

Amendments to the Alternative Fuels Credits and Exemptions

Introduction

Governor George E. Pataki recently signed into law Chapter 60 of the Laws of 2004, which extends and amends existing provisions relating to the alternative fuels credits and exemptions.

Corporate franchise and personal income taxes

For corporations subject to the franchise taxes imposed under Article 9-A or under sections 183, 184, 185, or 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 credits have been extended for one year. The credits are now available for qualifying property placed in service in taxable years beginning before January 1, 2005. Prior to the amendments, the credits were only available for property placed in service in taxable years beginning before January 1, 2004.

Additionally, for taxable years beginning on or after January 1, 2004, a qualified hybrid vehicle* only qualifies for the alternative fuels credit for qualified hybrid vehicles. For taxable years beginning prior to January 1, 2004, a qualified hybrid vehicle could qualify for either the alternative fuels credit for qualified hybrid vehicles or the alternative fuels credit for clean-fuel vehicle property.

Article 22 personal income tax taxpayers claim this credit by filing Form IT-253, *Alternative Fuels Credit*. Article 9 and Article 9-A corporate taxpayers file Form CT-40, *Claim for Alternative Fuels Credit*. These forms are filed with the taxpayer's annual return. Taxpayers who did not originally claim the credit or who were unable to claim the credit may be entitled to file claims for refund. See section "Claims for credit or refund" for further information.

For more information on the alternative fuels credits, see TSB-M-02(6)C, (8)S, (10)I and TSB-M-98(6)C, (11)S, (4)I.

Sales and use tax exemptions

The sales and use tax exemption for purchases of new alternative fuel vehicles and alternative fuel vehicle refueling property is extended without interruption for one year. This exemption is available for purchases and uses of such vehicles and property made on or before February 28, 2005. Prior to the amendments, the exemption was available for such vehicles and property purchased on or before February 29, 2004.

In addition, the definition of *incremental cost* with respect to a qualified hybrid vehicle* has been amended. The *incremental cost* of a qualified hybrid vehicle purchased on or after March 1, 2004, is \$3,000, regardless of whether a comparable motor vehicle exists. For vehicles purchased prior to March 1, 2004, the *incremental cost* of a qualified hybrid vehicle:

- when a comparable motor vehicle existed, was the excess of the sales price of the qualified hybrid vehicle above the sales price of a gasoline-powered vehicle, similar in all other respects but for the equipment necessary to render it an alternative fuel vehicle;
- when no comparable motor vehicle existed, was \$3,000.

The incremental cost of all new alternative fuel vehicles, including qualified hybrid vehicles, must continue to be separately stated in the written contract or bill given to the purchaser to be eligible for the exemption. However, for a qualified hybrid vehicle purchased during the period beginning March 1, 2004, and ending August 20, 2004, the incremental cost of such a vehicle is not required to be separately stated in the written contract or bill provided to the purchaser.

Taxpayers who did not receive an exemption for an alternative fuel vehicle or alternative fuel vehicle refueling property at the time of the sale may be eligible for a credit or refund. See section "Claims for credit or refund" for further information.

For more information on the sales and use tax exemptions for alternative fuel vehicles and alternative fuel vehicle refueling property, see TSB-M-02(6)C, (8)S, (10)I, TSB-M-98(6)C, (11)S, (4)I, and TSB-M-93(1)S.

Claims for credit or refund

The corporate franchise tax and personal income tax alternative fuels credits for qualified property are allowable for property placed in service in taxable years beginning before January 1, 2005. Taxpayers who did not originally claim the credit or who were unable to claim the credit may be entitled to file for a 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 either Form CT-8, *Claim for Credit or Refund of Corporation Tax Paid*, or an amended return. Generally, any corporate or personal income tax claim for credit or refund which is filed within three years from the time the return was filed or two years from the time the tax was paid will be considered timely.

The sales and use tax exemption for alternative fuel vehicles and alternative fuel vehicle refueling property is available for purchases and uses of such vehicles and property made on or before February 28, 2005. Taxpayers who did not receive an exemption for such vehicles or property at the time of the sale may be eligible for a credit or refund of the tax paid. Taxpayers may claim a credit or refund of sales or use tax paid by filing form AU-11, *Application for Credit or Refund of Sales or Use Tax*. The claim must be accompanied by the 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 Tax Department.

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

* It should be noted the definition of a qualified hybrid vehicle under section 606(p)(6)(E) of the Tax Law was not changed by Chapter 60. Therefore, any vehicle, including one marketed as a mild hybrid vehicle, must meet all of the requirements of the definition, including the regenerative vehicle braking system requirement.