

Clean Heating Fuel Credit

Chapter 57 of the Laws of 2008 reinstates the clean heating fuel credit. The credit was previously available for tax years 2006 and 2007 for clean heating fuel (bioheat) purchased on or after July 1, 2006, and before July 1, 2007. Under the new law, the credit also applies to bioheat purchased on or after January 1, 2008, and before January 1, 2012.

General

For tax years beginning in 2006 through 2011, a New York State personal income tax credit and Article 9-A corporation franchise tax credit is allowed for bioheat that is used for space heating or hot water production for residential purposes within New York State. The credit applies to bioheat purchased on or after July 1, 2006, and before July 1, 2007, and on or after January 1, 2008, and before January 1, 2012. (There is no credit available for bioheat purchased on or after July 1, 2007, and before January 1, 2008.)

Who is eligible

This credit may be claimed by:

- Resident and nonresident individuals, estates, and trusts who are taxable under Article 22 of the Tax Law (the Personal Income Tax). This includes an individual, estate, or trust that is a partner in a partnership (including a member of an LLC that is treated as a partnership for federal income tax purposes), a shareholder of a New York S corporation, or a beneficiary of an estate or trust.
- Corporations that are taxable under Article 9-A of the Tax Law (the Franchise Tax on Business Corporations), including a corporation that is a partner in a partnership (or a member of an LLC that is treated as a partnership for federal income tax purposes).

Definitions

For purposes of this credit:

Bioheat means a fuel comprised of biodiesel blended with conventional home heating oil, which meets the specifications of the American Society of Testing and Materials (ASTM) designation D 396 or D 975.

Biodiesel means a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100 (pure biodiesel), which meets the specifications of ASTM designation D 6751.

Residential purposes means any use of a structure, or part of a structure, as a place of abode maintained by or for a person, whether or not owned by such person, on other than a temporary or transient basis. This includes multi-family dwelling units such as multi-family homes, apartment buildings, condominiums, and cooperative apartments. *Residential purposes* do not include the part of a structure used as a hotel, motel, or similar space, except for those units used by the same occupant for at least 90 consecutive days. The structure must be located in New York State.

Amount of credit

The credit amount equals \$0.01 (one cent) per gallon for each percent of biodiesel included in the bioheat, not to exceed \$0.20 (twenty cents) per gallon, purchased by the taxpayer on or after July 1, 2006, and before July 1, 2007, and on or after January 1, 2008, but before January 1, 2012. The bioheat must be used for space heating or hot water production for residential purposes within New York State. If a taxpayer makes more than one purchase of bioheat that qualifies for this credit and the percentage of biodiesel included in the bioheat varies, a separate calculation must be made for each purchase of bioheat. If two or more taxpayers share in the purchase of bioheat, the amount of the credit allowable to each taxpayer is to be prorated according to the percentage of the total bioheat purchased by each taxpayer.

The credit is claimed for the tax year (2006 through 2011) in which the bioheat is purchased. In general, bioheat is deemed purchased on the date of delivery regardless of when the payment is made. For example, bioheat that is paid for through a budget payment plan whereby the taxpayer makes monthly payments to the supplier and the supplier charges the taxpayer's account for the cost of the bioheat delivered, will be deemed purchased on the date the delivery was made, even if the taxpayer's budget account does not contain sufficient funds to cover the cost of the delivery. However, bioheat that is purchased under a plan that requires the taxpayer to prepay the supplier for a certain number of gallons of bioheat at a fixed price will be treated as purchased on the date the prepayment was made, not the date of delivery.

In order to properly compute the amount of credit allowed, the taxpayer should have an invoice or bill that includes the following:

- date of purchase (see above),
- number of gallons of bioheat purchased, and
- the percentage of biodiesel included in the bioheat. (Note: The percentage of biodiesel included in the bioheat is the number preceded by the letter "B" in the bioheat designation. For example, bioheat designated B5 contains 5% biodiesel, bioheat designated B20 contains 20% biodiesel, etc.)

Example 1: On December 29, 2008, a calendar-year taxpayer receives a delivery of 100 gallons of bioheat to be used for residential heating purposes within New York State. The invoice requires the taxpayer to pay for the fuel within 30 days of delivery. Each gallon of bioheat

contains 30% biodiesel (B30). Since the credit is \$0.01 per gallon for each percentage of biodiesel included in the bioheat, not to exceed \$0.20 per gallon, the amount of credit allowed for this purchase is limited to \$20.00 (\$0.20 X 100 gallons). Since the bioheat was delivered (purchased) in 2008, the credit is claimed on the taxpayer's 2008 tax return even though the taxpayer may actually pay for the bioheat in 2009.

Example 2: On December 8, 2007, a fiscal-year (July 1, 2007, through June 30, 2008) taxpayer receives a delivery of 250 gallons of bioheat to be used for residential heating purposes within New York State. The invoice requires the taxpayer to pay for the fuel within 30 days of delivery (the taxpayer pays for the bioheat on January 4, 2008). On March 13, 2008, the same taxpayer receives another delivery of 200 gallons of bioheat for the same residence. The bioheat contains 20% biodiesel (B20).

The taxpayer is not allowed a credit for the 250 gallons of bioheat delivered (purchased) on December 8, 2007, since the credit is not allowed for bioheat purchased on or after July 1, 2007, and before January 1, 2008. However, the taxpayer is allowed a credit on its fiscal July 1, 2007, through June 30, 2008, return for the 200 gallons of bioheat delivered (purchased) on March 13, 2008. Since the credit is \$0.01 per gallon for each percentage of biodiesel included in the bioheat, the amount of credit allowed for the March 13, 2008 purchase is \$40.00 (\$0.20 X 200 gallons).

Example 3: On August 15, 2008, a calendar-year taxpayer signs a fixed price contract with a heating fuel supplier and prepays for 1,000 gallons of bioheat. Each gallon of bioheat includes 10% biodiesel (B10). The bioheat will be delivered to the taxpayer's home in New York State and will be used for residential heating purposes. Therefore, the taxpayer will be allowed a credit of \$0.10 per gallon (\$0.01 X 10). As of December 31, 2008, the supplier has delivered only 400 gallons of the 1,000 gallons purchased on August 15, 2008. For tax year 2008, the taxpayer is allowed a credit of \$100.00 (\$0.10 X 1,000 gallons) for the entire purchase of bioheat made on August 15, 2008, even though the remaining 600 gallons of prepaid bioheat will be delivered to the taxpayer in tax year 2009.

Example 4: On August 1, 2008, a calendar-year taxpayer enters into a budget payment plan with a heating fuel supplier for the purchase of bioheat to be used for heating the taxpayer's residence in New York State. The budget plan covers the period from August 1, 2008, to June 30, 2009. The supplier estimates that the taxpayer's fuel cost for this period will be \$2,500. The taxpayer agrees to pay \$250 per month to the supplier for the next 10 months, starting on August 15, 2008, and ending on May 15, 2009. The supplier will deliver bioheat on an as-needed basis. There is no set number of gallons to be delivered under the terms of this plan, and the supplier has the right to adjust the monthly payment amount due based on the taxpayer's actual use and the market price of the bioheat.

The supplier delivers 230 gallons of bioheat on September 20, 2008, that includes 20% biodiesel (B20). The total cost of the September 20, 2008, delivery of bioheat is \$736 (230 X \$3.20/gallon). On December 18, 2008, the supplier delivers another 190 gallons of B20 bioheat at a cost of \$627 (190 X 3.30/gallon).

As of December 31, 2008, the taxpayer has made five payments of \$250 (\$1,250) into the budget payment plan and the supplier has made two deliveries of bioheat (September 20, 2008, and December 18, 2008). The supplier has charged \$1,363 against the taxpayer's account for the two deliveries. The taxpayer's account now indicates a negative balance of \$113.

For tax year 2008, the taxpayer is allowed a credit based on the 420 gallons of bioheat that was delivered (purchased) under the budget payment plan in tax year 2008, even though the taxpayer's budget account had a negative balance after the charge for the deliveries. The amount of credit allowed for the purchase of bioheat in tax year 2008 is \$84 ($\0.20×420 gallons).

On February 6, 2009, the supplier delivers 200 gallons of B20 bioheat at a cost of \$660 (200 X \$3.30/gallon) and on April 4, 2009, the supplier delivers another 130 gallons of B20 bioheat at a cost of \$429 (130 X \$3.30/gallon). There are no other deliveries of bioheat on or before June 30, 2009, which is the end date of the budget payment plan.

Between January 1, 2009, and May 15, 2009, the taxpayer has made five payments of \$250 (\$1,250) into the budget payment plan and the supplier has charged \$1,089 against the taxpayer's account for the deliveries made on February 6, 2009, and April 4, 2009, and \$113 for the negative balance as of December 31, 2008. Accordingly, on June 30, 2009, the taxpayer's account indicates a positive balance of \$48 which will remain in the taxpayer's account for the next heating season.

For tax year 2009, the taxpayer will be allowed a credit of \$66 ($\0.20×330 gallons based on the 330 gallons of bioheat that was delivered (purchased) through June 30, 2009. If the taxpayer purchases additional bioheat after June 30, 2009, but before January 1, 2010, the taxpayer will be entitled to a credit for 2009 based on the additional bioheat purchased.

If a taxpayer purchases bioheat for a premises that has both residential and nonresidential space but has only one tank for the storage of the bioheat fuel, the taxpayer will need to use the following formula to determine the percentage of the premises used for residential purposes in order to properly compute the credit.

For purposes of the formula:

- Hotels, motels, etc., may claim as residential square footage only those units used by the same occupant for at least 90 consecutive days.

- *Common areas* mean any area on the premises used without distinction for both residential and nonresidential purposes.

$$\frac{\text{Square footage of residential areas (excluding common areas)}}{\text{Total square footage of premises (excluding common areas)}} = \% \text{ used for residential purposes (rounded to four decimal places)}$$

The percentage is then multiplied by the number of gallons of bioheat purchased to determine the number of gallons eligible for the credit, as the following example illustrates:

Example 5: Taxpayer X owns a building that has apartments, a restaurant, and retail stores on the premises. The building has one storage tank that is used to store heating fuel for the entire building. X purchases 500 gallons of bioheat on October 12, 2008. Each gallon of bioheat contains 5% biodiesel (B5).

Using the formula (see above), X determines that the percentage of the premises used for residential purposes is 65%. Therefore, 325 gallons (500 X .65) of the bioheat purchased on October 12, 2008, will be eligible for the clean heating fuel credit. Accordingly, the amount of credit allowed for this purchase will be \$16.25 (\$0.05 X 325 gallons).

How to claim this credit

Personal income tax taxpayers claim this credit by filing Form IT-241, *Claim for Clean Heating Fuel Credit*, with their New York State personal income tax return. If the amount of the credit allowed exceeds the taxpayer’s tax for the year, the excess may be credited or refunded without interest.

Article 9-A corporate franchise tax taxpayers claim this credit by filing Form CT-241, *Claim for Clean Heating Fuel Credit*, and attaching it to their franchise tax return. The amount of the credit deducted for the tax year cannot reduce the tax to an amount less than the tax due on the minimum taxable income base or the fixed dollar minimum, whichever is higher. Any amount of credit not deductible in the current tax year may be credited or refunded without interest.

(Tax Law sections 210(39) and 606(mm))

NOTE: A TSB-M is an informational statement of changes to the law, regulations, or Department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information presented in a TSB-M.