

4260

2013-2014 Regular Sessions

I N   S E N A T E

March 18, 2013

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Introduced by Sens. RITCHIE, FARLEY, GALLIVAN, GRISANTI, LARKIN, LAVALLE, LIBOUS, LITTLE, MARCHIONE, MARTINS, MAZIARZ, O'MARA, RANZENHOFFER, SEWARD, VALESKY, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, the tax law, the vehicle and traffic law and the environmental conservation law, in relation to reducing farm-based taxes, fees and regulatory burdens to help grow the agricultural economy and benefit family farms

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

1     Section 1. This act shall be known and may be cited as the "let New  
2     York farm act."  
3     S 2. Legislative intent. The legislature finds that viable farms and  
4     the protection of working farmland are of paramount importance to the  
5     economic and environmental wellbeing of New York state. The locally-fo-  
6     cused, diverse food supply New York farms provide is of critical impor-  
7     tance to the health and welfare of all New York citizens. With agricul-  
8     ture facing ever increasing global competition, New York state is  
9     committed to helping grow and expand our farms. In aid of this goal,  
10    reducing farm-based taxes, fees and regulatory burdens that do not  
11    recognize the unique nature and benefits of agriculture is an important  
12    step in achieving successful, sustainable family farms.  
13    S 3. Subdivision 3 of section 303-b of the agriculture and markets law  
14    is amended by adding a new paragraph c to read as follows:  
15    C. THE NOTICE SHALL ALSO BE PROVIDED TO ALL LANDOWNERS WITH LAND BEING  
16    PROPOSED FOR INCLUSION IN AN AGRICULTURAL DISTRICT. LANDOWNERS SHALL  
17    HAVE THE OPTION TO RECEIVE THIS NOTICE EITHER THROUGH WRITTEN COMMUNI-  
18    CATION OR THROUGH ELECTRONIC COMMUNICATION.  
19    S 4. Subdivision 12 of section 210 of the tax law is amended by adding  
20    a new paragraph (e-1) to read as follows:

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

LBD04918-02-3

1 (E-1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, FOR  
2 TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOUR-  
3 TEEN, IF THE CREDIT ALLOWED UNDER THIS SUBDIVISION IS GREATER THAN THE  
4 TAX DUE IN ANY TAXABLE YEAR FOR A TAXPAYER WHOSE PRIMARY SOURCE OF  
5 INCOME IS DERIVED FROM OPERATING A FARM OPERATION OR COMMERCIAL HORSE  
6 BOARDING OPERATION, SUCH TAXPAYER MAY ELECT TO TREAT THE AMOUNT BY WHICH  
7 SUCH CREDIT EXCEEDS SUCH TAX DUE AS AN OVER-PAYMENT OF TAX TO BE  
8 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND  
9 EIGHTY-SIX OF THIS CHAPTER. FOR PURPOSES OF THIS PARAGRAPH, THE TERMS  
10 "FARM OPERATION" AND "COMMERCIAL HORSE BOARDING OPERATION" SHALL HAVE  
11 THE SAME MEANINGS AS SUCH TERMS ARE DEFINED IN SECTION THREE HUNDRED ONE  
12 OF THE AGRICULTURE AND MARKETS LAW.

13 S 5. Subsection (a) of section 606 of the tax law is amended by adding  
14 a new paragraph 5-a to read as follows:

15 (5-A) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION, FOR  
16 TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOUR-  
17 TEEN, IF THE CREDIT ALLOWED UNDER THIS SUBSECTION IS GREATER THAN THE  
18 TAX DUE IN ANY TAXABLE YEAR FOR A TAXPAYER WHOSE PRIMARY SOURCE OF  
19 INCOME IS DERIVED FROM OPERATING A FARM OPERATION OR COMMERCIAL HORSE  
20 BOARDING OPERATION, SUCH TAXPAYER MAY ELECT TO TREAT THE AMOUNT BY WHICH  
21 SUCH CREDIT EXCEEDS SUCH TAX DUE AS AN OVER-PAYMENT OF TAX TO BE  
22 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHT-  
23 Y-SIX OF THIS ARTICLE. FOR PURPOSES OF THIS PARAGRAPH, THE TERMS "FARM  
24 OPERATION" AND "COMMERCIAL HORSE BOARDING OPERATION" SHALL HAVE THE SAME  
25 MEANINGS AS SUCH TERMS ARE DEFINED IN SECTION THREE HUNDRED ONE OF THE  
26 AGRICULTURE AND MARKETS LAW.

27 S 6. Subparagraph (C) of paragraph 1 of subdivision (i) of section  
28 1136 of the tax law, as amended by chapter 108 of the laws of 2012, is  
29 amended to read as follows:

30 (C) Every wholesaler, as defined by section three of the alcoholic  
31 beverage control law, if it has made a sale of an alcoholic beverage, as  
32 defined by section four hundred twenty of this chapter, without collect-  
33 ing sales or use tax during the period covered by the return, except (i)  
34 a sale to a person that has furnished an exempt organization certificate  
35 to the wholesaler for that sale; or (ii) a sale to another wholesaler  
36 whose license under the alcoholic beverage control law does not allow it  
37 to make retail sales of the alcoholic beverage. For each vendor, opera-  
38 tor, or recipient to whom the wholesaler has made a sale without  
39 collecting sales or compensating use tax, the return must include the  
40 total value of those sales made during the period covered by the return  
41 (excepting the sales described in clauses (i) and (ii) of this subpara-  
42 graph) and the vendor's, operator's or recipient's state liquor authori-  
43 ty license number, along with the information required by paragraph two  
44 of this subdivision. A person operating pursuant to a farm winery  
45 license as provided in section seventy-six-a of the alcoholic beverage  
46 control law, or a person operating pursuant to a farm distillery license  
47 as provided in subdivision two-c of section sixty-one of such law, or a  
48 person operating pursuant to a farm brewery license as provided in  
49 section fifty-one-a of the alcoholic beverage control law, or a person  
50 operating pursuant to any combination of such licenses, shall not be  
51 subject to any of the requirements of this subdivision. THE PROVISIONS  
52 OF THIS SUBPARAGRAPH SHALL NOT APPLY TO A WINERY AS DEFINED IN SECTION  
53 THREE OF THE ALCOHOLIC BEVERAGE CONTROL LAW.

54 S 7. Subparagraphs (A) and (B) of paragraph 3 of subsection (c) of  
55 section 658 of the tax law, subparagraph (A) as amended by section 18 of  
56 part U of chapter 61 of the laws of 2011 and subparagraph (B) as amended

1 by section 1 of part H-1 of chapter 57 of the laws of 2009, are amended  
2 to read as follows:

3 (A) Every subchapter K limited liability company, every limited  
4 liability company that is a disregarded entity for federal income tax  
5 purposes, and every partnership which has any income derived from New  
6 York sources, determined in accordance with the applicable rules of  
7 section six hundred thirty-one of this article as in the case of a  
8 nonresident individual, shall, within sixty days after the last day of  
9 the taxable year, make a payment of a filing fee. SUCH DEADLINE SHALL  
10 NOT APPLY TO FARMS, COMMERCIAL HORSE BOARDING OPERATIONS OR AGRICULTURAL  
11 SERVICE PROVIDERS SUBJECT TO THE FEE, WHICH SHALL, WITHIN ONE HUNDRED  
12 TWENTY DAYS AFTER THE LAST DAY OF THE TAXABLE YEAR, MAKE PAYMENT OF ANY  
13 REQUIRED FILING FEE. The amount of the filing fee is the amount set  
14 forth in subparagraph (B) of this paragraph. The minimum filing fee is  
15 twenty-five dollars for taxable years beginning in two thousand eight  
16 and thereafter. Limited liability companies that are disregarded enti-  
17 ties for federal income tax purposes must pay a filing fee of twenty-  
18 five dollars for taxable years beginning on or after January first, two  
19 thousand eight.

20 (B) The filing fee will be based on the New York source gross income  
21 of the limited liability company or partnership for the taxable year  
22 immediately preceding the taxable year for which the fee is due. If the  
23 limited liability company or partnership does not have any New York  
24 source gross income for the taxable year immediately preceding the taxa-  
25 ble year for which the fee is due, the limited liability company or  
26 partnership shall pay the minimum filing fee. Partnerships, other than  
27 limited liability partnerships under article eight-B of the partnership  
28 law and foreign limited liability partnerships, with less than one  
29 million dollars in New York source gross income are exempt from the  
30 filing fee. New York source gross income is the sum of the partners' or  
31 members' shares of federal gross income from the partnership or limited  
32 liability company derived from or connected with New York sources,  
33 determined in accordance with the provisions of section six hundred  
34 thirty-one of this article as if those provisions and any related  
35 provisions expressly referred to a computation of federal gross income  
36 from New York sources. For this purpose, federal gross income is  
37 computed without any allowance or deduction for cost of goods sold,  
38 EXCEPT THAT FOR COMPANIES ENGAGED PRIMARILY IN FARMING, COMMERCIAL HORSE  
39 BOARDING OR AGRICULTURAL SERVICE PROVIDERS, THE TERM FEDERAL GROSS  
40 INCOME SHALL MEAN NET INCOME AS REPORTED FOR FEDERAL TAX PURPOSES.

41 The amount of the filing fee for taxable years beginning on or after  
42 January first, two thousand eight will be determined in accordance with  
43 the following table:

44 If the New York source gross income is:	The fee is:
45 not more than \$100,000	\$25
46 more than \$100,000 but not over \$250,000	\$50
47 more than \$250,000 but not over \$500,000	\$175
48 more than \$500,000 but not over \$1,000,000	\$500
49 more than \$1,000,000 but not over \$5,000,000	\$1,500
50 more than \$5,000,000 but not over \$25,000,000	\$3,000
51 Over \$25,000,000	\$4,500

52 S 8. Subparagraph 4 of paragraph (d) of subdivision 1 of section 210  
53 of the tax law, as added by section 2 of part AA-1 of chapter 57 of the  
54 laws of 2008, is amended to read as follows:

(4) Notwithstanding subparagraphs one and two of this paragraph, for taxable years beginning on or after January first, two thousand eight, the amount prescribed by this paragraph for New York S corporations will be determined in accordance with the following table:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 25
more than \$100,000 but not over \$250,000	\$ 50
more than \$250,000 but not over \$500,000	\$ 175
more than \$500,000 but not over \$1,000,000	\$ 300
more than \$1,000,000 but not over \$5,000,000	\$1,000
more than \$5,000,000 but not over \$25,000,000	\$3,000
Over \$25,000,000	\$4,500

Otherwise the amount prescribed by this paragraph will be determined in accordance with the following table:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 25
more than \$100,000 but not over \$250,000	\$ 75
more than \$250,000 but not over \$500,000	\$ 175
more than \$500,000 but not over \$1,000,000	\$ 500
more than \$1,000,000 but not over \$5,000,000	\$1,500
more than \$5,000,000 but not over \$25,000,000	\$3,500
Over \$25,000,000	\$5,000

For purposes of this paragraph, New York receipts are the receipts computed in accordance with subparagraph two of paragraph (a) of subdivision three of this section for the taxable year, EXCEPT THAT FOR CORPORATIONS ENGAGED PRIMARILY IN FARMING, COMMERCIAL HORSE BOARDING OR PROVIDING AGRICULTURAL SERVICES, THE TERM NEW YORK RECEIPTS SHALL REFER TO NET FARM INCOME AS REPORTED FOR FEDERAL TAX PURPOSES.

S 9. Section 499-b of the vehicle and traffic law, as added by section 1 of part B of chapter 25 of the laws of 2009, is amended to read as follows:

S 499-b. Collection of supplemental fee. All registrants of motor vehicles who reside in the metropolitan commuter transportation district shall pay to the commissioner or his or her agent the supplemental registration fee provided for in this article upon registration or renewal of motor vehicles subject to registration fees pursuant to the following sections of this chapter: paragraph a of subdivision six of section four hundred one; schedules A, B, C, [E,] F (EXCEPT AGRICULTURAL SPRAYERS), G, I and K of subdivision seven of section four hundred one; paragraph a of subdivision eight of section four hundred one, EXCEPT LIVESTOCK TRAILERS; paragraph a of subdivision five of section four hundred ten; and section four hundred eleven-b.

S 10. Paragraph 1 of schedule E of subdivision 7 of section 401 of the vehicle and traffic law, as amended by section 9 of part G of chapter 59 of the laws of 2009, is amended to read as follows:

1. For each agricultural truck, the annual fee of two dollars and [fifty-one cents] ONE CENT for each five hundred pounds maximum gross weight, or fraction thereof.

S 11. Section 72-0602 of the environmental conservation law is amended by adding a new subdivision q-1 to read as follows:

Q-1. \$25.00 PER ACRE DISTURBED PLUS \$25.00 PER FUTURE IMPERVIOUS ACRE FOR ANY FACILITY THAT IS PART OF A FARM OPERATION AS DEFINED IN SECTION

1 THREE HUNDRED ONE OF THE AGRICULTURE AND MARKETS LAW, DISCHARGING OR  
2 AUTHORIZED TO DISCHARGE PURSUANT TO A SPDES PERMIT FOR STORMWATER  
3 DISCHARGES FROM CONSTRUCTION ACTIVITY. FOR THE PURPOSES OF THIS SUBDIVI-  
4 SION, ACRES DISTURBED ARE ACRES SUBJECT TO CLEARING, GRADING, OR EXCA-  
5 VATING IN THE CONSTRUCTION AREA SUBJECT TO SPDES PERMITTING AND FUTURE  
6 IMPERVIOUS ACRES ARE ACRES THAT WILL BE NEWLY PAVED WITH AN IMPERVIOUS  
7 SUBSTANCE OR ROOFED DURING CONSTRUCTION;

8 S 12. Subdivision t of section 72-0602 of the environmental conserva-  
9 tion law, as amended by section 1 of part JJ of chapter 59 of the laws  
10 of 2009, is relettered subdivision u and amended and a new subdivision t  
11 is added to read as follows:

12 T. \$50.00 FOR A WINERY OR DISTILLERY DISCHARGING OR AUTHORIZED TO  
13 DISCHARGE PURSUANT TO A GENERAL PERMIT;

14 u. \$100.00 for any facility, other than a municipal separate storm  
15 sewer as defined by 40 CFR S122.26 (b) (8), discharging or authorized to  
16 discharge pursuant to a general permit unless a specific fee is imposed  
17 pursuant to subdivisions a through [s] T of this section for such  
18 discharge or authorization to discharge.

19 S 13. This act shall take effect immediately, provided however, that  
20 section three of this act shall take effect on the ninetieth day after  
21 it shall have become a law, provided further that sections four and five  
22 of this act shall apply to any tax year commencing on or after January  
23 1, 2014.