

## Amendments Relating to the Alternative Fuels Credits and Exemption

### Introduction

Governor George E. Pataki recently signed into law Chapter 597 of the Laws of 2002 which extends and makes technical corrections to the provisions contained in Chapter 389 of the Laws of 1997 and Chapter 541 of the Laws of 1992, relating to the alternative fuels credits and sales and use tax exemption.

#### Chapter 597:

- extends existing provisions that provide for the corporate and income tax credits and sales and use tax exemption for new alternative fuel vehicles and alternative fuel vehicle refueling property;
- retroactively adds a definition of a *qualified hybrid vehicle* as property qualifying for the corporate and income tax alternative fuels credits and prescribes the amount of credit available; and
- retroactively provides a predetermined *incremental cost* of \$3,000 that may be used to claim a sales and use tax exemption for a *qualified hybrid vehicle* under certain circumstances.

The provisions of Chapter 389 of the Laws of 1997 relating to the alternative fuels credits and sales and use tax exemption are explained in detail in TSB-M-98(6)C, (11)S and (4)I. Information about the sales and use tax exemption for alternative fuel vehicles is also provided in TSB-M-93(1)S. Many of the provisions discussed in these TSB-Ms are not affected by the current amendments (e.g., eligibility requirements, information relating to electric vehicles, and clean fuel vehicle property). For information concerning these provisions, we suggest that taxpayers refer to TSB-M-98(6)C, (11)S and (4)I and TSB-M-93(1)S.

### Definitions

Chapter 597 defines the term *qualified hybrid vehicle* to mean a motor vehicle, as defined in section 125 of the Vehicle and Traffic Law, other than an electric vehicle, that:

- draws propulsion from both,
  - an internal combustion engine (or heat engine that uses combustible fuel); and
  - an energy storage device; and

- employs a regenerative vehicle braking system that recovers waste energy to charge such energy storage device.

The existing definitions for electric vehicle, motor vehicle, clean-fuel, clean-fuel vehicle property and clean fuel vehicle refueling property remain unchanged. See TSB-M-98(6)C,(11)S and (4)I.

### **Corporate Franchise and Personal Income Taxes**

For corporations subject to the franchise taxes imposed under Article 9-A or under sections 183, 184, 185 and 186 of Article 9 of the Tax Law, and taxpayers subject to the income tax imposed under Article 22 of the Tax Law, the alternative fuels credit is available for property placed in service during taxable years ending on or before December 31, 2003. Prior to Chapter 597, the credit was available for property placed in service during taxable years ending on or before December 31, 2002.

For taxable years beginning on or after January 1, 2000, the amount of the alternative fuels credit for each *qualified hybrid vehicle* registered in New York State is \$2,000. Taxpayers may **not** claim both the alternative fuels credit for *qualified hybrid vehicles* and the alternative fuels credit for clean-fuel vehicle property on the same vehicle. For information concerning the amount of the credit for electric vehicles, clean-fuel vehicle property, and clean-fuel vehicle refueling property, see TSB-M-98(6)C, (4)I.

Article 22 personal income tax taxpayers claim this credit by filing Form IT-253, *Alternative Fuels Credit*. Article 9 and 9-A corporate taxpayers file Form CT-40, *Claim for Alternative Fuels Credit*. These forms are filed with the taxpayer's annual tax return.

If a taxpayer had previously purchased a *qualified hybrid vehicle* and did not claim the credit or claimed the credit for a lesser amount, the taxpayer may be entitled to file a claim for refund. See section "Claims for Credit or Refund" for further information.

In the case of a *qualified hybrid vehicle*, the alternative fuels credit is required to be recaptured if the *qualified hybrid vehicle* ceases to qualify as a *qualified hybrid vehicle* or the taxpayer sells or disposes of the vehicle and knows or has reason to know that the vehicle will be modified so that it no longer qualifies as a *qualified hybrid vehicle*. For more information concerning the recapture of the alternative fuels credit, see TSB-M-98(6)C, (4)I.

### **Sales and Use Tax Exemption**

Chapter 597 amends Chapter 389 of the Laws of 1997 so that the sunset date for the sales and use tax exemption for alternative fuel vehicles and alternative fuel vehicle refueling property provided for in section 1115(p) of the Tax Law is extended for one year. The exemption is available for property purchased on or before February 29, 2004. Prior to Chapter 597, the exemption was available for property purchased on or before February 28, 2003.

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Additional amendments to section 1115(p) of the Tax Law are further described below. These amendments are retroactive to January 1, 2000, and apply to sales made and uses occurring on or after that date. The definition of the term *dual fuel vehicle* is expanded to include a *qualified hybrid vehicle*. In addition, an *incremental cost* of \$3,000 has been established for use in determining the available sales and use tax exemption on the purchase of a *qualified hybrid vehicle* when no comparable motor vehicle exists. Where a comparable motor vehicle does exist, the *incremental cost* is the excess of the sale price of the *qualified hybrid vehicle* above the sale price of a gasoline-powered vehicle, similar in all other respects but for the equipment necessary to render it an alternative fuel vehicle.

For purchases of new alternative fuel vehicles, model years 2003 and beyond, in order to be eligible for the sales and use tax exemption, the *incremental cost* of the alternative fuel vehicle is required to be separately stated in the written contract or bill given to the purchaser. However, for new model year 2000-2002 *qualified hybrid vehicles*, the *incremental cost* for a vehicle is not required to be separately stated in the written contract or bill.

If a taxpayer paid the sales or use tax on a *qualified hybrid vehicle*, without a reduction based on the *incremental cost*, the taxpayer is eligible to file for a refund of the portion of the sales or use tax paid attributable to the *incremental cost* of the *qualified hybrid vehicle*. See section "Claims for Credit or Refund" for further information.

### Sales Tax Examples

*Example 1:* An individual residing in an 8% taxing jurisdiction signs a contract to purchase a new 2003 alternative fuel vehicle for \$23,400. A comparable gasoline-powered vehicle, similar in all other respects but for the equipment necessary to render it an alternative fuel vehicle, sells for \$20,000. The *incremental cost* of the vehicle which qualifies for the exemption from the sales and use tax is \$3,400.

2003 Alternative Fuel Vehicle	\$23,400
2003 Comparable gasoline-powered vehicle	- <u>20,000</u>
Incremental cost	\$ 3,400

2003 Alternative Fuel Vehicle	\$23,400
Incremental cost	- <u>3,400</u>
Amount subject to sales tax	\$20,000
Sales tax rate	<u>x .08</u>
Tax due	\$ 1,600

For this transaction, the sales and use tax exemption is based on the *incremental cost* of \$3,400, which is the difference between the selling price of the comparable gasoline-powered vehicle and the new alternative fuel vehicle.

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*Example 2:* An individual residing in an 8% taxing jurisdiction signs a contract to purchase a new 2003 *qualified hybrid vehicle* for \$22,400. No comparable gasoline-powered vehicle, similar in all other respects, but for the equipment necessary to render it an alternative fuel vehicle, exists.

2003 Alternative Fuel Vehicle	\$22,400
Incremental cost	<u>- 3,000</u>
Amount subject to sales tax	\$19,400
Sales tax rate	<u>x .08</u>
Tax due	\$ 1,552

For this transaction, because no comparable gasoline-powered vehicle exists, the *incremental cost* used to determine the sales and use tax exemption is \$3,000. Additionally, since the *qualified hybrid vehicle* is a 2003 model year, the *incremental cost* is required to be separately stated on the written contract or bill given to the purchaser.

*Example 3:* Assume the same facts as Example 2, however, the vehicle is a new 2002 *qualified hybrid vehicle*. Since the *qualified hybrid vehicle* is a 2002 model year, the *incremental cost* is not required to be separately stated in the written contract or bill given to the purchaser. The individual will still realize the \$3,000 reduction based on the *incremental cost*, and be subject to sales tax on \$19,400.

### Claims for Credit or Refund

The corporate franchise tax and personal income tax alternative fuels credits for *qualified hybrid vehicles* are allowable for property placed in service in taxable years beginning on or after January 1, 2000. Taxpayers who did not originally claim the credit or claimed the credit for a lesser amount may be entitled to file claims for refund. Article 22 personal income tax taxpayers may file claims for refund by filing the appropriate amended income tax return. Article 9 and 9-A corporate taxpayers may file claims for refund by filing Form CT-8, *Claim for Credit or Refund of Corporation Tax Paid*.

Taxpayers who are eligible for a refund of the sales and use tax paid on the *incremental cost* of a *qualified hybrid vehicle* may file claims for refund by filing Form AU-11, *Application for Credit or Refund*. The claim for refund must be accompanied by appropriate documentation as explained in the instructions for the form, and must generally be filed within three years after the date when the sales tax was required to be paid to the Department. Any sales tax refund claim which is filed within three years from the vehicle purchase date is considered timely. For individuals who previously purchased a model year 2000-2002 *qualified hybrid vehicle*, please note the special rules on page 3 pertaining to separately stating the *incremental cost* on the contract or bill.

The above forms are available by visiting our website at <http://www.tax.state.ny.us> or calling 1 800 462-8100.