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

S. 6598--A A. 9425--A

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

March 1, 2012

IN SENATE -- Introduced by Sens. YOUNG, O'MARA, RITCHIE, VALESKY -- (at request of the Legislative Commission on Rural Resources) -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. GUNTHER -- Multi-Sponsored by -- M. of A. BURLING, LIFTON, PALMESANO -- read once and referred to the Committee on Ways and Means -- 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 business franchise and personal income tax credit for soil improvement projects upon farmlands

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

Section 1. Subparagraphs 3 and 4 of paragraph (a) of subdivision 8-B of section 208 of the tax law, as amended by chapter 170 of the laws of 1994, are amended, and a new subparagraph 5 is added to read as follows:

(3) increased by the net operating loss deduction otherwise allowed under paragraph (f) of subdivision nine of this section, [and]

(4) reduced, for taxable years beginning after nineteen hundred ninety-three, by the alternative net operating loss deduction, as defined in paragraph (d) of this subdivision[.], AND

(5) IN THE EVENT THE TAXPAYER CLAIMS THE SOIL IMPROVEMENT CREDIT FOR FARMLANDS ESTABLISHED PURSUANT TO SUBDIVISION FORTY-FIVE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE, INCREASED BY THE AMOUNT OF ANY EXPENDITURES DEFINED IN INTERNAL REVENUE CODE SECTION 175(C)(1) THAT THE TAXPAYER DEDUCTED FROM ITS TOTAL NET INCOME ON ITS FEDERAL TAX RETURN FOR THE TAX YEAR.

S 2. Section 210 of the tax law is amended by adding a new subdivision 45 to read as follows:

45. SOIL IMPROVEMENT CREDIT FOR FARMLANDS. (A) ALLOWANCE OF CREDIT. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND

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

LBD13593-05-2

TWELVE, A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE IN AN AMOUNT EQUAL TO TWENTY-FIVE PERCENT OF THE TAXPAYER'S ELIGIBLE EXPENDITURES DURING THE TAX YEAR FOR A SOIL IMPROVEMENT PROJECT. PROVIDED, HOWEVER, THAT THE CREDIT GRANTED FOR ANY SOIL IMPROVEMENT PROJECT PURSUANT TO THIS SUBDIVISION SHALL NOT EXCEED FIFTY THOUSAND DOLLARS.

(B) DEFINITIONS. FOR THE PURPOSES OF THIS SUBDIVISION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(1) "ELIGIBLE EXPENDITURES" SHALL MEAN FEES FOR ARCHITECTURAL, ARCHEOLOGICAL, GEOLOGICAL AND ENGINEERING SERVICES; THE COSTS OF DEVELOPING PLANS AND SPECIFICATION; FEES FOR CONSULTANT AND LEGAL SERVICES; AND ANY EXPENDITURE DEFINED IN INTERNAL REVENUE CODE SECTION 175(C)(1), INCLUDING EXPENDITURES RELATED TO THE APPLICATION OF LIME AND FERTILIZER, IMPROVEMENT OF DRAINAGE IN THE CASE OF OPEN AREAS THAT HAVE BEEN USED FOR AGRICULTURAL PURPOSES AT ANY TIME IN THE PAST, AND EXPENDITURES RELATED TO THE DECONSTRUCTION AND REMOVAL OF FENCES, STREAM CROSSINGS AND NECESSARY RIPARIAN BUFFERS AS REQUIRED BY THE SOIL IMPROVEMENT PROJECT.

(2) "FARMLAND" SHALL MEAN LAND WHICH, DURING THE TAXABLE YEAR IN WHICH THE CREDIT IS CLAIMED PURSUANT TO THIS SUBDIVISION, IS ELIGIBLE FOR AN AGRICULTURAL ASSESSMENT PURSUANT TO ARTICLE TWENTY-FIVE-AA OF THE AGRICULTURE AND MARKETS LAW.

(3) "SOIL IMPROVEMENT PROJECT" SHALL MEAN THE RESTORATION OF FARMLAND FOR THE PRODUCTION OF AGRICULTURAL PERENNIAL CROPS, INCLUDING THOSE CROPS INTENDED FOR ENERGY PRODUCTION PURPOSES, BY IMPROVING SUCH LAND WHICH HAS NOT BEEN USED IN AGRICULTURAL PRODUCTION FOR TWO OR MORE YEARS PRIOR TO THE COMPLETION OF SUCH RESTORATION.

(C) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

S 3. 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) SOIL IMPROVEMENT CREDIT FOR FARMLANDS UNDER SUBSECTION (UU)	AMOUNT OF CREDIT FOR ELIGIBLE EXPENDITURES FOR A SOIL IMPROVEMENT PROJECT UNDER SUBDIVISION FORTY-FIVE OF SECTION TWO HUNDRED TEN

S 4. Section 606 of the tax law is amended by adding a new subsection (uu) to read as follows:

(UU) SOIL IMPROVEMENT CREDIT FOR FARMLANDS. (1) ALLOWANCE OF CREDIT. FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE, A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE IN AN AMOUNT EQUAL TO TWENTY-FIVE PERCENT OF THE TAXPAYER'S ELIGIBLE EXPENDITURES DURING THE TAX YEAR FOR A SOIL IMPROVEMENT PROJECT. PROVIDED, HOWEVER, THAT THE CREDIT GRANTED FOR ANY SOIL IMPROVEMENT PROJECT PURSUANT TO THIS SUBSECTION SHALL NOT EXCEED FIFTY THOUSAND DOLLARS.

(2) DEFINITIONS. FOR THE PURPOSES OF THIS SUBSECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "ELIGIBLE EXPENDITURES" SHALL MEAN FEES FOR ARCHITECTURAL, ARCHEOLOGICAL, GEOLOGICAL AND ENGINEERING SERVICES; THE COSTS OF DEVELOPING PLANS AND SPECIFICATIONS; FEES FOR CONSULTANT AND LEGAL SERVICES; AND ANY EXPENDITURE DEFINED IN INTERNAL REVENUE CODE SECTION 175(C)(1), INCLUDING EXPENDITURES RELATED TO THE APPLICATION OF LIME AND FERTILIZER, IMPROVEMENT OF DRAINAGE IN THE CASE OF OPEN AREAS THAT HAVE BEEN USED FOR AGRICULTURAL PURPOSES AT ANY TIME IN THE PAST, AND EXPENDITURES RELATED TO THE DECONSTRUCTION AND REMOVAL OF FENCES, STREAM CROSSINGS AND NECESSARY RIPARIAN BUFFERS AS REQUIRED BY THE SOIL IMPROVEMENT PROJECT.

(B) "FARMLAND" SHALL MEAN LAND WHICH, DURING THE TAXABLE YEAR IN WHICH THE CREDIT IS CLAIMED PURSUANT TO THIS SUBSECTION, IS ELIGIBLE FOR AN AGRICULTURAL ASSESSMENT PURSUANT TO ARTICLE TWENTY-FIVE-AA OF THE AGRICULTURE AND MARKETS LAW.

(C) "SOIL IMPROVEMENT PROJECT" SHALL MEAN THE RESTORATION OF FARMLAND FOR THE PRODUCTION OF AGRICULTURAL PERENNIAL CROPS, INCLUDING THOSE CROPS INTENDED FOR ENERGY PRODUCTION PURPOSES, BY IMPROVING SUCH LAND WHICH HAS NOT BEEN USED IN AGRICULTURAL PRODUCTION FOR TWO OR MORE YEARS PRIOR TO THE COMPLETION OF SUCH RESTORATION.

(3) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE TAXPAYER MAY RECEIVE AND THE COMPTROLLER, SUBJECT TO A CERTIFICATE OF THE COMMISSIONER, SHALL PAY AS AN OVERPAYMENT, WITHOUT INTEREST, THE AMOUNT OF SUCH EXCESS.

S 5. Subsection (c) of section 615 of the tax law is amended by adding a new paragraph 9 to read as follows:

(9) IN THE EVENT THE TAXPAYER CLAIMS THE SOIL IMPROVEMENT CREDIT FOR FARMLANDS ESTABLISHED PURSUANT TO SUBSECTION (UU) OF SECTION SIX HUNDRED SIX OF THIS ARTICLE, THE AMOUNT OF ANY EXPENDITURES DEFINED IN INTERNAL REVENUE CODE SECTION 175(C)(1) THAT THE TAXPAYER DEDUCTED FROM HIS OR HER FEDERAL GROSS INCOME ON HIS OR HER FEDERAL TAX RETURN FOR THE TAX YEAR.

S 6. This act shall take effect immediately.