

# 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:

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

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

23 (1) "Biofuel" means a fuel which includes biodiesel ~~[and ethanol]~~,  
24 renewable diesel and renewable hydrocarbon diesel. The term "biodiesel"  
25 shall mean a fuel comprised exclusively of mono-alkyl esters of long  
26 chain fatty acids derived from vegetable oils or animal fats, designated  
27 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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1 Materials designation D 6751-02. The [~~term "ethanol" shall mean ethyl~~  
2 ~~alcohol manufactured in the United States and its territories and sold~~  
3 ~~(i) for fuel use and which has been rendered unfit for beverage use in a~~  
4 ~~manner and which is produced at a facility approved by the federal~~  
5 ~~bureau of alcohol, tobacco and firearms for the production of ethanol~~  
6 ~~for fuel, or (ii) as denatured ethanol used by blenders and refiners~~  
7 ~~which has been rendered unfit for beverage use]~~ terms "renewable diesel"  
8 and "renewable hydrocarbon diesel" mean a diesel fuel substitute  
9 produced from nonpetroleum renewable sources, including vegetable oils  
10 and animal fats, that meets the registration requirements for fuels and  
11 fuel additives established by the federal Environmental Protection Agen-  
12 cy in 40 C.F.R. Part 79 (2008) and conforms to the specifications of  
13 ASTM D975. Renewable diesel and renewable hydrocarbon diesel shall not  
14 include any fuel from co-processed biomass with a feedstock that is not  
15 biomass. The term "biofuel" may also include any other standard  
16 approved by the New York state energy and research development authori-  
17 ty.

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

20 § 187-c. Biofuel production credit. A taxpayer shall be allowed a  
21 credit to be computed as provided in section twenty-eight of this chap-  
22 ter, as added by part X of chapter sixty-two of the laws of two thousand  
23 six, against the tax imposed by this article. Provided, however, that  
24 the amount of such credit allowed against the tax imposed by section one  
25 hundred eighty-four of this article shall be the excess of the amount of  
26 such credit over the amount of any credit allowed by this section  
27 against the tax imposed by section one hundred eighty-three of this  
28 article. In no event shall the credit under this section be allowed in  
29 an amount which will reduce the tax payable to less than the applicable  
30 minimum tax fixed by section one hundred eighty-three of this article.  
31 If, however, the amount of the credit allowed under this section for any  
32 taxable year reduces the tax to such amount, the excess shall be treated  
33 as an overpayment of tax to be credited or refunded in accordance with  
34 the provisions of section six hundred eighty-six of this chapter.  
35 Provided, however, the provisions of subsection (c) of section one thou-  
36 sand eighty-eight of this chapter notwithstanding, no interest shall be  
37 paid thereon. The tax credit allowed pursuant to this section shall  
38 apply to taxable years beginning before January first, two thousand  
39 [~~twenty~~] twenty-seven.

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

43 24. Biofuel production credit. [~~(a) General.~~] A taxpayer shall be  
44 allowed a credit, to be computed as provided in section twenty-eight of  
45 this chapter added as part X of chapter sixty-two of the laws of two  
46 thousand six, against the tax imposed by this article. The credit  
47 allowed under this subdivision for any taxable year shall not reduce the  
48 tax due for such year to less than the fixed dollar minimum amount  
49 prescribed in paragraph (d) of subdivision one of section two hundred  
50 ten of this article. However, if the amount of credit allowed under this  
51 subdivision for any taxable year reduces the tax to such amount or if  
52 the taxpayer otherwise pays tax based on the fixed dollar minimum  
53 amount, any amount of credit thus not deductible in such taxable year  
54 shall be treated as an overpayment of tax to be credited or refunded in  
55 accordance with the provisions of section one thousand eighty-six of  
56 this chapter. Provided, however, the provisions of subsection (c) of

1 section one thousand eighty-eight of this chapter notwithstanding, no  
2 interest shall be paid thereon. The tax credit allowed pursuant to this  
3 section shall apply to taxable years beginning before January first, two  
4 thousand [~~twenty~~] twenty-seven.

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

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

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