

STATE OF NEW YORK

6269

2019-2020 Regular Sessions

IN ASSEMBLY

March 4, 2019

Introduced by M. of A. WALKER -- read once and referred to the Committee on Ways and Means

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

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, is renumbered section 38-a.
3 § 2. Subdivisions (a) and (b) of section 38-a of the tax law, subdivi-
4 sion (a) as amended by section 1 of part K of chapter 59 of the laws of
5 2012, subdivision (b) as added by section 1 of part X of chapter 62 of
6 the laws of 2006, such section as renumbered by section one of this act,
7 are amended to read as follows:
8 (a) General. A taxpayer subject to tax under article nine, nine-A or
9 twenty-two of this chapter shall be allowed a credit against such tax
10 pursuant to the provisions referenced in subdivision (d) of this
11 section. The credit (or pro rata share of earned credit in the case of a
12 partnership) for each gallon of biofuel produced at a biofuel plant on
13 or after January first, two thousand six shall equal fifteen cents per
14 gallon or twenty-five cents per gallon for production of biomethane
15 after the production of the first forty thousand gallons per year
16 presented to market. The credit under this section shall be capped at
17 two and one-half million dollars per taxpayer per taxable year for up to
18 no more than four consecutive taxable years per biofuel plant. If the
19 taxpayer is a partner in a partnership or shareholder of a New York S
20 corporation, then the cap imposed by the preceding sentence shall be
21 applied at the entity level, so that the aggregate credit allowed to all
22 the partners or shareholders of each such entity in the taxable year
23 does not exceed two and one-half million dollars. The tax credit allowed
24 pursuant to this section shall apply to taxable years beginning before
25 January first, two thousand twenty.

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

LBD05950-01-9

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

3 (1) "Biofuel" means a fuel which includes biodiesel [~~and~~], ethanol or
4 biomethane.

5 (2) The term "biodiesel" shall mean a fuel comprised exclusively of
6 mono-alkyl esters of long chain fatty acids derived from vegetable oils
7 or animal fats, designated B100, which meets the specifications of Amer-
8 ican Society of Testing and Materials designation D 6751-02.

9 (3) The term "ethanol" shall mean ethyl alcohol manufactured in the
10 United States and its territories and sold (i) for fuel use and which
11 has been rendered unfit for beverage use in a manner and which is
12 produced at a facility approved by the federal bureau of alcohol, tobac-
13 co and firearms for the production of ethanol for fuel, or (ii) as dena-
14 tured ethanol used by blenders and refiners which has been rendered
15 unfit for beverage use. The term "biofuel" may also include any other
16 standard approved by the New York state energy and research development
17 authority.

18 [~~(2)~~] (4) The term "biomethane" shall mean biogases that are emitted
19 as organic wastes that break down in airless environments. Biomethane is
20 produced from a variety of biomass and/or biogas sources, including
21 landfill gas, solid waste, municipal wastewater and agricultural manure
22 via airless tanks called anaerobic digesters. It can also be produced
23 from other sources such as forestry and agricultural waste through the
24 process of thermal gasification and methanation, although these technol-
25 ogies are not yet widely used. Biomethane is a renewable fuel, easily
26 distributed through existing infrastructure and is suitable for applica-
27 tions from light-duty vehicles to heavy-duty freight trucks.

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

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

34 § 187-c. Biofuel production credit. A taxpayer shall be allowed a
35 credit to be computed as provided in section [~~twenty-eight~~] thirty-
36 eight-a of this chapter, [~~as added by part X of chapter sixty-two of the~~
37 ~~laws of two thousand six,~~] against the tax imposed by this article.
38 Provided, however, that the amount of such credit allowed against the
39 tax imposed by section one hundred eighty-four of this article shall be
40 the excess of the amount of such credit over the amount of any credit
41 allowed by this section against the tax imposed by section one hundred
42 eighty-three of this article. In no event shall the credit under this
43 section be allowed in an amount which will reduce the tax payable to
44 less than the applicable minimum tax fixed by section one hundred eight-
45 y-three of this article. If, however, the amount of the credit allowed
46 under this section for any taxable year reduces the tax to such amount,
47 the excess shall be treated as an overpayment of tax to be credited or
48 refunded in accordance with the provisions of section six hundred eight-
49 y-six of this chapter. Provided, however, the provisions of subsection
50 (c) of section one thousand eighty-eight of this chapter notwithstand-
51 ing, no interest shall be paid thereon. The tax credit allowed pursuant
52 to this section shall apply to taxable years beginning before January
53 first, two thousand twenty.

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

1 (jj) Biofuel production credit. A taxpayer shall be allowed a credit
2 to be computed as provided in section [~~twenty-eight~~ thirty-eight-a of
3 this chapter, [~~as added by part X of chapter sixty-two of the laws of~~
4 ~~two thousand six,~~] against the tax imposed by this article. If the
5 amount of the credit allowed under this subsection for any taxable year
6 shall exceed the taxpayer's tax for such year, the excess shall be
7 treated as an overpayment of tax to be credited or refunded in accord-
8 ance with the provisions of section six hundred eighty-six of this arti-
9 cle, provided, however, that no interest shall be paid thereon. The tax
10 credit allowed pursuant to this section shall apply to taxable years
11 beginning before January first, two thousand twenty.

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

15 24. Biofuel production credit. (a) General. A taxpayer shall be
16 allowed a credit, to be computed as provided in section [~~twenty-eight~~
17 thirty-eight-a of this chapter [~~added as part X of chapter sixty-two of~~
18 ~~the laws of two thousand six,~~] against the tax imposed by this article.
19 The credit allowed under this subdivision for any taxable year shall not
20 reduce the tax due for such year to less than the fixed dollar minimum
21 amount prescribed in paragraph (d) of subdivision one of section two
22 hundred ten of this article. However, if the amount of credit allowed
23 under this subdivision for any taxable year reduces the tax to such
24 amount or if the taxpayer otherwise pays tax based on the fixed dollar
25 minimum amount, any amount of credit thus not deductible in such taxable
26 year shall be treated as an overpayment of tax to be credited or
27 refunded in accordance with the provisions of section one thousand
28 eighty-six of this chapter. Provided, however, the provisions of
29 subsection (c) of section one thousand eighty-eight of this chapter
30 notwithstanding, no interest shall be paid thereon. The tax credit
31 allowed pursuant to this section shall apply to taxable years beginning
32 before January first, two thousand twenty.

33 § 6. This act shall take effect immediately.