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:

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

§ 24-b. Credit for alternative energy systems and generating equipment. (a) General. A taxpayer subject to tax under article nine-A, twenty-two or thirty-three of this chapter, whose business is not substantially engaged in the commercial generation, distribution, transmission or servicing of energy or energy products, and who employs one or more full-time employees, excluding general executive officers (in the case of a corporation), shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (e) of this section. The credit shall be allowed for qualified expenditures which meet the eligibility criteria, if any, prescribed by the department, in consultation with the department of environmental conservation and the New York state energy research and development authority, disbursed in New York state.

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

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

(ii) a wind energy system, which shall mean an arrangement or combination 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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mechanical energy through the process of converting force provided by wind into mechanical and/or electrical energy, and storing or distributing such energy.

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

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

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

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

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

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

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

(i) manufactured, installed, and operated in accordance with applicable government and industry standards,

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

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

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

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

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

of solar and wind energy system equipment, solar electric generating equipment, fuel cell electric generating equipment and/or geothermal resource transfer system equipment directly related to the construction or installation of such equipment intended for the original use of said taxpayer, at, or directly related to, a property in New York state that operates as the situs of a business entity of said taxpayer. Such qualified expenditures shall not include interest or other finance charges whether such charges accrue as a result of lease or ownership of such equipment. For purposes of determining the expenses serving as qualified expenditures under this section, any amount of federal, state or local grant received by the taxpayer used for the purchase and/or installation of such equipment and which is not included in the federal gross income of the taxpayer shall not serve as a qualifying expenditure.

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

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

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

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

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

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

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

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

(4) Revocation of benefits. In addition to any other penalties enumerated under this chapter, a violation of the terms of this subdivision or any willful misrepresentation of any of the terms of this section may result in the rescinding of the certificate issued under this paragraph and a recapture of current and previously received benefits. The president of the New York state energy research and development authority shall report to the commissioner any determinations of violations of the terms of this section. The commissioner and the commissioner of environmental conservation shall make recommendations to the president of the New York state energy research and development authority for the rescinding of any certificate issued pursuant to this section that the commissioner of environmental conservation determines results from a willful false claim of the capabilities or amount of qualifying expenditures of solar and wind energy system equipment and fuel cell electric generating equipment.

(5) Early disposition. The discontinued use of any solar and wind energy system equipment, fuel cell electric generating equipment or geothermal resource transfer system equipment within five years of the credit allowance year shall result in the recapture of current and previously received benefits unless such disposition is due to the inoperativeness of such equipment beyond any reasonable control or efforts of the taxpayer or the replacement of such equipment by more efficient and technically advanced alternative energy systems approved by the commissioner of environmental conservation and the president of the New York state energy research and development authority. Such early disposition shall not include the transfer of ownership interest of the property such equipment operates within unless the transfer results in the cessation of the operation of such equipment within five years of the credit allowance year. The taxpayer shall annually attest to the president of the New York state energy research and development authority 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:

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

§ 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.