

# STATE OF NEW YORK

3217--A

2021-2022 Regular Sessions

## IN SENATE

January 28, 2021

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- 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 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~~ **fifty**] thousand gallons per  
16 year presented to market. The credit under this section shall be capped  
17 at two and one-half million dollars per taxpayer per taxable year for up  
18 to 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

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

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1 pursuant to this section shall apply to taxable years beginning before  
2 January first, two thousand [~~twenty~~] twenty-five.

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 or  
6 biomethane.

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

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

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

30 (5) "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 biomethane is produced shall  
33 be considered a separate biofuel plant.

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

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

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

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

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

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

36 § 6. This act shall take effect immediately.