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:

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

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

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

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

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

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

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

LBD08509-04-5

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

4. As used in this section, the following terms shall have the following meanings:

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

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

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

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

e. "Office" means the New York state energy research and development authority established pursuant to article eight of the public authorities law.

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

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

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

(A) the American Society for Testing and Materials International Standard D7566; or

(B) Standard D1655;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) article 9: section 187-s;

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

(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:

(lii) Sustainable aviation fuel tax credit under subsection (www)	**Amount of credit under subdivision sixty-one of section two hundred ten-B**

§ 7. This act shall take effect immediately.