

S T A T E O F N E W Y O R K

S. 346--A
Cal. No. 1050

A. 152--A

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 5, 2011

IN SENATE -- Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY -- Introduced by M. of A. SAYWARD -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to establishing a forestry stewardship and habitat conservation credit for personal income and business franchise taxes

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 606 of the tax law is amended by adding a new
2 subsection (aaa) to read as follows:

3 (AAA) FORESTRY STEWARDSHIP AND HABITAT CONSERVATION CREDIT. (1) IN THE
4 CASE OF A TAXPAYER WHO OWNS LAND THAT IS SUBJECT TO AN AGREEMENT WITH
5 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, BY WHICH SUCH LAND IS
6 COMMITTED TO FORESTRY STEWARDSHIP, OR HABITAT CONSERVATION, OR BOTH,
7 THERE SHALL BE ALLOWED A CREDIT FOR TWENTY-FIVE PERCENT OF THE REAL
8 PROPERTY TAXES PAID ON SUCH LAND. IN NO EVENT SHALL THE CREDIT ALLOWED
9 UNDER THIS SUBSECTION IN COMBINATION WITH ANY OTHER CREDIT FOR SUCH REAL

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

LBD01361-02-2

1 PROPERTY TAXES UNDER THIS SECTION EXCEED THE TOTAL AMOUNT OF SUCH TAXES
2 PAID DURING THE TAXABLE YEAR.

3 (2) FOR THE PURPOSES OF THIS SUBSECTION:

4 (A) "ELIGIBLE TRACT" SHALL MEAN A TRACT OF LAND OF AT LEAST
5 TWENTY-FIVE CONTIGUOUS ACRES THAT HAS BEEN INSPECTED BY THE DEPARTMENT
6 OF ENVIRONMENTAL CONSERVATION, A WILDLIFE BIOLOGIST CERTIFIED BY THE
7 WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE AMERICAN
8 FISHERIES SOCIETY, AND BASED ON SUCH INSPECTION IS DETERMINED BY THE
9 DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO BE: VALUABLE HABITAT FOR
10 WILDLIFE, FISH, SHELLFISH OR CRUSTACEA; OR SAFE AND SUITABLE FOR FISH OR
11 WILDLIFE-RELATED RECREATION, INCLUDING FISHING, HUNTING, TRAPPING AND
12 WILDLIFE OBSERVATION; OR BOTH. LAND DIVIDED ONLY BY FEDERAL, STATE,
13 COUNTY OR TOWN ROADS, EASEMENTS OR RIGHTS-OF-WAY, OR ENERGY TRANSMISSION
14 CORRIDORS OR SIMILAR FACILITIES SHALL BE CONSIDERED CONTIGUOUS FOR
15 PURPOSES OF THIS SECTION.

16 (B) "AGREEMENT" SHALL MEAN A WRITTEN AGREEMENT BETWEEN THE DEPARTMENT
17 OF ENVIRONMENTAL CONSERVATION AND THE OWNER OF AN ELIGIBLE TRACT,
18 EXECUTED BY BOTH PARTIES, BY WHICH THE ELIGIBLE TRACT IS COMMITTED TO
19 HABITAT CONSERVATION, OR FORESTRY STEWARDSHIP, OR BOTH, FOR A PERIOD OF
20 NOT LESS THAN FIVE YEARS.

21 (C) "APPROVED HABITAT CONSERVATION PLAN" SHALL MEAN A PLAN, APPROVED
22 BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, FOR THE MANAGEMENT OF
23 AN ELIGIBLE TRACT WHICH SHALL CONTAIN REQUIREMENTS AND STANDARDS WITH
24 WHICH THE OWNER OF THE ELIGIBLE TRACT MUST COMPLY IN ORDER TO CONSERVE
25 THE VALUE OF THE LAND AS WILDLIFE, FISH, SHELLFISH, OR CRUSTACEA HABI-
26 TAT.

27 (D) "FORESTRY STEWARDSHIP" SHALL MEAN PARTICIPATION IN A FOREST
28 CERTIFICATION PROGRAM (SUCH AS FOREST STEWARDSHIP COUNCIL CERTIFICATION,
29 SUSTAINABLE FORESTRY INITIATIVE, AMERICAN TREE FARM PROGRAM, ETC.)
30 RECOGNIZED IN THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSER-
31 VATION.

32 (3) THERE IS HEREBY CREATED A NEW YORK STATE FORESTRY STEWARDSHIP AND
33 HABITAT CONSERVATION PROGRAM FOR THE PURPOSE OF PROVIDING FORESTED LANDS
34 IN THE STATE AND CONSERVING THE VALUE OF LAND IN THE STATE AS WILDLIFE,
35 FISH, SHELLFISH OR CRUSTACEA HABITAT.

36 (4) A LANDOWNER MAY MAKE APPLICATION TO THE DEPARTMENT OF ENVIRON-
37 MENTAL CONSERVATION, ON FORMS PRESCRIBED BY SUCH DEPARTMENT, TO HAVE
38 LAND INCLUDED IN THE NEW YORK STATE HABITAT CONSERVATION AND FORESTRY
39 STEWARDSHIP PROGRAM. IF, BASED ON AN INSPECTION OF THE LAND BY THE
40 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OR A WILDLIFE BIOLOGIST CERTI-
41 FIED BY THE WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE
42 AMERICAN FISHERIES SOCIETY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
43 DETERMINES THAT SUCH LAND IS AN ELIGIBLE TRACT, IT SHALL NOTIFY THE
44 LANDOWNER THAT THE LAND IS ELIGIBLE FOR INCLUSION IN THE NEW YORK STATE
45 HABITAT CONSERVATION AND FORESTRY STEWARDSHIP PROGRAM.

46 (5) THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY, IN ITS
47 DISCRETION, ENTER INTO AGREEMENTS WITH OWNERS OF ELIGIBLE TRACTS FOR
48 PURPOSES OF FORESTRY STEWARDSHIP, OR HABITAT CONSERVATION, OR BOTH. SUCH
49 AGREEMENTS SHALL BE FOR A MINIMUM DURATION OF FIVE YEARS, AND SHALL
50 CONTAIN A DESCRIPTION OF THE PROPERTY THAT IS THE SUBJECT OF THE AGREE-
51 MENT, AND SUCH TERMS AND CONDITIONS AS THE DEPARTMENT DEEMS APPROPRIATE,
52 INCLUDING, BUT NOT LIMITED TO:

53 (A) FOR FORESTRY STEWARDSHIP AGREEMENTS, A DESCRIPTION OF THE PARTIC-
54 IPATION IN A FOREST CERTIFICATION PROGRAM FOR A PERIOD OF NOT LESS THAN
55 FIVE YEARS;

1 (B) FOR HABITAT CONSERVATION AGREEMENTS, A REQUIREMENT THAT THE LAND-
2 OWNER DEVELOP A HABITAT CONSERVATION PLAN AND IMPLEMENT THE PLAN FOR A
3 PERIOD OF NOT LESS THAN FIVE YEARS;

4 (C) FOR HABITAT CONSERVATION AND FORESTRY STEWARDSHIP AGREEMENTS, A
5 REQUIREMENT THAT THE LANDOWNER DEVELOP A HABITAT CONSERVATION PLAN AND
6 IMPLEMENT THE PLAN FOR A PERIOD OF NOT LESS THAN FIVE YEARS; AND A
7 DESCRIPTION OF PARTICIPATION IN A FOREST CERTIFICATION PROGRAM FOR A
8 PERIOD OF NOT LESS THAN FIVE YEARS;

9 (D) A REQUIREMENT THAT THE LANDOWNER'S OBLIGATIONS CONCERNING THE LAND
10 UNDER THE TERMS OF THE AGREEMENT, AS WELL AS ANY BENEFITS, SHALL PASS TO
11 ANY SUCCESSOR IN INTEREST TO SUCH LAND FOR THE DURATION OF THE TERM OF
12 THE AGREEMENT; AND

13 (E) A REQUIREMENT THAT A COPY OF THE AGREEMENT SHALL BE DULY RECORDED
14 AND INDEXED AS SUCH IN THE OFFICE OF THE RECORDING OFFICER FOR THE COUN-
15 TY OR COUNTIES WHERE THE LAND IS SITUATE IN THE MANNER PRESCRIBED BY
16 ARTICLE NINE OF THE REAL PROPERTY LAW; AND THAT ANY SUBSEQUENT INSTRU-
17 MENT OF CONVEYANCE RELATING TO THE PROPERTY ENCUMBERED BY THE AGREEMENT
18 SHALL REFERENCE, BY BOOK AND PAGE NUMBER, THE AGREEMENT; AND THAT SUCH
19 INSTRUMENT SHALL ALSO SPECIFY THAT THE PROPERTY IS SUBJECT TO THE
20 RESTRICTIONS CONTAINED IN THE AGREEMENT; AND THAT AN INSTRUMENT FOR THE
21 PURPOSE OF CREATING, CONVEYING, MODIFYING OR TERMINATING THE AGREEMENT
22 SHALL NOT BE EFFECTIVE UNLESS RECORDED.

23 (6) THE AMOUNT OF THE CREDIT THAT MAY BE CLAIMED BY A TAXPAYER PURSU-
24 ANT TO THIS SUBSECTION SHALL NOT EXCEED TEN THOUSAND DOLLARS IN ANY
25 GIVEN YEAR.

26 (7) IF THE AMOUNT OF THE CREDIT UNDER THIS SUBSECTION FOR ANY TAXABLE
27 YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE
28 TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORD-
29 ANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTI-
30 CLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

31 S. 2. Paragraph 4 of subsection (n) of section 606 of the tax law, as
32 amended by section 2 of part F of chapter 62 of the laws of 2006, is
33 amended to read as follows:

34 (4) Qualified agricultural property. For purposes of this subsection,
35 the term "qualified agricultural property" means land located in this
36 state which is used in agricultural production, and land improvements,
37 structures and buildings (excluding buildings used for the taxpayer's
38 residential purpose) located on such land which are used or occupied to
39 carry out such production. Qualified agricultural property also includes
40 land set aside or retired under a federal supply management or soil
41 conservation program or land that at the time it becomes subject to a
42 conservation easement, as defined under subsection (kk) of this section,
43 met the requirements under this paragraph, AND LAND THAT AT THE TIME IT
44 BECOMES SUBJECT TO AN AGREEMENT AS DEFINED IN SUBSECTION (AAA) OF THIS
45 SECTION MET THE REQUIREMENTS UNDER THIS PARAGRAPH.

46 S. 3. Section 210 of the tax law is amended by adding a new subdivision
47 45 to read as follows:

48 45. FORESTRY STEWARDSHIP AND HABITAT CONSERVATION CREDIT. (1) IN THE
49 CASE OF A TAXPAYER WHO OWNS LAND THAT IS SUBJECT TO AN AGREEMENT WITH
50 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, BY WHICH SUCH LAND IS
51 COMMITTED TO FORESTRY STEWARDSHIP, OR HABITAT CONSERVATION, OR BOTH,
52 THERE SHALL BE ALLOWED A CREDIT FOR TWENTY-FIVE PERCENT OF THE REAL
53 PROPERTY TAXES PAID ON SUCH LAND. IN NO EVENT SHALL THE CREDIT ALLOWED
54 UNDER THIS SUBDIVISION IN COMBINATION WITH ANY OTHER CREDIT FOR SUCH
55 REAL PROPERTY TAXES UNDER THIS SECTION EXCEED THE TOTAL AMOUNT OF SUCH
56 TAXES PAID DURING THE TAXABLE YEAR.

(2) FOR THE PURPOSES OF THIS SUBDIVISION:

(A) "ELIGIBLE TRACT" SHALL MEAN A TRACT OF LAND OF AT LEAST TWENTY-FIVE CONTIGUOUS ACRES THAT HAS BEEN INSPECTED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, A WILDLIFE BIOLOGIST CERTIFIED BY THE WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE AMERICAN FISHERIES SOCIETY, AND BASED ON SUCH INSPECTION IS DETERMINED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO BE: VALUABLE HABITAT FOR WILDLIFE, FISH, SHELLFISH OR CRUSTACEA; OR SAFE AND SUITABLE FOR FISH OR WILDLIFE-RELATED RECREATION, INCLUDING FISHING, HUNTING, TRAPPING AND WILDLIFE OBSERVATION; OR BOTH. LAND DIVIDED ONLY BY FEDERAL, STATE, COUNTY OR TOWN ROADS, EASEMENTS OR RIGHTS-OF-WAY, OR ENERGY TRANSMISSION CORRIDORS OR SIMILAR FACILITIES SHALL BE CONSIDERED CONTIGUOUS FOR PURPOSES OF THIS SECTION.

(B) "AGREEMENT" SHALL MEAN A WRITTEN AGREEMENT BETWEEN THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE OWNER OF AN ELIGIBLE TRACT, EXECUTED BY BOTH PARTIES, BY WHICH THE ELIGIBLE TRACT IS COMMITTED TO HABITAT CONSERVATION, OR FORESTRY STEWARDSHIP, OR BOTH, FOR A PERIOD OF NOT LESS THAN FIVE YEARS.

(C) "APPROVED HABITAT CONSERVATION PLAN" SHALL MEAN A PLAN, APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, FOR THE MANAGEMENT OF AN ELIGIBLE TRACT WHICH SHALL CONTAIN REQUIREMENTS AND STANDARDS WITH WHICH THE OWNER OF THE ELIGIBLE TRACT MUST COMPLY IN ORDER TO CONSERVE THE VALUE OF THE LAND AS WILDLIFE, FISH, SHELLFISH, OR CRUSTACEA HABITAT.

(D) "FORESTRY STEWARDSHIP" SHALL MEAN PARTICIPATION IN A FOREST CERTIFICATION PROGRAM (SUCH AS FOREST STEWARDSHIP COUNCIL CERTIFICATION, SUSTAINABLE FORESTRY INITIATIVE, AMERICAN TREE FARM PROGRAM, ETC.) RECOGNIZED IN THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

(3) THERE IS HEREBY CREATED A NEW YORK STATE FORESTRY STEWARDSHIP AND HABITAT CONSERVATION PROGRAM FOR THE PURPOSE OF PROVIDING FORESTED LANDS IN THE STATE AND CONSERVING THE VALUE OF LAND IN THE STATE AS WILDLIFE, FISH, SHELLFISH OR CRUSTACEA HABITAT.

(4) A LANDOWNER MAY MAKE APPLICATION TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ON FORMS PRESCRIBED BY SUCH DEPARTMENT, TO HAVE LAND INCLUDED IN THE NEW YORK STATE HABITAT CONSERVATION AND FORESTRY STEWARDSHIP PROGRAM. IF, BASED ON AN INSPECTION OF THE LAND BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OR A WILDLIFE BIOLOGIST CERTIFIED BY THE WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE AMERICAN FISHERIES SOCIETY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION DETERMINES THAT SUCH LAND IS AN ELIGIBLE TRACT, IT SHALL NOTIFY THE LANDOWNER THAT THE LAND IS ELIGIBLE FOR INCLUSION IN THE NEW YORK STATE HABITAT CONSERVATION AND FORESTRY STEWARDSHIP PROGRAM.

(5) THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY, IN ITS DISCRETION, ENTER INTO AGREEMENTS WITH OWNERS OF ELIGIBLE TRACTS FOR PURPOSES OF HABITAT CONSERVATION, OR FORESTRY STEWARDSHIP, OR BOTH. SUCH AGREEMENTS SHALL BE FOR A MINIMUM DURATION OF FIVE YEARS, AND SHALL CONTAIN A DESCRIPTION OF THE PROPERTY THAT IS THE SUBJECT OF THE AGREEMENT, AND SUCH TERMS AND CONDITIONS AS THE DEPARTMENT DEEMS APPROPRIATE, INCLUDING, BUT NOT LIMITED TO:

(A) FOR FORESTRY STEWARDSHIP AGREEMENTS, A DESCRIPTION OF THE PARTICIPATION IN A FOREST CERTIFICATION PROGRAM FOR A PERIOD OF NOT LESS THAN FIVE YEARS;

(B) FOR HABITAT CONSERVATION AGREEMENTS, A REQUIREMENT THAT THE LANDOWNER DEVELOP A HABITAT CONSERVATION PLAN AND IMPLEMENT THE PLAN FOR A PERIOD OF NOT LESS THAN FIVE YEARS;

(C) FOR HABITAT CONSERVATION AND FORESTRY STEWARDSHIP AGREEMENTS, A REQUIREMENT THAT THE LANDOWNER DEVELOP A HABITAT CONSERVATION PLAN AND IMPLEMENT THE PLAN FOR A PERIOD OF NOT LESS THAN FIVE YEARS; AND A DESCRIPTION OF PARTICIPATION IN A FOREST CERTIFICATION PROGRAM FOR A PERIOD OF NOT LESS THAN FIVE YEARS;

(D) A REQUIREMENT THAT THE LANDOWNER'S OBLIGATIONS CONCERNING THE LAND UNDER THE TERMS OF THE AGREEMENT, AS WELL AS ANY BENEFITS, SHALL PASS TO ANY SUCCESSOR IN INTEREST TO SUCH LAND FOR THE DURATION OF THE TERM OF THE AGREEMENT; AND

(E) A REQUIREMENT THAT A COPY OF THE AGREEMENT SHALL BE DULY RECORDED AND INDEXED AS SUCH IN THE OFFICE OF THE RECORDING OFFICER FOR THE COUNTY OR COUNTIES WHERE THE LAND IS SITUATE IN THE MANNER PRESCRIBED BY ARTICLE NINE OF THE REAL PROPERTY LAW; AND THAT ANY SUBSEQUENT INSTRUMENT OF CONVEYANCE RELATING TO THE PROPERTY ENCUMBERED BY THE AGREEMENT SHALL REFERENCE, BY BOOK AND PAGE NUMBER, THE AGREEMENT; AND THAT SUCH INSTRUMENT SHALL ALSO SPECIFY THAT THE PROPERTY IS SUBJECT TO THE RESTRICTIONS CONTAINED IN THE AGREEMENT; AND THAT AN INSTRUMENT FOR THE PURPOSE OF CREATING, CONVEYING, MODIFYING OR TERMINATING THE AGREEMENT SHALL NOT BE EFFECTIVE UNLESS RECORDED.

(6) THE AMOUNT OF THE CREDIT THAT MAY BE CLAIMED BY A TAXPAYER PURSUANT TO THIS SUBDIVISION SHALL NOT EXCEED TEN THOUSAND DOLLARS IN ANY GIVEN YEAR.

(7) IF THE AMOUNT OF THE CREDIT UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL EXCEED 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 TEN HUNDRED EIGHTY-SIX OF THIS CHAPTER, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

S 4. Paragraph (d) of subdivision 22 of section 210 of the tax law, as amended by section 4 of part F of chapter 62 of the laws of 2006, is amended to read as follows:

(d) Qualified agricultural property. For purposes of this subdivision, the term "qualified agricultural property" means land located in this state which is used in agricultural production, and land improvements, structures and buildings (excluding buildings used for the taxpayer's residential purpose) located on such land which are used or occupied to carry out such production. Qualified agricultural property also includes land set aside or retired under a federal supply management or soil conservation program [or], land that at the time it becomes subject to a conservation easement, as defined under subdivision thirty-eight of this section, met the requirements under this paragraph AND LAND THAT AT THE TIME IT BECOMES SUBJECT TO AN AGREEMENT AS DEFINED UNDER SUBDIVISION FORTY-FIVE OF THIS SECTION, MET THE REQUIREMENTS UNDER THIS PARAGRAPH.

S 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxiv) to read as follows:

(XXXIV) FOREST STEWARDSHIP AND	AMOUNT OF CREDIT UNDER
HABITAT CONSERVATION	SUBDIVISION FORTY-FIVE OF
CREDIT UNDER SUBSECTION (AAA)	SECTION TWO HUNDRED TEN

S 6. This act shall take effect immediately.