STATE OF NEW YORK

1153

2019-2020 Regular Sessions

IN SENATE

January 11, 2019

Introduced by Sen. TEDISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to creating the alternative fuel incentive fund; to amend the tax law, in relation to creating the alternative fuels credit; to amend the public authorities law, in relation to alternative fuel grants; and making an appropriation therefor

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

Section 1. The state finance law is amended by adding a new section 99-ff to read as follows:

§ 99-ff. Alternative fuel incentive fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special revenue fund to be known as the "alternative fuel incentive fund".

2. The fund shall consist of the amount of revenues from sales taxes imposed on the receipts of the price of motor and diesel fuel more than one dollar or equal to or less than two dollars.

3. Monies of the fund, when allocated, shall be disbursed for the following purposes:

(a) credits against personal income tax and corporate franchise tax for the installation or conversion of fueling stations for alternative fuels;

(b) grants for research and development in regards to fuel diversification and energy efficiency in the transportation sector;

(c) installation of alternative fueling stations at each of the twenty-seven travel plazas on the New York state thruway;

(d) grants for a cellulosic ethanol refinery; and

(e) administrative costs borne by the department of taxation and finance and the New York state energy research and development authority.

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

LBD05234-01-9

§ 2. Section 1148 of the tax law, as amended by section 57 of part HH of chapter 57 of the laws of 2013, is amended to read as follows:

§ 1148. Deposit and disposition of revenue. All taxes, interest and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter; provided however, the comptroller shall on or before the twelfth day of each month, pay all such taxes, interest and penalties collected under this article and remaining to the comptroller's credit in such banks, banking houses or trust companies at the close of business on the last day of the preceding month, into the general fund of the state treasury, except as otherwise provided in sections ninety-two-d, ninety-two-h, [~~and~~] ninety-two-r **and ninety-nine-ff** of the state finance law and sections eleven hundred two, eleven hundred four and eleven hundred nine of this article.

§ 3. Section 606 of the tax law is amended by adding two new subsections (p-1) and (jjj) to read as follows:

(p-1) Alternative fuels credit. (1) General. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article for fuel flexible vehicles and qualified hybrid vehicles placed in service during the taxable year. Provided, however, that the credit provided for by this subsection with respect to fuel flexible vehicles shall not be allowed to a gas corporation or electric corporation as defined in subdivisions eleven and thirteen of section two of the public service law, or a gas and electric corporation as described in section sixty-four of the public service law, where such corporation is subject to the supervision of the department of public service.

(2) Fuel flexible and hybrid vehicles. The credit under this subsection for fuel flexible and qualified hybrid vehicles shall equal five hundred dollars per vehicle registered in this state.

(3) Definitions. (A) The term "fuel flexible vehicle" means a vehicle which is equipped to use alternative fuel as defined in subdivision eleven of section three hundred fifty-one of the public authorities law.

(B) The term "qualified hybrid vehicle" means a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, other than an electric vehicle, that:

(i) draws propulsion energy from both

(a) an internal combustion engine (or heat engine that uses combustible fuel); and

(b) an energy storage device; and

(ii) employs a regenerative vehicle braking system that recovers waste energy to charge such energy storage device.

(4) Carryovers. If the amount of credit allowable under this subsection shall exceed the taxpayer's tax of such year, the excess, may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(5) Credit recapture. (A) Vehicles. If, within three full years from the date a qualified hybrid vehicle is placed in service such vehicles cease to be qualified, a recapture amount must be added back in the tax year in which such cessation occurs.

(B) Cessation of qualification. (i) A qualified hybrid ceases to be qualified if

(a) it is modified by the taxpayer so that it no longer meets the requirements of a qualified hybrid vehicle.

(b) the taxpayer receiving the credit under this subsection sells or disposes of the vehicle and knows or has reason to know that the vehicle will be so modified.

(ii) Recapture amount. The recapture amount is equal to the credit allowable under this subsection.

(6) Termination. This subsection shall not apply to property placed in service in taxable years beginning after December thirty-first, two thousand twenty.

(jjj) Alternative fuel credit for installation or conversion of fueling stations. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed hereinafter provided, against the tax imposed by this article for the cost of installation construction, reconstruction or acquisition of an alternative fuel refueling facility that is directly attributable to the storage, compression, charging or dispensing of alternative fuels to motor vehicles. The income tax credit would be thirty percent of the costs associated with such expenses.

(2) Application of credit. If the amount of the credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be carried over to the immediately succeeding taxable year and may be deducted from the taxpayer's tax for such year. The excess, if any, of the amount of the credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

§ 4. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding two new clauses (xliv) and (xlv) to read as follows:

(xliv) Alternative fuels credit under subsection (p-1)	Amount of credit under subdivision fifty-three of section two hundred ten-B
(xlv) Alternative fuel credit for installation or conservation of fueling stations under subsection (jjj)	Amount of credit under subdivision fifty-four of section two hundred ten-B

§ 5. Section 210-B of the tax law is amended by adding two new subdivisions 53 and 54 to read as follows:

53. Alternative fuels credit. (a) General. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for fuel flexible vehicles and qualified hybrids. Provided, however, that the credit provided for by this subsection with respect to fuel flexible vehicles shall not be allowed to a gas corporation or electric corporation as defined in subdivisions eleven and thirteen of section two of the public service law, or a gas and electric corporation as described in section sixty-four of the public service law, where such corporation is subject to the supervision of the department of public service.

(b) Fuel flexible vehicles and qualified hybrid vehicles. The credit under this subdivision for fuel flexible vehicles and qualified hybrid

vehicles shall equal five hundred dollars per vehicle registered in this state.

(c) Definitions. (i) The term "fuel flexible vehicle" means a vehicle, which is equipped to use alternative fuel as defined in subdivision eleven of section three hundred fifty-one of the public authorities law.

(ii) The term "qualified hybrid vehicle" shall have the same meaning as provided for under subparagraph (B) of paragraph three of subsection (p-1) of section six hundred six of this chapter.

(d) Carryovers. In no event shall the credit under this subdivision be allowed in an amount which will reduce the tax payable to less than the higher of the amounts prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that 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 may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(e) Credit recapture. (i) If, within three full years from the date a qualified hybrid vehicle is placed in service ceases to be qualified, a recapture amount must be added back in the tax year in which such cessation occurs.

(ii) A qualified hybrid vehicle ceases to be qualified if:

(A) it is modified by the taxpayer so that it no longer meets the requirements of a qualified hybrid vehicle as defined in subparagraph (B) of paragraph three of subsection (p-1) of section six hundred six of this chapter; or

(B) the taxpayer receiving the credit under this subsection sells or disposes of the vehicle and knows or has reason to know that the vehicle will be so modified.

(iii) Recapture amount. The recapture amount is equal to the credit allowable under this subdivision multiplied by a fraction, the numerator of which is the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year, and the denominator of which is the total recovery period.

(f) Termination. This subdivision shall not apply to property placed in service in taxable years beginning after December thirty-first, two thousand twenty.

54. Alternative fuel credit for installation or conversion of fueling stations. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article for the cost of installation construction, reconstruction or acquisition of an alternative fuel refueling facility that is directly attributable to the storage, compression, charging or dispensing of alternative fuels to motor vehicles. The income tax credit shall be thirty percent of the costs associated with such expenses.

(b) 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 amount described in paragraph (d) of subdivision one of section two hundred ten of this article. If the amount of the credit allowable under this subdivision for any taxable year exceeds the taxpayer's tax for such year, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this chapter, provided, however, that no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be carried over to the immediately succeeding taxable year and may be deducted from the taxpayer's tax for such year. The excess, if any, of the amount of the credit over the tax

for such succeeding year shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this chapter, provided, however, that no interest shall be paid thereon.

§ 6. The tax law is amended by adding two new sections 187-q and 187-r to read as follows:

§ 187-q. Alternative fuels credit. 1. General. A taxpayer shall be allowed a credit, to be credited against the taxes imposed under sections one hundred eighty-three, and one hundred eighty-four of this article. Such credit, to be computed as hereinafter provided, shall be allowed for fuel flexible and hybrid vehicles placed in service during the taxable year. Provided, however, that the amount of such credit allowable against the tax imposed by section one hundred eighty-four of this article shall be the excess of the credit allowed by this section over the amount of such credit allowable against the tax imposed by section one hundred eighty-three of this article.

2. Fuel flexible and hybrid vehicles. The credit under this subdivision for fuel flexible and qualified hybrid vehicles shall equal five hundred dollars per vehicle registered in this state.

3. Definitions. (a) The term "fuel flexible vehicle" means a vehicle, which is equipped to use alternative fuel as defined in subdivision eleven of section three hundred fifty-one of the public authorities law.

(b) The term "qualified hybrid vehicle" shall have the same meaning as provided for in subparagraph (B) of paragraph three of subsection (p-1) of section six hundred six of this chapter.

4. Carryovers. 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 of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

5. Credit recapture. (a) If, within three full years from the date a qualified hybrid vehicle is placed in service ceases to be qualified, a recapture amount must be added back in the tax year in which such cessation occurs.

(b) A qualified hybrid vehicle ceases to be qualified if:

(i) it is modified by the taxpayer so that it no longer meets the requirements of a qualified hybrid vehicle as defined in subparagraph (B) of paragraph three of subsection (p-1) of section six hundred six of this chapter, or

(ii) the taxpayer receiving the credit under this section sells or disposes of the vehicle and knows or has reason to know that the vehicle will be so modified.

(c) The recapture amount is equal to the credit allowable under this section.

6. Termination. This section shall not apply to property placed in service in taxable years beginning after December thirty-first, two thousand twenty.

§ 187-r. Alternative fuel credit for installation or conversion of fueling stations. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article for the cost of installation construction, reconstruction or acquisition of an alternative fuel refueling facility that is directly attributable to the storage, compression, charging or

dispensing of alternative fuels to motor vehicles. The income tax credit shall be thirty percent of the costs associated with such expenses.

(2) Application of credit. If the amount of the credit allowable under this section for any taxable year exceeds the taxpayer's tax for such year, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this chapter, provided, however, that no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be carried over to the immediately succeeding taxable year and may be deducted from the taxpayer's tax for such year. The excess, if any, of the amount of the credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded as provided in section six hundred eighty-six of this chapter, provided, however, that no interest shall be paid thereon.

§ 7. The public authorities law is amended by adding a new section 1884 to read as follows:

§ 1884. Alternative fuel grants. The New York state energy research and development authority shall:

1. Oversee and promote research and development regarding fuel diversification and energy efficiency in the transportation sector; and

2. Provide grants for the creation of a cellulosic ethanol refinery.

§ 8. Subdivision 10 of section 354 of the public authorities law, as amended by section 2 of part TT of chapter 54 of the laws of 2016, is amended to read as follows:

10. To construct, reconstruct or improve on or along the thruway system in the manner herein provided, suitable facilities for gas stations, restaurants, and other facilities for the public, or to lease the right to construct, reconstruct or improve and operate such facilities; such facilities shall be publicly offered for leasing for operation, or the right to construct, reconstruct or improve and operate such facilities shall be publicly offered under rules and regulations to be established by the authority, provided, however, that lessees operating such facilities at the time this act becomes effective, may reconstruct or improve them or may construct additional like facilities, in the manner and upon such terms and conditions as the board shall determine; and provided further, however, that such facilities constructed, reconstructed or improved on or along the canal system shall be consistent with the canal recreationway plan approved pursuant to section one hundred thirty-eight-c of the canal law and former section three hundred eighty-two of this title; and provided further, that each such facility which contains or consists of a gas station shall include a facility for selling to the public alternative fuel, as defined in section three hundred fifty-one of this article.

§ 9. Section 351 of the public authorities law is amended by adding a new subdivision 11 to read as follows:

11. The term "alternative fuel" shall mean ethanol, methanol, natural gas, propane, electricity (including electricity from solar energy), hydrogen, and any other fuel identified which is substantially not petroleum-based, which is consistent with the goals of protecting the safety and health of the public and minimizing emissions of air pollutants, and which is consistent with any applicable federal alternative fuel requirements.

§ 10. The sum of eighty-two million dollars ($82,000,000), or so much thereof as may be necessary, is hereby appropriated as follows: thirty million dollars for research and development in regards to fuel diversification and energy efficiency in the transportation sector; twenty-

seven million dollars for the installation of alternative fueling stations at each of the twenty-seven travel plazas on the New York state thruway; twenty million dollars for a cellulosic ethanol refinery; and five million dollars for administrative costs borne by the department of taxation and finance and the New York state energy research and development authority to the department of taxation and finance; out of moneys in the state treasury in the general fund to the credit of the alternative fuel incentive fund, not otherwise appropriated, and made immediately available, for the purpose of carrying out the provisions of this act. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved in the manner prescribed by law.

§ 11. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the commissioner of taxation and finance shall be authorized on and after the date this act shall have become a law to adopt and amend any rules or regulations and to take any steps necessary to implement the provisions of this act.