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Introduced by Sens. LARKIN, BONACIC, LAVALLE, LEIBELL, MAZIARZ, SEWARD, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to partial eligibility of farmers for the agricultural property tax credit

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

Section 1. Paragraphs (a) and (b) of subdivision 22 of section 210 of the tax law, paragraph (a) as amended by chapter 315 of the laws of 1998 and paragraph (b) as amended by chapter 527 of the laws of 2003, are amended to read as follows:

(a) General. In the case of a taxpayer which is an eligible farmer OR PARTIALLY ELIGIBLE FARMER, or an eligible farmer [who] OR PARTIALLY ELIGIBLE FARMER WHICH has paid taxes pursuant to a land contract, there shall be allowed a credit OR PARTIAL CREDIT for the allowable school district property taxes. The term "allowable school district property taxes" means the school district property taxes paid during the taxable year on qualified agricultural property, subject to the acreage limitation provided in paragraph (e) of this subdivision and the income limitation provided in paragraph (f) of this subdivision, WHICH QUALIFICATIONS SHALL ALL APPLY IDENTICALLY TO ELIGIBLE FARMERS AND PARTIALLY ELIGIBLE FARMERS. THE PARTIAL CREDIT ALLOWED TO A PARTIALLY ELIGIBLE FARMER SHALL BE EQUAL TO ONE-HALF OF THE CREDIT THAT WOULD BE ALLOWED TO AN ELIGIBLE FARMER, CALCULATING THE ALLOWABLE SCHOOL DISTRICT PROPERTY TAXES AS PROVIDED IN THIS PARAGRAPH, WITH ALL STATED QUALIFICATIONS.

(b) (1) Eligible farmer. For purposes of this subdivision, the term "eligible farmer" means a taxpayer whose federal gross income from farming for the taxable year is at least two-thirds of excess federal gross income. The term "eligible farmer" also includes a corporation other than the taxpayer of record for qualified agricultural land which has paid the school district property taxes on such land pursuant to a

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

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contract for the future purchase of such land; provided that such corporation has a federal gross income from farming for the taxable year which is at least two-thirds of excess federal gross income; and provided further that, in determining such income eligibility, a taxpayer may, for any taxable year, use the average of such federal gross income from farming for that taxable year and such income for the two consecutive taxable years immediately preceding such taxable year. Excess federal gross income means the amount of federal gross income from all sources for the taxable year in excess of thirty thousand dollars.

(2) PARTIALLY ELIGIBLE FARMER. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "PARTIALLY ELIGIBLE FARMER" MEANS A TAXPAYER WHOSE FEDERAL GROSS INCOME FROM FARMING FOR THE TAXABLE YEAR IS AT LEAST FORTY PERCENT OF, BUT LESS THAN TWO-THIRDS OF, EXCESS FEDERAL GROSS INCOME. THE TERM "PARTIALLY ELIGIBLE FARMER" ALSO INCLUDES A CORPORATION OTHER THAN THE TAXPAYER OF RECORD FOR QUALIFIED AGRICULTURAL LAND WHICH HAS PAID THE SCHOOL DISTRICT PROPERTY TAXES ON SUCH LAND PURSUANT TO A CONTRACT FOR THE FUTURE PURCHASE OF SUCH LAND; PROVIDED THAT SUCH CORPORATION HAS A FEDERAL GROSS INCOME FROM FARMING FOR THE TAXABLE YEAR WHICH IS AT LEAST FORTY PERCENT OF, BUT LESS THAN TWO-THIRDS OF, EXCESS FEDERAL GROSS INCOME; AND PROVIDED FURTHER THAT, IN DETERMINING SUCH INCOME ELIGIBILITY, A TAXPAYER MAY, FOR ANY TAXABLE YEAR, USE THE AVERAGE OF SUCH FEDERAL GROSS INCOME FROM FARMING FOR THAT TAXABLE YEAR AND SUCH INCOME FOR THE TWO CONSECUTIVE TAXABLE YEARS IMMEDIATELY PRECEDING SUCH TAXABLE YEAR. EXCESS FEDERAL GROSS INCOME MEANS THE AMOUNT OF FEDERAL GROSS INCOME FROM ALL SOURCES FOR THE TAXABLE YEAR IN EXCESS OF THIRTY THOUSAND DOLLARS.

S 2. Subparagraph 1 of paragraph (e), paragraph (g), and subparagraphs 1 and 2 of paragraph (h) of subdivision 22 of section 210 of the tax law, as added by chapter 309 of the laws of 1996, are amended to read as follows:

(1) Eligible taxes. In the event that the qualified agricultural property owned by the taxpayer includes land in excess of the base acreage as provided in this paragraph, the amount of school district property taxes eligible for credit OR PARTIAL CREDIT under this subdivision shall be that portion of the school district property taxes which bears the same ratio to the total school district property taxes paid during the taxable year, as the acreage allowable under this paragraph bears to the entire acreage of such land.

(g) In no event shall the credit OR PARTIAL CREDIT provided herein be allowed in an amount which will reduce the tax payable to less than the higher of the amounts prescribed in paragraphs (c) and (d) of subdivision one of this section. If, however, the amount of credit OR PARTIAL CREDIT allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit OR PARTIAL CREDIT not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. Provided, however, in lieu of carrying over the unused portion of such credit OR PARTIAL CREDIT, the taxpayer may elect to treat such unused portion as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter except that no interest shall be paid on such overpayment.

(1) No credit OR PARTIAL CREDIT in conversion year. In the event that qualified agricultural property is converted by the taxpayer to nonqualified use, credit OR PARTIAL CREDIT under this subdivision shall not be

allowed with respect to such property for the taxable year of conversion (the conversion year).

(2) Credit OR PARTIAL CREDIT recapture. If the conversion by the taxpayer of qualified agricultural property to nonqualified use occurs during the period of the two taxable years following the taxable year for which the credit OR PARTIAL CREDIT under this subdivision was first claimed with respect to such property, the credit OR PARTIAL CREDIT allowed with respect to such property for the taxable years prior to the conversion year must be added back in the conversion year. Where the property converted includes land, and where the conversion is of only a portion of such land, the credit OR PARTIAL CREDIT allowed with respect to the property converted shall be determined by multiplying the entire credit OR PARTIAL CREDIT under this subdivision for the taxable years prior to the conversion year by a fraction, the numerator of which is the acreage converted and the denominator of which is the entire acreage of such land owned by the taxpayer immediately prior to the conversion.

S 3. Paragraphs 1 and 2 of subsection (n) of section 606 of the tax law, paragraph 1 as amended by chapter 315 of the laws of 1998 and paragraph 2 as amended by chapter 527 of the laws of 2003, are amended to read as follows:

(1) General. In the case of a taxpayer who is an eligible farmer OR PARTIALLY ELIGIBLE FARMER or an eligible farmer OR PARTIALLY ELIGIBLE FARMER who has paid taxes pursuant to a land contract, there shall be allowed a credit OR PARTIAL CREDIT for the allowable school district property taxes. The term "allowable school district property taxes" means the school district property taxes paid during the taxable year on qualified agricultural property, subject to the acreage limitation provided in paragraph five of this subsection and the income limitation provided in paragraph six of this subsection, WHICH QUALIFICATIONS SHALL ALL APPLY IDENTICALLY TO ELIGIBLE FARMERS AND PARTIALLY ELIGIBLE FARMERS. THE PARTIAL CREDIT ALLOWED TO A PARTIALLY ELIGIBLE FARMER SHALL BE EQUAL TO ONE-HALF OF THE CREDIT THAT WOULD BE ALLOWED TO AN ELIGIBLE FARMER, CALCULATING THE ALLOWABLE SCHOOL DISTRICT PROPERTY TAXES AS PROVIDED IN THIS PARAGRAPH, WITH ALL STATED QUALIFICATIONS. Such credit OR PARTIAL CREDIT shall be allowed against the taxes imposed by this article for the taxable year reduced by the credits permitted by this article. If the credit OR PARTIAL CREDIT exceeds the tax as so reduced, 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.

(2) (A) Eligible farmer. For purposes of this subsection, the term "eligible farmer" means a taxpayer whose federal gross income from farming for the taxable year is at least two-thirds of excess federal gross income. The term "eligible farmer" also includes an individual other than the taxpayer of record for qualified agricultural land who has paid the school district property taxes on such land pursuant to a contract for the future purchase of such land; provided that such individual has a federal gross income from farming for the taxable year which is at least two-thirds of excess federal gross income; and provided further that, in determining such income eligibility, a taxpayer may, for any taxable year, use the average of such federal gross income from farming for that taxable year and such income for the two consecutive taxable years immediately preceding such taxable year. Excess federal gross income means the amount of federal gross income from all sources for the taxable year reduced by the sum (not to exceed thirty thousand dollars) of those items included in federal gross income which consist of (i)

earned income, (ii) pension payments, including social security payments, (iii) interest, and (iv) dividends. For purposes of this paragraph, the term "earned income" shall mean wages, salaries, tips and other employee compensation, and those items of gross income which are includible in the computation of net earnings from self-employment.

(B) PARTIALLY ELIGIBLE FARMER. FOR PURPOSES OF THIS SUBSECTION, THE TERM "PARTIALLY ELIGIBLE FARMER" MEANS A TAXPAYER WHOSE FEDERAL GROSS INCOME FROM FARMING FOR THE TAXABLE YEAR IS AT LEAST FORTY PERCENT OF, BUT LESS THAN TWO-THIRDS OF, EXCESS FEDERAL GROSS INCOME. THE TERM "PARTIALLY ELIGIBLE FARMER" ALSO INCLUDES AN INDIVIDUAL OTHER THAN THE TAXPAYER OF RECORD FOR QUALIFIED AGRICULTURAL LAND WHO HAS PAID THE SCHOOL DISTRICT PROPERTY TAXES ON SUCH LAND PURSUANT TO A CONTRACT FOR THE FUTURE PURCHASE OF SUCH LAND; PROVIDED THAT SUCH INDIVIDUAL HAS A FEDERAL GROSS INCOME FROM FARMING FOR THE TAXABLE YEAR WHICH IS AT LEAST FORTY PERCENT OF, BUT LESS THAN TWO-THIRDS OF, EXCESS FEDERAL GROSS INCOME; AND PROVIDED FURTHER THAT, IN DETERMINING SUCH INCOME ELIGIBILITY, A TAXPAYER MAY, FOR ANY TAXABLE YEAR, USE THE AVERAGE OF SUCH FEDERAL GROSS INCOME FROM FARMING FOR THAT TAXABLE YEAR AND SUCH INCOME FOR THE TWO CONSECUTIVE TAXABLE YEARS IMMEDIATELY PRECEDING SUCH TAXABLE YEAR. EXCESS FEDERAL GROSS INCOME MEANS THE AMOUNT OF FEDERAL GROSS INCOME FROM ALL SOURCES FOR THE TAXABLE YEAR REDUCED BY THE SUM (NOT TO EXCEED THIRTY THOUSAND DOLLARS) OF THOSE ITEMS INCLUDED IN FEDERAL GROSS INCOME WHICH CONSIST OF (I) EARNED INCOME, (II) PENSION PAYMENTS, INCLUDING SOCIAL SECURITY PAYMENTS, (III) INTEREST, AND (IV) DIVIDENDS. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "EARNED INCOME" SHALL MEAN WAGES, SALARIES, TIPS AND OTHER EMPLOYEE COMPENSATION, AND THOSE ITEMS OF GROSS INCOME WHICH ARE INCLUDIBLE IN THE COMPUTATION OF NET EARNINGS FROM SELF-EMPLOYMENT.

S 4. Subparagraph (A) of paragraph 5 and subparagraphs (A) and (B) of paragraph 7 of subsection (n) of section 606 of the tax law, as added by chapter 309 of the laws of 1996, are amended to read as follows:

(A) Eligible taxes. In the event that the qualified agricultural property owned by the taxpayer includes land in excess of the base acreage as provided in this paragraph, the amount of school district property taxes eligible for credit OR PARTIAL CREDIT under this subsection shall be that portion of the school district property taxes which bears the same ratio to the total school district property taxes paid during the taxable year, as the acreage allowable under this paragraph bears to the entire acreage of such land.

(A) No credit OR PARTIAL CREDIT in conversion year. In the event that qualified agricultural property is converted by the taxpayer to nonqualified use, credit OR PARTIAL CREDIT under this subsection shall not be allowed with respect to such property for the taxable year of conversion (the conversion year).

(B) Credit OR PARTIAL CREDIT recapture. If the conversion by the taxpayer of qualified agricultural property to nonqualified use occurs during the period of the two taxable years following the taxable year for which the credit OR PARTIAL CREDIT under this subsection was first claimed with respect to such property, the credit OR PARTIAL CREDIT allowed with respect to such property for the taxable years prior to the conversion year must be added back in the conversion year. Where the property converted includes land, and where the conversion is of only a portion of such land, the credit OR PARTIAL CREDIT allowed with respect to the property converted shall be determined by multiplying the entire credit OR PARTIAL CREDIT under this subsection for the taxable years prior to the conversion year by a fraction, the numerator of which is

the acreage converted and the denominator of which is the entire acreage of such land owned by the taxpayer immediately prior to the conversion.

S 5. The commissioner of taxation and finance is authorized and directed to promulgate any rules and regulations necessary to implement the provisions of this act.

S 6. This act shall take effect immediately and shall apply to taxable years commencing on or after the first of January next succeeding the date on which it shall have become a law.