

# STATE OF NEW YORK

7308

2025-2026 Regular Sessions

## IN ASSEMBLY

March 25, 2025

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

AN ACT to amend the energy law and the tax law, in relation to establishing a sustainable aviation fuel tax credit in New York state

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

1 Section 1. The energy law is amended by adding a new section 5-112 to  
2 read as follows:

3 § 5-112. Sustainable aviation fuel tax credit. 1. Except as otherwise  
4 provided under this section, a sustainable aviation fuel producer may  
5 claim a credit against the tax imposed by section three hundred one-e of  
6 the tax law in an amount equal to one dollar per gallon of sustainable  
7 aviation fuel purchased in this state during the tax year by a business  
8 for use as fuel for flights departing in this state. The amount of cred-  
9 it per gallon allowed under this section increases by two cents for each  
10 additional one percent reduction in carbon dioxide equivalent emissions  
11 above fifty percent but shall not exceed two dollars per gallon.

12 2. A taxpayer shall not claim a credit under this section unless the  
13 office issued a certificate to the taxpayer. The taxpayer shall attach  
14 the certificate to their annual return on which a credit under this  
15 section is claimed. The certificate required under this subdivision  
16 shall state all of the following:

17 a. The name, business address, and tax identification number of the  
18 taxpayer.

19 b. The total amount of gallons of sustainable aviation fuel that is  
20 purchased in this state during the tax year from the taxpayer and to be  
21 used as fuel in an aircraft departing from an airport in this state.

22 c. The number of gallons of sustainable aviation fuel for which the  
23 percentage reduction in carbon dioxide equivalent emissions is above  
24 fifty percent and that percentage amount.

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

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1 3. If the amount of the credit allowed under this section exceeds the  
2 taxpayer's tax liability for the tax year, that portion that exceeds the  
3 tax liability for the tax year shall be refunded.

4 4. As used in this section, the following terms shall have the follow-  
5 ing meanings:

6 a. "Aviation fuel" means kero-jet fuel and gasoline as that term is  
7 described in subdivision (a) of section three hundred one-b of the tax  
8 law.

9 b. "Biomass" means any organic matter that is available on a renewable  
10 or recurring basis, including agricultural crops, wood and wood waste  
11 and residues, plants including aquatic plants, grasses, residues,  
12 fibers, animal waste, and the organic portion of solid wastes.

13 c. "Carbon dioxide equivalent" means a metric measure used to compare  
14 the emissions from various greenhouse gases based upon their global-  
15 warming potential.

16 d. "Carbon intensity" means the quantity of life-cycle greenhouse gas  
17 emission, per unit of fuel energy, expressed in grams of carbon dioxide  
18 equivalent per megajoule.

19 e. "Office" means the New York state energy research and development  
20 authority established pursuant to article eight of the public authori-  
21 ties law.

22 f. "Commissioner" means the president of the New York state energy  
23 research and development authority.

24 g. "Sustainable aviation fuel" means liquid fuel that:

25 (i) consists of synthesized hydrocarbons and meets the requirements  
26 of:

27 (A) the American Society for Testing and Materials International Stan-  
28 dard D7566; or

29 (B) Standard D1655;

30 (ii) is derived from biomass resources, waste streams, renewable or  
31 zero-carbon energy sources, or gaseous carbon oxides;

32 (iii) is not derived from any palm or petroleum derivatives; and

33 (iv) the fuel production pathway for the sustainable aviation fuel  
34 achieves at least a fifty percent lifecycle greenhouse gas emissions  
35 reduction in comparison with petroleum-based jet fuel, as determined by  
36 a test that shows either:

37 (A) that the fuel production pathway achieves at least a fifty percent  
38 reduction of the aggregate attributional core lifecycle emissions and  
39 the positive induced land use change values under the lifecycle method-  
40 ology for sustainable aviation fuels adopted by the International Civil  
41 Aviation Organization with the agreement of the United States; or

42 (B) that the fuel production pathway achieves at least a fifty percent  
43 reduction of the aggregate attributional core lifecycle greenhouse gas  
44 emissions values utilizing the most recent version of Argonne National  
45 Laboratory's GREET model, inclusive of but not limited to climate smart  
46 agricultural practices, on-site renewables and carbon capture and  
47 sequestration.

48 5. The total amount of tax credits listed on certificates of tax cred-  
49 it issued by the commissioner pursuant to this article may not exceed  
50 thirty million dollars for each year the credit is available.

51 6. Each aviation fuel producer claiming such credit shall report to  
52 the commissioner of the department of taxation and finance on a monthly  
53 basis the amount of sustainable aviation fuel to be sold within the  
54 state. The commissioner of the department of taxation and finance shall  
55 make all such reports publicly available on such department's website.

1 7. The department of taxation and finance shall determine a fair and  
2 equitable maximum distribution of such credit per eligible entity.

3 § 2. The tax law is amended by adding a new section 50 to read as  
4 follows:

5 § 50. Sustainable aviation fuel tax credit. (a) Allowance of credit.  
6 For taxable years beginning on or after January first, two thousand  
7 twenty-five, a taxpayer subject to tax pursuant to articles nine,  
8 nine-A, thirteen-A, or twenty-two of this chapter shall be allowed a  
9 credit against such tax pursuant to the provisions referenced in subdivi-  
10 vision (f) of this section. The amount of the credit shall be equal to  
11 the amount determined pursuant to section 5-112 of the energy law. No  
12 cost or expense paid or incurred by the taxpayer that is included as  
13 part of the calculation of such credit shall be the basis of any other  
14 tax credit allowed under this chapter.

15 (b) Eligibility criteria. To be eligible for the aviation fuel tax  
16 credit, the taxpayer shall have been issued a certificate of tax credit  
17 by the New York state energy research and development authority pursuant  
18 to section 5-112 of the energy law, which certificate shall set forth  
19 the amount of the credit that may be claimed for the taxable year. The  
20 taxpayer shall be allowed to claim only the amount listed on the certifi-  
21 cate of tax credit for the taxable year. A taxpayer that is a partner  
22 in a partnership, member of a limited liability company, or shareholder  
23 in a subchapter S corporation that has received a certificate of tax  
24 credit shall be allowed its pro rata share of the credit earned by the  
25 partnership, limited liability company, or subchapter S corporation.

26 (c) Tax return requirement. The taxpayer shall be required to attach  
27 to its tax return, in the form prescribed by the commissioner, proof of  
28 receipt of its certificate of tax credit issued by the New York state  
29 energy research and development authority.

30 (d) Information sharing. Notwithstanding any provision of this chap-  
31 ter, employees of the division of criminal justice services and the  
32 department shall be allowed and are directed to share and exchange:

33 (1) information derived from tax returns or reports that is relevant  
34 to a taxpayer's eligibility to participate in the sustainable aviation  
35 fuel tax credit program;

36 (2) information regarding the credit applied for, allowed, or claimed  
37 pursuant to this section and taxpayers that are applying for the credit  
38 or that are claiming such credit; and

39 (3) information contained in or derived from credit claim forms  
40 submitted to the department and applications for admission into the  
41 sustainable aviation fuel tax credit program. All information exchanged  
42 between the department, the New York state energy research and develop-  
43 ment authority and the department of environmental conservation shall  
44 not be subject to disclosure or inspection under the state's freedom of  
45 information law.

46 (e) Credit recapture. If a certificate of tax credit issued by the New  
47 York state energy research and development authority is revoked by such  
48 department, the amount of credit described in this section and claimed  
49 by the taxpayer prior to such revocation shall be added back to tax in  
50 the taxable year in which any such revocation becomes final. Post credit  
51 issuance revocation shall only apply to the previous taxable year.

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

54 (1) article 9: section 187-s;

55 (2) article 9-A: section 210-b, subdivision 61;

56 (3) article 22: section 606, subsection (www).

§ 3. The tax law is amended by adding a new section 187-s to read as follows:

§ 187-s. Sustainable aviation fuel tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section fifty of this chapter, against the tax imposed by this article.

(b) Application of credit. In no event shall the credit under this section be allowed in an amount that will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-two 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 shall be treated as an overpayment of tax to be refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

§ 4. Section 210-B of the tax law is amended by adding a new subdivision 61 to read as follows:

61. Sustainable aviation fuel tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section fifty of this chapter, against the tax imposed by this article.

(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 fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credits allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

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

(www) Sustainable aviation fuel tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section fifty 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 the taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

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

|  |                                  |
|--|----------------------------------|
| <u>(lii) Sustainable aviation fuel</u> | <u>Amount of credit under</u>    |
| <u>tax credit under subsection</u>     | <u>subdivision sixty-one of</u>  |
| <u>(www)</u>                           | <u>section two hundred ten-B</u> |

§ 7. This act shall take effect immediately.