

10103

I N A S S E M B L Y

March 4, 2010

Introduced by M. of A. MAGEE -- read once and referred 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. Legislative intent. The legislature finds that viable farms
2 and the protection of working farmland are of paramount importance to
3 the economic and environmental wellbeing of New York state. The local-
4 ly-focused, diverse food supply New York farms provide is of critical
5 importance to the health and welfare of all New York citizens. With
6 agriculture facing ever increasing global competition, New York state is
7 committed to helping grow and expand our farms. In aid of this goal,
8 reducing farm-based taxes, fees and regulatory burdens that do not
9 recognize the unique nature and benefits of agriculture is an important
10 step in achieving successful, sustainable family farms.

11 S 2. Subdivision 3 of section 303-b of the agriculture and markets law
12 is amended by adding a new paragraph c to read as follows:

13 C. THE NOTICE SHALL ALSO BE PROVIDED TO ALL LANDOWNERS WITH LAND BEING
14 PROPOSED FOR INCLUSION IN AN AGRICULTURAL DISTRICT. LANDOWNERS SHALL
15 HAVE THE OPTION TO RECEIVE THIS NOTICE EITHER THROUGH WRITTEN COMMUNI-
16 CATION OR THROUGH ELECTRONIC COMMUNICATION.

17 S 3. Subdivision 12 of section 210 of the tax law is amended by adding
18 a new paragraph (e-1) to read as follows:

19 (E-1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, FOR
20 TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN,
21 IF THE CREDIT ALLOWED UNDER THIS SUBDIVISION IS GREATER THAN THE TAX DUE
22 IN ANY TAXABLE YEAR FOR A TAXPAYER WHOSE PRIMARY SOURCE OF INCOME IS
23 DERIVED FROM OPERATING A FARM OPERATION OR COMMERCIAL HORSE BOARDING
24 OPERATION, SUCH TAXPAYER MAY ELECT TO TREAT THE AMOUNT BY WHICH SUCH
25 CREDIT EXCEEDS SUCH TAX DUE AS AN OVER-PAYMENT OF TAX TO BE REFUNDED IN
26 ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF

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

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1 THIS CHAPTER. FOR PURPOSES OF THIS PARAGRAPH, THE TERMS "FARM OPERATION"
2 AND "COMMERCIAL HORSE BOARDING OPERATION" SHALL HAVE THE SAME MEANINGS
3 AS SUCH TERMS ARE DEFINED IN SECTION THREE HUNDRED ONE OF THE AGRICUL-
4 TURE AND MARKETS LAW.

5 S 4. Subsection (a) of section 606 of the tax law is amended by adding
6 a new paragraph 5-a to read as follows:

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

19 S 5. Subparagraph (C) of paragraph 1 of subdivision (i) of section
20 1136 of the tax law, as added by section 1 of subpart G of part V-1 of
21 chapter 57 of the laws of 2009, is amended to read as follows:

22 (C) Every wholesaler, as defined by section three of the alcoholic
23 beverage control law, if it has made a sale of an alcoholic beverage, as
24 defined by section four hundred twenty of this chapter, without collect-
25 ing sales or use tax during the period covered by the return, except (i)
26 a sale to a person that has furnished an exempt organization certificate
27 to the wholesaler for that sale; or (ii) a sale to another wholesaler
28 whose license under the alcoholic beverage control law does not allow it
29 to make retail sales of the alcoholic beverage. For each vendor, opera-
30 tor, or recipient to whom the wholesaler has made a sale without
31 collecting sales or compensating use tax, the return must include the
32 total value of those sales made during the period covered by the return
33 (excepting the sales described in clauses (i) and (ii) of this subpara-
34 graph) and the vendor's, operator's or recipient's state liquor authori-
35 ty license number, along with the information required by paragraph two
36 of this subdivision. THE PROVISIONS OF THIS SUBPARAGRAPH SHALL NOT
37 APPLY TO A FARM WINERY AS DEFINED IN SECTION THREE OF THE ALCOHOLIC
38 BEVERAGE CONTROL LAW.

39 S 6. Subparagraphs (A) and (B) of paragraph 3 of subsection (c) of
40 section 658 of the tax law, as amended by section 1 of part H-1 of chap-
41 ter 57 of the laws of 2009, are amended to read as follows:

42 (A) Every subchapter K limited liability company, every limited
43 liability company that is a disregarded entity for federal income tax
44 purposes, and every partnership which has any income derived from New
45 York sources, determined in accordance with the applicable rules of
46 section six hundred thirty-one of this article as in the case of a
47 nonresident individual, shall, within thirty days after the last day of
48 the taxable year, make a payment of a filing fee. SUCH DEADLINE SHALL
49 NOT APPLY TO FARMS, COMMERCIAL HORSE BOARDING OPERATIONS OR AGRICULTURAL
50 SERVICE PROVIDERS SUBJECT TO THE FEE, WHICH SHALL, WITHIN ONE HUNDRED
51 TWENTY DAYS AFTER THE LAST DAY OF THE TAXABLE YEAR, MAKE PAYMENT OF ANY
52 REQUIRED FILING FEE. The amount of the filing fee is the amount set
53 forth in subparagraph (B) of this paragraph. The minimum filing fee is
54 twenty-five dollars for taxable years beginning in two thousand eight
55 and thereafter. Limited liability companies that are disregarded enti-
56 ties for federal income tax purposes must pay a filing fee of twenty-

five dollars for taxable years beginning on or after January first, two thousand eight.

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

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

If the New York source gross income is:	The fee 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	\$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	\$3,000
Over \$25,000,000	\$4,500

S 7. Subparagraph 4 of paragraph (d) of subdivision 1 of section 210 of the tax law, as added by section 2 of part AA-1 of chapter 57 of the 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:

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

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

15 S 8. Subdivision (b) of section 800 of the tax law, as added by
 16 section 1 of part C of chapter 25 of the laws of 2009, is amended to
 17 read as follows:

18 (b) Employer. Employer means an employer required by section six
 19 hundred seventy-one of this chapter to deduct and withhold tax from
 20 wages, that has a payroll expense in excess of two thousand five hundred
 21 dollars in any calendar quarter; other than

22 (1) any agency or instrumentality of the United States;

23 (2) the United Nations; [or]

24 (3) an interstate agency or public corporation created pursuant to an
 25 agreement or compact with another state or the Dominion of Canada[.];

26 (4) EMPLOYERS PRIMARILY ENGAGED IN FARMING, COMMERCIAL HORSE BOARDING
 27 OPERATIONS OR PROVIDING AGRICULTURAL SERVICES;

28 (5) SOIL AND WATER CONSERVATION DISTRICTS AS DEFINED IN SECTION THREE
 29 OF THE SOIL AND WATER CONSERVATION DISTRICTS LAW; OR

30 (6) COOPERATIVE EXTENSIONS AS LISTED IN SECTION TWO HUNDRED
 31 TWENTY-FOUR OF THE COUNTY LAW.

32 S 9. Section 499-b of the vehicle and traffic law, as added by section
 33 1 of part B of chapter 25 of the laws of 2009, is amended to read as
 34 follows:

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

46 S 10. Subdivision 3 of section 504 of the tax law, as amended by chap-
 47 ter 194 of the laws of 1963, is amended to read as follows:

48 3. [Owned and operated] OPERATED by a farmer and used exclusively by
 49 such farmer in transporting his own agricultural commodities and
 50 products, pulpwood or livestock, including the packed, processed, or
 51 manufactured products thereof, that were originally grown or raised on
 52 his farm, lands or orchard, or when used to transport supplies and
 53 equipment to his farm or orchard that are consumed and used thereon or
 54 when operated by a farmer in transporting farm products from a farm
 55 contiguous to his own.

1 S 11. Paragraph 1 of schedule E of subdivision 7 of section 401 of the
2 vehicle and traffic law, as amended by section 9 of part G of chapter 59
3 of the laws of 2009, is amended to read as follows:

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

7 S 12. Section 72-0602 of the environmental conservation law is amended
8 by adding a new subdivision q-1 to read as follows:

9 Q-1. \$25.00 PER ACRE DISTURBED PLUS \$25.00 PER FUTURE IMPERVIOUS ACRE
10 FOR ANY FACILITY THAT IS PART OF A FARM OPERATION AS DEFINED IN SECTION
11 THREE HUNDRED ONE OF THE AGRICULTURE AND MARKETS LAW, DISCHARGING OR
12 AUTHORIZED TO DISCHARGE PURSUANT TO A SPDES PERMIT FOR STORMWATER
13 DISCHARGES FROM CONSTRUCTION ACTIVITY. FOR THE PURPOSES OF THIS SUBDIVI-
14 SION, ACRES DISTURBED ARE ACRES SUBJECT TO CLEARING, GRADING, OR EXCA-
15 VATING IN THE CONSTRUCTION AREA SUBJECT TO SPDES PERMITTING AND FUTURE
16 IMPERVIOUS ACRES ARE ACRES THAT WILL BE NEWLY PAVED WITH AN IMPERVIOUS
17 SUBSTANCE OR ROOFED DURING CONSTRUCTION;

18 S 13. Subdivision t of section 72-0602 of the environmental conserva-
19 tion law, as amended by section 1 of part JJ of chapter 59 of the laws
20 of 2009, is relettered subdivision u and amended and a new subdivision t
21 is added to read as follows:

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

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

29 S 14. This act shall take effect immediately, provided however, that
30 section two of this act shall take effect on the ninetieth day after it
31 shall have become a law, provided further that sections three and four
32 of this act shall apply to any tax year commencing on or after January
33 1, 2011.