STATE OF NEW YORK

9544

IN SENATE

March 23, 2026

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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

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

Section 1. Subdivision (a) and paragraph 1 of subdivision (b) of section 28 of the tax law, as added by section 1 of part X of chapter 62 of the laws of 2006, subdivision (a) as amended by section 1 of part K of chapter 59 of the laws of 2012, are amended to read as follows:

(a) General. A taxpayer subject to tax under article nine, nine-A or twenty-two of this chapter shall be allowed a credit against such tax pursuant to the provisions referenced in subdivision (d) of this section. The credit (or pro rata share of earned credit in the case of a partnership) for each gallon of biofuel produced at a biofuel plant on or after January first, two thousand [~~six~~] twenty-two shall equal fifteen cents per gallon after the production of the first forty thousand gallons per year presented to market. The credit under this section shall be capped at two and one-half million dollars per taxpayer per taxable year for up to no more than four consecutive taxable years per biofuel plant. If the taxpayer is a partner in a partnership or shareholder of a New York S corporation, then the cap imposed by the preceding sentence shall be applied at the entity level, so that the aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed two and one-half million dollars. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand [~~twenty~~] twenty-seven.

(1) "Biofuel" means a fuel which includes biodiesel [~~and ethanol~~], renewable diesel and renewable hydrocarbon diesel. The term "biodiesel" shall mean a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of American Society of Testing and

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

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Materials designation D 6751-02. The [~~term "ethanol" shall mean ethyl alcohol manufactured in the United States and its territories and sold (i) for fuel use and which has been rendered unfit for beverage use in a manner and which is produced at a facility approved by the federal bureau of alcohol, tobacco and firearms for the production of ethanol for fuel, or (ii) as denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use~~] terms "renewable diesel" and "renewable hydrocarbon diesel" mean a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal Environmental Protection Agency in 40 C.F.R. Part 79 (2008) and conforms to the specifications of ASTM D975. Renewable diesel and renewable hydrocarbon diesel shall not include any fuel from co-processed biomass with a feedstock that is not biomass. The term "biofuel" may also include any other standard approved by the New York state energy and research development authority.

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

§ 187-c. Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section twenty-eight of this chapter, as added by part X of chapter sixty-two of the laws of two thousand six, against the tax imposed by this article. Provided, however, that the amount of such credit allowed against the tax imposed by section one hundred eighty-four of this article shall be the excess of the amount of such credit over the amount of any credit allowed by this section against the tax imposed by section one hundred eighty-three of this article. 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 the credit allowed under this section for any taxable year reduces the tax to such amount, 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 chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand [~~twenty~~] twenty-seven.

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

24. Biofuel production credit. [~~(a) General.~~] A taxpayer shall be allowed a credit, to be computed as provided in section twenty-eight of this chapter added as part X of chapter sixty-two of the laws of two thousand six, 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 fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit 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. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand [~~twenty~~] twenty-seven.

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

(jj) Biofuel production credit. A taxpayer shall be allowed a credit to be computed as provided in section twenty-eight of this chapter, as added by part X of chapter sixty-two of the laws of two thousand six, against the tax imposed by this article. If the amount of the credit allowed under this subsection for any taxable year shall exceed 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. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand [~~twenty~~] twenty-seven.

§ 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to taxable years beginning on and after such date.