

## **Alternative Fuels Credit**

### **Introduction**

On August 7, 1997, Governor George E. Pataki signed into law Chapter 389 of the Laws of 1997. This chapter amended the New York State Tax Law to provide a tax credit for the purchase of new electric or other alternative (clean-fuel) vehicles, or the conversion of gasoline or diesel-powered vehicles to clean fuel use. Investments in new clean-fuel vehicle refueling property also qualify for the credit.

The credit applies to vehicles and refueling property which are eligible for the federal electric vehicles credit under section 30 of the Internal Revenue Code (IRC) or the clean-fuel deduction under section 179-A of the IRC.

The credits apply to property placed in service in tax years **beginning after 1997 and before 2003**. The credit for vehicles is available for both business and personal vehicles registered in New York State, while the credit for refueling property is available only when the property is used in a trade or business located in New York State.

A sales and use tax exemption for these vehicles and property is also provided (see page 6).

### **Who is Eligible**

- Individuals, estates, and trusts taxable under Article 22 of the Tax Law;
- Partners in a partnership, including members of an LLC that is treated as a partnership for federal tax purposes, shareholders of a New York S corporation, and beneficiaries of an estate or trust who are taxable under Article 22 of the Tax Law (the personal income tax);
- Corporations taxable under Article 9, sections 183, 184, 185 or 186 of the Tax Law; and,
- Corporations taxable under Article 9-A of the Tax Law.

Gas or electric corporations that are subject to the supervision of the Department of Public Service are not eligible for either the tax credit or the sales tax exemption on electric vehicles.

### **Definitions for Corporate Taxes and Personal Income Tax**

**Electric vehicle** is defined by reference to Section 30(c) of the Internal Revenue Code (IRC). It is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electric current. The original use must commence with the taxpayer, and the vehicle must be acquired for use by the taxpayer and not for resale.

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**Incremental cost** of an electric vehicle means the excess of the cost of an electric vehicle over the cost of a gasoline-powered vehicle that is similar in size and style.

**Motor vehicle** means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least four wheels.

**Clean-fuel** means natural gas, liquefied petroleum gas, hydrogen, and electricity. It also means any other fuel that is at least 85%, singly or in combination, methanol, ethanol, any other alcohol, or ether.

**Clean-fuel vehicle property** is the same as federal “qualified clean-fuel vehicle property” defined by section 179A(c) of the IRC. This property includes the engine, exhaust components, and fuel storage and delivery components that enable the vehicle to use clean-fuel (other than electricity) either in the retrofit of an existing vehicle or in a manufacturer’s original equipment vehicle. The original use must commence with the taxpayer and the vehicle must be acquired for use by the taxpayer and not for resale. In the case of a vehicle originally manufactured to use clean fuel or a vehicle that is powered by both clean fuel and by other fuel, only the incremental cost of the clean-fuel vehicle property (engine, exhaust components, and fuel storage and delivery components) that enables the vehicle to use clean-fuel is included.

**Clean-fuel vehicle refueling property** is defined by section 179A(d) of the IRC. This includes property, other than buildings and structural components of buildings, that is used for storing or dispensing clean-fuel into the tank of a motor vehicle powered by such fuel or for recharging electric vehicles. The property must be located at the point where the vehicles are refueled or recharged, it must be eligible for the depreciation deduction, and the original use must commence with the taxpayer.

### **Amount of Credit**

**(1) 50% of the incremental cost of new electric vehicles** registered in New York State for which a federal credit is allowed under section 30 of the Internal Revenue Code (IRC). The maximum credit is \$5,000 per electric vehicle.

*Example: In 1998, an individual purchases a new electric vehicle for \$40,000 that qualifies for the federal 10% electric vehicle credit. The vehicle is for personal use and is registered in New York State. The cost of a comparable gasoline-powered vehicle is \$25,000, making the incremental cost of the electric vehicle \$15,000 (\$40,000 - \$25,000). This incremental cost multiplied by the credit rate of 50% results in a tentative credit of \$7,500.*

*However, since \$7,500 exceeds the \$5,000 per vehicle limitation, this taxpayer will receive the maximum credit of \$5,000 for the purchase of this vehicle.*

If taxpayers elect not to claim the federal credit on qualified property, they may still claim the New York State credit. For New York purposes, the cost is not limited by the federal credit

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limitations at IRC section 30(b), and the credit may be allowed for the entire incremental cost even if some or all of the cost was expensed under section 179 of the IRC.

**(2) 60% of the cost of new clean-fuel components of vehicles** registered in New York State for which a deduction is allowed under section 179A of the IRC. For New York State purposes, the cost is not limited by the federal expense limits of IRC section 179A(b)(1), and the credit may be allowed for the entire cost even if some or all of the cost is expensed under IRC section 179.

The maximum credit is \$5,000 for a vehicle with a gross vehicle weight rating of 14,000 pounds or less, and \$10,000 for all other vehicles. In the case of a retrofit of an existing vehicle, the cost of the property includes the cost of installation.

*Example: In 1999, a corporation converts both a gasoline- powered car weighing 4,000 pounds and a diesel- powered truck weighing 18,000 pounds to run on alternative fuels. Both vehicles are registered in New York State. The cost of the clean- fuel components of the car are \$3,000, and the cost of the clean-fuel components of the truck are \$20,000. These costs include installation.*

*The credit is computed as follows:*

|                   |  |
|-------------------|--|
| <i>Car.....</i>   | <i>\$3,000 x 60% = \$1,800 (limited to \$5,000) = \$1,800</i>            |
| <i>Truck.....</i> | <i>\$20,000 x 60% = \$12,000 (limited to \$10,000) = <u>\$10,000</u></i> |
|                   | <i>Total Credit.....\$11,800</i>   |

**(3) 50% of the cost of new clean-fuel vehicle refueling property** used in a trade or business located in New York State, and for which a deduction is allowed under Section 179A of the IRC. For New York State purposes, the cost is not limited by the federal expense limits of IRC section 179(b)(2), and the credit may be allowed even if some or all of the cost is expensed under IRC section 179.

*Example: In 2001, an individual purchases a building for \$100,000 and refueling property for \$40,000 to be used in the individual's business of operating a compressed natural gas station in New York. The building and refueling property qualify for a depreciation deduction, and the individual is the original user of the property.*

*The credit is computed as follows:*

|                                |   |
|--------------------------------|---|
| <i>Building.....</i>           | <i>Not Qualified*      -0-</i>          |
| <i>Refueling Property.....</i> | <i>\$40,000 x 50% = <u>\$20,000</u></i> |
|                                | <i>Total Credit.....\$20,000</i>        |

*\*Only clean-fuel vehicle refueling property qualifies for the credit. Buildings and their structural components are excluded from the definition of clean-fuel vehicle refueling property.*

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## **How to Claim This Credit**

Article 22 personal income taxpayers claim this credit by filing Form IT-253. Article 9 or 9-A corporate taxpayers file Form CT-40. These forms are filed with the taxpayers' annual tax return.

## **Leased Property**

A taxpayer is eligible for the New York credit on vehicles (or refueling property) which are eligible for the federal credit or deduction. A taxpayer which is a lessor of such vehicles or property may qualify for the federal credit or deduction, and accordingly would qualify for the New York credit, if the taxpayer has acquired the vehicles or property for use in its leasing business and not for resale. However, vehicles leased to public (governmental) or tax-exempt (charitable) organizations generally do not qualify for federal credit or deduction, and accordingly would not qualify for the New York credit.

## **Application and Carryover of Credit**

This credit is not refundable. However, any amount of credit not deductible in the current tax year may be carried forward for an unlimited number of years. For personal income taxpayers, the credit is only allowed against the regular (tax table/tax rate schedule) tax. It is not allowed against the minimum income tax or the separate tax on lump-sum distributions.

For corporations taxable under sections 183 and 184 of Article 9, the credit and carryover of the credit are first applied against the tax imposed under section 183, and cannot reduce the section 183 tax below the minimum tax. Any excess is then applied against the tax imposed by section 184. For section 185 and 186 filers, the credit and carryover of the credit may not reduce the tax below the fixed-dollar minimum.

For corporations taxable under Article 9-A, the credit and carryover of the credit may not reduce the tax below the alternative minimum tax or the fixed-dollar minimum tax, whichever is higher. In addition, Article 9-A taxpayers may elect to transfer their credit to an affiliate (see below).

## **Election to Transfer Credit**

**Only Article 9-A taxpayers** may elect to transfer their alternative fuels credit to an affiliate. An affiliate means the taxpayer's parent, an 80% or more owned subsidiary, or other member of the taxpayer's affiliated group. Both the corporation transferring the credit and the corporation receiving the credit must be Article 9-A taxpayers.

The taxpayer and the affiliate must both consent to the election. Once the election is made, the credit becomes the credit of the affiliate, and any credit recapture (see below) becomes chargeable to the affiliate. The election is made on Form CT-40 at the time the return is filed.

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## **Credit Recapture**

### Vehicles

If a vehicle is modified within three years of the date it is placed in service so that it is no longer propelled by electricity or clean-burning fuel, some or all of the credit must be recaptured. If the taxpayer sells or disposes of the vehicle, the recapture is required only if the taxpayer knows or has reason to know that the property will be so modified. In either event, the vehicle ceases to qualify, and the amount of credit to be recaptured is as follows:

- 100% if the vehicle ceases to qualify within the first full year from the date placed in service;
- 66 $\frac{2}{3}$  % if the vehicle ceases to qualify within the second full year from the date placed in service; and,
- 33 $\frac{1}{3}$  % if the vehicle ceases to qualify within the third full year from the date placed in service.

### Refueling Property

A portion of the credit must be recaptured if within the recovery period (depreciation life) the property:

- (a) ceases to be used as clean-fuel vehicle refueling property, or
- (b) less than 50% of the use of the property in a taxable year is in a trade or business in New York State, or
- (c) the taxpayer receiving the credit sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in (a) or (b) above.

The recapture amount is the amount of the credit multiplied by the number of nonqualified years (including the recapture year) in the recovery period, divided by the total recovery period.

*Example: In year 1, a taxpayer claims a credit of \$10,000 on refueling property that has a recovery period of 10 years. The taxpayer uses the property for 3 years and disposes of it during year 4. The recapture is computed as follows:*

$$\text{Credit} \times \frac{\text{Nonqualified Years Including Recapture Year}}{\text{Total Recovery Period}} = \$10,000 \times \frac{7}{10} = \$7,000$$

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## **Sales Tax Exemption**

The sales and use tax exemption for alternative-fuel vehicles under section 1115(p) of the Tax Law, originally scheduled to expire on August 31, 1997, has been extended through February 28, 2003.

In addition, the exemption has been expanded to include alternative-fuel vehicle refueling property, **effective March 1, 1998, and ending on February 28, 2003**. Alternative-fuel vehicle refueling property is property predominantly used for the storage or dispensing of alcohol, natural gas, propane, or hydrogen into the fuel tank of an alternative fuel vehicle. It also includes property predominantly used for the recharging of an electric vehicle. The storage, dispensing, or recharging must take place at the point where the fuel is delivered into the fuel tank of the vehicle or where the electric vehicle is recharged.

To qualify for the exemption, the refueling property must be depreciable, and the original use must begin with the purchaser.

The exemption for alternative-fuel refueling property includes receipts from the retail sale of this property (including sales to contractors) and receipts from the service of installing this property.