mean an arrange-  
21 ment or combination of components utilizing solar radiation to produce  
22 energy designed to provide heating, cooling, hot water or electricity.  
23 Such arrangement or components shall not include equipment that is part  
24 of a non-solar energy system or which uses any sort of recreational  
25 facility or equipment as a storage medium;

26 (ii) a wind energy system, which shall mean an arrangement or combina-  
27 tion of components designed to generate and provide electricity or

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

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1 mechanical energy through the process of converting force provided by  
2 wind into mechanical and/or electrical energy, and storing or distribut-  
3 ing such energy.

4 (2) The term "fuel cell electric generating equipment" shall refer to  
5 on-site electricity generation systems, located in real property located  
6 in New York state utilizing proton exchange membrane fuel cells or  
7 molten carbonate fuel cell technologies. "Fuel cell" means a device  
8 that produces electricity directly from hydrogen or hydrocarbon fuel  
9 through a non-combustive electrochemical process.

10 (3) The term "geothermal resource transfer system" means a system  
11 transferring energy through the use of a resource in New York state  
12 including:

13 (i) all products of geothermal processes embracing indigenous steam,  
14 hot water, and hot brines;

15 (ii) steam and other gases, hot water and hot brines resulting from  
16 water, gas, or other fluids artificially introduced into geothermal  
17 formations;

18 (iii) heat or other associated energy found in geothermal formations;  
19 and

20 (iv) any byproducts derived from them, where "byproduct" means any  
21 mineral or minerals (exclusive of oil, hydrocarbon gas, and helium)  
22 which are found in solution or in association with other geothermal  
23 resources and which have a value of less than seventy-five percent of  
24 the value of the geothermal steam or are not, because of quantity, qual-  
25 ity, or technical difficulties in extraction and production, of suffi-  
26 cient value to warrant extraction and production by themselves.

27 (4) The term "biomass energy conversion equipment" shall mean equip-  
28 ment that converts forest and/or agricultural materials through  
29 combustion, gasification, or pyrolysis into heat, electricity, or heat  
30 and electricity that is:

31 (i) manufactured, installed, and operated in accordance with applica-  
32 ble government and industry standards,

33 (ii) in the case of biomass-generated electricity, either used to meet  
34 the electricity requirements of the owner or the owner and users located  
35 within one-half mile of the installed equipment, or connected to the  
36 electric system and operated in conjunction with an electric corpora-  
37 tion's transmission and distribution facilities,

38 (iii) in the case of biomass-generated heat, either used to meet the  
39 requirements of the owner or of other businesses and heat customers  
40 located within one-quarter mile of the installed equipment.

41 (5) The term "credit allowance year" means the first taxable year with  
42 respect to which the credit may be claimed pursuant to the initial cred-  
43 it component certificate issued pursuant to subdivision (d) of this  
44 section.

45 (6) The term "taxable year" means the taxable year of a business  
46 taxpayer filing a New York state tax return under article nine-A, twen-  
47 ty-two or thirty-three of this chapter. If the business does not have a  
48 taxable year because it is exempt from taxation or otherwise is not  
49 required to file such a return under any of such statutes, the term  
50 "taxable year" means (i) the business's federal taxable year, or (ii) if  
51 the business does not have a federal taxable year, the given calendar  
52 year.

53 (7) "Qualified expenditures" shall be remitted costs for materials,  
54 labor costs properly allocable to on-site preparation, assembly and  
55 original installation, architectural and engineering services, and  
56 designs and plans directly related to the construction or installation

1 of solar and wind energy system equipment, solar electric generating  
2 equipment, fuel cell electric generating equipment and/or geothermal  
3 resource transfer system equipment directly related to the construction  
4 or installation of such equipment intended for the original use of said  
5 taxpayer, at, or directly related to, a property in New York state that  
6 operates as the situs of a business entity of said taxpayer. Such quali-  
7 fied expenditures shall not include interest or other finance charges  
8 whether such charges accrue as a result of lease or ownership of such  
9 equipment. For purposes of determining the expenses serving as quali-  
10 fied expenditures under this section, any amount of federal, state or  
11 local grant received by the taxpayer used for the purchase and/or  
12 installation of such equipment and which is not included in the federal  
13 gross income of the taxpayer shall not serve as a qualifying expendi-  
14 ture.

15 (c) Allowance of credit. (1) Qualified alternative energy systems and  
16 generating equipment expenses. Qualified alternative energy systems and  
17 generating equipment expenses are those qualified expenditures generated  
18 from the purchase and installation of eligible equipment as enumerated  
19 in subdivision (b) of this section.

20 (2) Credit for solar and wind energy system equipment. The amount of  
21 credit for the purchase and installation of eligible solar and wind  
22 energy system equipment shall be fifty percent of the qualified expenses  
23 for taxpayers under article nine-A or thirty-three, and forty-five  
24 percent of the qualified expenses for taxpayers under article twenty-two  
25 of this chapter, incurred in purchasing and installing any such system  
26 or combination thereof.

27 (3) Credit for fuel cell electric generating equipment, geothermal  
28 resource transfer system equipment and/or biomass energy conversion  
29 equipment. The amount of credit for the purchase and installation of  
30 eligible fuel cell electric generating equipment, geothermal resource  
31 transfer system equipment and/or biomass energy conversion equipment  
32 shall be forty-five percent of the qualified expenses for taxpayers  
33 under article nine, nine-A or thirty-three, and forty percent of the  
34 qualified expenses for taxpayers under article twenty-two of this chap-  
35 ter, incurred in purchasing and installing any such system.

36 (4) Multiple taxpayers. Where qualifying expenditures are accumulated  
37 from the construction and/or the installation of qualifying alternative  
38 systems and generating equipment are shared by two or more taxpayers,  
39 the amount of the credit allowable under this section shall be prorated  
40 according to the percentage of the total expenditure for such equipment  
41 contributed by each taxpayer.

42 (d) Credit qualification. (1) Realization of credit. Credits earned  
43 under this section shall be qualifying expenditures incurred after Janu-  
44 ary first, two thousand twenty, that accredit to the taxpayer's credit  
45 allowance year and each subsequent taxable year according to the  
46 provisions of subdivision (c) of this section.

47 (2) Credit component certificate. A taxpayer who wishes to make an  
48 initial claim for credits under this section shall submit an application  
49 for a credit component certificate to the director of the New York state  
50 energy research and development authority upon the successful installa-  
51 tion and operation for at least three continuous months of eligible  
52 equipment that rate as qualified expenditures. The president of the New  
53 York state energy research and development authority, in consultation  
54 with the commissioner and the commissioner of environmental conserva-  
55 tion, shall prescribe the requirements for the acceptance of such appli-  
56 cation, but at a minimum the application shall list the amount of quali-

1 fyng expenditures, the rating capacity in kilowatt hours of such  
2 equipment, and the anticipated reduction in the use of conventional  
3 energy generation sources realized through the use of such equipment.  
4 Such application shall require a fee of fifty dollars for each five  
5 million dollars of gross receipts listed by the taxpayer for the taxable  
6 year immediately preceding the initial credit allowance year after the  
7 first five million dollars in gross receipts for such taxable year. Any  
8 expansion of alternative rated capacity adhering to increased qualifying  
9 expenditures beyond such expenditures utilized in a prior accepted  
10 application shall require an additional application for further credit  
11 claims under this section.

12 (3) Issuance of certificate. The president of the New York state ener-  
13 gy research and development authority shall review applications filed  
14 under this section to verify an eligible business's claimed benefits  
15 under this section. The president shall supply to each company a certif-  
16 icate marking the approval of qualifying expenses for application to the  
17 commissioner for credits under this section within ninety days of the  
18 receipt of such application. A copy of this certificate shall be  
19 attached to any returns such taxpayer is required to file under this  
20 chapter. If any expenses used as part of the credit base of qualifying  
21 expenditures are denied for such credit claim by the president of the  
22 New York state energy research and development authority, such denial  
23 shall be reported to the taxpayer and the commissioner with a detailed  
24 explanation of the rationale for such denial.

25 (4) Revocation of benefits. In addition to any other penalties enumer-  
26 ated under this chapter, a violation of the terms of this subdivision or  
27 any willful misrepresentation of any of the terms of this section may  
28 result in the rescinding of the certificate issued under this paragraph  
29 and a recapture of current and previously received benefits. The presi-  
30 dent of the New York state energy research and development authority  
31 shall report to the commissioner any determinations of violations of the  
32 terms of this section. The commissioner and the commissioner of envi-  
33 ronmental conservation shall make recommendations to the president of  
34 the New York state energy research and development authority for the  
35 rescinding of any certificate issued pursuant to this section that the  
36 commissioner of environmental conservation determines results from a  
37 willful false claim of the capabilities or amount of qualifying expendi-  
38 tures of solar and wind energy system equipment and fuel cell electric  
39 generating equipment.

40 (5) Early disposition. The discontinued use of any solar and wind  
41 energy system equipment, fuel cell electric generating equipment or  
42 geothermal resource transfer system equipment within five years of the  
43 credit allowance year shall result in the recapture of current and  
44 previously received benefits unless such disposition is due to the inop-  
45 erativeness of such equipment beyond any reasonable control or efforts  
46 of the taxpayer or the replacement of such equipment by more efficient  
47 and technically advanced alternative energy systems approved by the  
48 commissioner of environmental conservation and the president of the New  
49 York state energy research and development authority. Such early dispo-  
50 sition shall not include the transfer of ownership interest of the prop-  
51 erty such equipment operates within unless the transfer results in the  
52 cessation of the operation of such equipment within five years of the  
53 credit allowance year. The taxpayer shall annually attest to the presi-  
54 dent of the New York state energy research and development authority  
55 that such equipment remains in qualifying use.

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

(1) Article 9-A: Section 210-B, subdivision 53

(2) Article 22: Section 606, subsections (i) and (jjj)

(3) Article 33: Section 1511, subdivision (dd).

§ 2. Section 210-B of the tax law is amended by adding a new subdivision 53 to read as follows:

53. Alternative energy systems and generating equipment credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-four-b of this chapter, 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 amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year or years may be carried over to any or all of the following five taxable years and may be deducted from the taxpayer's tax for such year or years.

§ 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xliv) to read as follows:

|                                      |                                      |
|--------------------------------------|--------------------------------------|
| <u>(xliv) Credit for alternative</u> | <u>Qualifying expenditures</u>       |
| <u>energy systems and</u>            | <u>under subdivision fifty-three</u> |
| <u>generating equipment</u>          | <u>of section two hundred</u>        |
| <u>under subsection (jjj)</u>        | <u>ten-B</u>                         |

§ 4. Section 606 of the tax law is amended by adding a new subsection (jjj) to read as follows:

(jjj) Alternative energy systems and generating equipment credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-four-b of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, such excess amount may be carried over to any or all of the following five taxable years next following the taxable year with respect to which the credit is allowed and may be deducted from the taxpayer's tax for such year or years.

§ 5. Section 1511 of the tax law is amended by adding a new subdivision (dd) to read as follows:

(dd) Alternative energy systems and generating equipment credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-four-b of this chapter, against the taxes imposed by this article.

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two or section fifteen hundred two-a of this article. However, if the amount of credits allowed under this subdivision for any taxable year reduced the tax to such amount, any amount of credit thus not deductible in such taxable year or years may be carried over to any or all of the following five taxable years and may be deducted from the taxpayer's tax for such year or years.

§ 6. This act shall take effect immediately and shall apply to taxable years commencing on and after January 1, 2019.