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

703

2009-2010 Regular Sessions

I N S E N A T E

January 13, 2009

Introduced by Sens. LARKIN, YOUNG, ALESI, BONACIC, LEIBELL, MAZIARZ, NOZZOLIO, ROBACH, SALAND, VOLKER, WINNER -- 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, in relation to the powers and duties of the commissioner of agriculture and markets pertaining to the direct marketing of grapes and other fruit products, and the profitability of farming and the preservation of viable farm land; and to amend the tax law, in relation to corporate franchise tax and personal income tax credits for the purchase of certain vineyard grape plants and fruit processing capital equipment

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

Section 1. Section 3 of the agriculture and markets law, as amended by chapter 651 of the laws of 1946, is amended to read as follows:

S 3. Declaration of policy and purposes. The agricultural industry is basic to the life of our state. It vitally concerns and affects the welfare, health, economic well-being and productive and industrial capabilities of all our people. It is the policy and duty of the state to promote, foster, and encourage the agricultural industry, with proper standards of living for those engaged therein; to design and establish long-range programs for its stabilization and profitable operation; to increase through education, research, regulation, and scientific means, the quantity, quality, and efficiency of its production; to improve its marketing system; to encourage adequate and skilled assistance for agricultural enterprises; to maintain at fair prices uncontrolled by speculation the instrumentalities and products of agriculture; to remove unnecessary or unfair costs and obstacles in the [transporation] TRANSPORTATION, storage, processing, distribution, marketing, and sale of agricultural products; to prevent frauds in the traffic therein; to promote an expanded demand for the state's agricultural products and the

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

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intelligent uses thereof by consumers as pure and wholesome food; to protect the public health and to eliminate the evils of under-nourishment; to encourage the selection and consumption of food according to sound dietary and nutritional principles; and to make our people conscious of the bond of mutual self-interest between our urban and our rural populations.

AT THE DAWN OF THE TWENTY-FIRST CENTURY, THE LEGISLATURE FINDS THAT EVER-INCREASING ECONOMIC CHANGES AND PRESSURES ON FARMING HAVE INTENSIFIED THE DIFFICULTIES FACED BY THOSE ENGAGED IN AGRICULTURAL PRODUCTION FOR THEIR LIVELIHOODS, MANY OF WHOM ARE THE DESCENDANTS OF GENERATIONS OF FARMERS. THESE POWERFUL FORCES, NATIONWIDE AND GLOBAL, HAVE INCREASED THE URGENCY OF THE PROBLEMS AND THE NEED TO IMPLEMENT THE PROVISIONS OF THE FOREGOING PARAGRAPH OF THIS SECTION. THUS, THE LEGISLATURE CONTINUES TO ENACT MEASURES DELIBERATELY INTENDED TO FULFILL THE GOALS OF SAID PARAGRAPH. THE NEED HAS NEVER BEEN GREATER.

Accordingly, all laws enacted concerning the agricultural industry and its allied subjects, whether included in this chapter or not, are to be deemed an exercise of the police power of the state and a discharge of its obligations for the promotion of the general welfare through statewide laws and regulations, local initiative and government, cooperative action between groups and localities, home-rule measures, individual enterprise, civic consciousness, and appropriate coordination with the federal government and as between educational research institutions within the state.

Such laws and all governmental measures adopted pursuant thereto should receive a liberal interpretation and application in furtherance of the aforesaid policy and purposes.

S 2. Subdivision 1 of section 16 of the agriculture and markets law, as amended by chapter 639 of the laws of 2004, is amended to read as follows:

1. Execute and carry into effect the laws of the state and the rules of the department, relative to agriculture, horticulture, farm, fruit AND FRUIT PRODUCTS, and dairy products, aquaculture, and the production, processing, transportation, storage, marketing and distributing of food; enforce and carry into effect the provisions of the laws of the state relative to weights and measures.

S 3. Subdivision 2 of section 16 of the agriculture and markets law, such section as renumbered by chapter 16 of the laws of 1935, is amended to read as follows:

2. Aid in the promotion and development of the agricultural resources of the state and the improvement of the conditions of rural life; the improvement of the fertility and productiveness of farm AND ORCHARD lands and the restoration to fertility and productiveness of unoccupied and unproductive land; the settlement of farms and the supply of farm labor; the stocking of farms with meat-producing and dairy animals and promoting the production of cereals, fruits and vegetables, AND THE PROCESSING THEREOF, and co-operate with county farm bureaus[,] and with agricultural, dairying and horticultural associations or corporations and other agencies organized for any or all of such purposes.

S 4. Subdivision 2-b of section 16 of the agriculture and markets law, as amended by chapter 639 of the laws of 2004, is amended to read as follows:

2-b. Aid in the promotion, marketing, and sale of New York state labelled wines, grapes [and], grape products, OTHER FRUITS AND ALL OTHER FRUIT PRODUCTS in cooperation with the department of economic development both within and outside the state and to provide promotion and

marketing advisement to wineries, farm wineries, micro-wineries, grape and other fruit growers and processors, and related trade organizations located within this state.

S 5. Subdivisions 5, 11 and 13 of section 283 of the agriculture and markets law, as added by chapter 834 of the laws of 1981, are amended to read as follows:

5. Provide assistance to consumer, COMMUNITY or non-profit organizations seeking to purchase or facilitate the purchase of farm products directly from producers.

11. Establish a statewide advisory council which shall provide information to and advise the commissioner, as prescribed by him OR HER, on policy, planning and programs.

13. Undertake any other activities which he OR SHE deems necessary to accomplish the purposes of this article.

S 6. Subdivision 9 of section 284 of the agriculture and markets law, as amended by chapter 639 of the laws of 2004, is amended to read as follows:

9. Establish the Hudson valley agricultural center to serve as a marketing, promotional, informational and cultural center for the Hudson river valley agricultural region and greenway and to promote the production of fruits [(] AND FRUIT PRODUCTS, including juices, jellies, [and] preserves [made therefrom)], wine, GRAPPA AND cider, vegetables[,] and other agricultural products.

S 7. The opening paragraph and paragraph a of subdivision 3 of section 285 of the agriculture and markets law, as added by chapter 834 of the laws of 1981, are amended to read as follows:

The duties and responsibilities of the statewide advisory council shall be prescribed by the commissioner [and he], WHO may specifically delegate to the council any or all of the following duties and responsibilities:

a. [Assisting] ASSIST the commissioner in the collection and assembly of information and data necessary for the proper administration of this article.

S 8. Subdivision 2 of section 285-b of the agriculture and markets law, as amended by chapter 571 of the laws of 2008, is amended to read as follows:

2. The advisory council, in consultation with the Hudson river valley greenway communities council, the upstate New York tourism council, and the downstate New York tourism council, may recommend programs and promotional activities designed to preserve and enhance Hudson valley region tourism, INCREASE THE PROFITABILITY OF FARMING and PRESERVE VIABLE agricultural open [space] SPACES, address issues affecting the viability of agriculture, including real property tax policies and municipal land use issues AND POLICIES, and promote greater agricultural marketing and promotional opportunities for the region's agricultural producers to the department.

S 9. Section 210 of the tax law is amended by adding two new subdivisions 41 and 42 to read as follows:

41. VINEYARD GRAPE PLANTS CREDIT. (A) GENERAL. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR VINEYARD GRAPE PLANTS PLACED IN SERVICE DURING THE TAXABLE YEAR.

(B) VINEYARD GRAPE PLANTS. THE CREDIT UNDER THIS SUBDIVISION FOR VINEYARD GRAPE PLANTS SHALL EQUAL SEVENTY-FIVE PERCENT OF THE COST OF ANY SUCH PLANTS WHICH ARE PLANTED WITHIN "LAND USED IN AGRICULTURAL PRODUCTION", AS DEFINED IN SUBDIVISION FOUR OF SECTION THREE HUNDRED ONE

OF THE AGRICULTURE AND MARKETS LAW, WHETHER OR NOT SUCH LAND IS WITHIN AN AGRICULTURAL DISTRICT WITHIN THE MEANING OF ARTICLE TWENTY-FIVE-AA OF THE AGRICULTURE AND MARKETS LAW.

(C) DEFINITION. THE TERM "VINEYARD GRAPE PLANTS" MEANS NEW GRAPE PLANT MATERIAL USED TO PLANT NEW VINEYARDS OR REPLANT PRESENTLY OR PREVIOUSLY EXISTING OLD VINEYARDS.

(D) CARRYOVERS. IN NO EVENT SHALL THE CREDIT UNDER THIS SUBDIVISION 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. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF 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.

(E) CREDIT RECAPTURE. (I) IF, AT ANY TIME BEFORE THE END OF ITS RECOVERY PERIOD, VINEYARD GRAPE PLANTS CEASE TO BE QUALIFIED, A RECAPTURE AMOUNT MUST BE ADDED BACK IN THE YEAR IN WHICH SUCH CESSATION OCCURS.

(II) VINEYARD GRAPE PLANTS CEASE TO BE QUALIFIED IF:

(A) SUCH VINEYARD IS NOT ACTUALLY USED FOR CROP PRODUCTION FOR THE TEN YEARS NEXT SUCCEEDING THE PLANTING THEREOF; PROVIDED THAT CROP PRODUCTION SHALL NOT BE DEEMED TO REQUIRE HARVESTING; OR

(B) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SUBDIVISION SELLS OR DISPOSES OF THE PROPERTY AND KNOWS OR HAS REASON TO KNOW THAT THE PROPERTY WILL BE USED IN A MANNER DESCRIBED IN CLAUSE (A) OF THIS SUBPARAGRAPH.

(III) RECAPTURE AMOUNT. THE RECAPTURE AMOUNT IS EQUAL TO THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE TOTAL RECOVERY PERIOD FOR THE PROPERTY MINUS THE NUMBER OF RECOVERY YEARS PRIOR TO, BUT NOT INCLUDING, THE RECAPTURE YEAR, AND THE DENOMINATOR OF WHICH IS THE TOTAL RECOVERY PERIOD.

(F) AFFILIATES. (I) IF A CREDIT UNDER THIS SUBDIVISION IS ALLOWED TO A TAXPAYER WITH RESPECT TO A TAXABLE YEAR, THE ACTION TAKEN BY SUCH TAXPAYER WHICH RESULTED IN SUCH CREDIT BEING ALLOWED THERETO MAY, AT THE ELECTION OF THE TAXPAYER AND AN AFFILIATE THEREOF, BE ASCRIBED TO SUCH AFFILIATE. WHERE SUCH AFFILIATE, BASED ON SUCH ASCRIPTION, IS ALLOWED SUCH CREDIT AND DEDUCTS FROM THE TAX OTHERWISE DUE THE AMOUNT OF SUCH CREDIT, SUCH CREDIT SHALL BE DEEMED IN ALL RESPECTS TO HAVE BEEN ALLOWED TO SUCH AFFILIATE; PROVIDED THAT ANY ACTION OR INACTION BY THE TAXPAYER WHICH CONSTITUTES AN EVENT OF RECAPTURE DESCRIBED IN PARAGRAPH (E) OF THIS SUBDIVISION SHALL BE ASCRIBED TO THE AFFILIATE AND SHALL CONSTITUTE AN EVENT OF RECAPTURE WITH RESPECT TO THE CREDIT ALLOWED TO THE AFFILIATE PURSUANT TO THIS SUBDIVISION.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IN THE CASE OF THE CREDIT PROVIDED FOR UNDER THIS SUBDIVISION BEING ALLOWED TO, OR ASSERTED TO BE ALLOWED TO, AN AFFILIATE, PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COMMISSIONER SHALL HAVE THE SAME POWERS WITH RESPECT TO EXAMINING THE BOOKS AND RECORDS OF THE TAXPAYER, AND HAVE SUCH OTHER POWERS OF INVESTIGATION WITH RESPECT TO THE TAXPAYER, AS ARE AFFORDED UNDER THIS CHAPTER WITH RESPECT TO A TAXPAYER WHICH HAS DEDUCTED THE CREDIT ALLOWED UNDER THIS SECTION FROM TAX OTHERWISE DUE, AS IF IT WERE THE TAXPAYER WHICH HAD DEDUCTED SUCH CREDIT FROM TAX OTHERWISE DUE.

(III) THE TERM "AFFILIATE" SHALL MEAN A CORPORATION SUBSTANTIALLY ALL THE CAPITAL STOCK OF WHICH IS OWNED OR CONTROLLED EITHER DIRECTLY OR INDIRECTLY BY THE TAXPAYER, OR WHICH OWNS OR CONTROLS EITHER DIRECTLY OR INDIRECTLY SUBSTANTIALLY ALL THE CAPITAL STOCK OF THE TAXPAYER, OR

SUBSTANTIALLY ALL THE CAPITAL STOCK OF WHICH IS OWNED OR CONTROLLED EITHER DIRECTLY OR INDIRECTLY BY INTERESTS WHICH OWN OR CONTROL EITHER DIRECTLY OR INDIRECTLY SUBSTANTIALLY ALL THE CAPITAL STOCK OF THE TAXPAYER.

42. FRUIT PROCESSING CAPITAL EQUIPMENT CREDIT. (A) GENERAL. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR CAPITAL EQUIPMENT THAT IS USED FOR THE PRODUCTION, MANUFACTURE OR STORAGE OF WINE, LIQUOR, ALCOHOL OR SPIRITS THAT PRIMARILY UTILIZES AGRICULTURAL PRODUCTS THAT ARE GROWN OR PRODUCED IN THE STATE THAT IS PLACED IN SERVICE DURING THE TAXABLE YEAR.

(B) CAPITAL EQUIPMENT FOR THE PRODUCTION, MANUFACTURE, OR STORAGE OF WINE, LIQUOR, ALCOHOL OR SPIRITS. THE CREDIT UNDER THIS SUBDIVISION FOR SUCH CAPITAL EQUIPMENT SHALL EQUAL FIFTY PERCENT OF THE COST OF ANY SUCH EQUIPMENT WHICH IS USED IN THIS STATE BY A TAXPAYER LICENSED UNDER SECTION SIXTY OR SEVENTY-FIVE OF THE ALCOHOLIC BEVERAGE CONTROL LAW THAT IS USED FOR THE PRODUCTION, MANUFACTURE, OR STORAGE OF WINE, LIQUOR, ALCOHOL OR SPIRITS THAT PRIMARILY UTILIZES AGRICULTURAL PRODUCTS THAT ARE GROWN OR PRODUCED IN THE STATE.

(C) DEFINITION. THE TERM "CAPITAL EQUIPMENT" MEANS, FOR THE PURPOSES OF THIS SUBDIVISION, MACHINERY, TOOLS, PRESSES, PUMPS, COOPERAGE, OTHER STORAGE TANKS, APPLIANCES AND OTHER SIMILAR EQUIPMENT USED FOR THE PRODUCTION, MANUFACTURE, OR STORAGE OF WINE, LIQUOR, ALCOHOL OR SPIRITS.

(D) CARRYOVERS. IN NO EVENT SHALL THE CREDIT UNDER THIS SUBDIVISION 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. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF 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.

(E) CREDIT RECAPTURE. (I) IF, AT ANY TIME BEFORE THE END OF ITS RECOVERY PERIOD, SUCH CAPITAL EQUIPMENT CEASES TO BE QUALIFIED, A RECAPTURE AMOUNT MUST BE ADDED BACK IN THE YEAR IN WHICH SUCH CESSATION OCCURS.

(II) SUCH CAPITAL EQUIPMENT CEASES TO BE QUALIFIED IF:

(A) SUCH EQUIPMENT IS NOT ACTUALLY USED IN THIS STATE FOR THE PRODUCTION, MANUFACTURE OR STORAGE OF WINE, LIQUOR, ALCOHOL OR SPIRITS THAT PRIMARILY UTILIZES AGRICULTURAL PRODUCTS THAT ARE GROWN OR PRODUCED IN THE STATE BY A TAXPAYER LICENSED UNDER SECTION SIXTY OR SEVENTY-FIVE OF THE ALCOHOLIC BEVERAGE CONTROL LAW FOR THE TEN YEARS NEXT SUCCEEDING THE PLACEMENT OF SUCH EQUIPMENT IN SERVICE; UNLESS SUCH EQUIPMENT HAS A PERIOD OF PROBABLE USEFULNESS THAT IS LESS THAN TEN YEARS, IN WHICH CASE SUCH PERIOD OF PROBABLE USEFULNESS SHALL BE THE RECOVERY PERIOD; OR

(B) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SUBDIVISION SELLS OR DISPOSES OF THE EQUIPMENT AND KNOWS OR HAS REASON TO KNOW THAT THE EQUIPMENT WILL BE USED IN A MANNER DESCRIBED IN CLAUSE (A) OF THIS SUBPARAGRAPH.

(III) RECAPTURE AMOUNT. THE RECAPTURE AMOUNT IS EQUAL TO THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE TOTAL RECOVERY PERIOD FOR THE PROPERTY MINUS THE NUMBER OF RECOVERY YEARS PRIOR TO, BUT NOT INCLUDING, THE RECAPTURE YEAR, AND THE DENOMINATOR OF WHICH IS THE TOTAL RECOVERY PERIOD.

(F) AFFILIATES. (I) IF A CREDIT UNDER THIS SUBDIVISION IS ALLOWED TO A TAXPAYER WITH RESPECT TO A TAXABLE YEAR, THE ACTION TAKEN BY SUCH TAXPAYER WHICH RESULTED IN SUCH CREDIT BEING ALLOWED THERETO MAY, AT THE ELECTION OF THE TAXPAYER AND AN AFFILIATE THEREOF, BE ASCRIBED TO SUCH

AFFILIATE. WHERE SUCH AFFILIATE, BASED ON SUCH ASCRIPTION, IS ALLOWED SUCH CREDIT AND DEDUCTS FROM THE TAX OTHERWISE DUE THE AMOUNT OF SUCH CREDIT, SUCH CREDIT SHALL BE DEEMED IN ALL RESPECTS TO HAVE BEEN ALLOWED TO SUCH AFFILIATE; PROVIDED THAT ANY ACTION OR INACTION BY THE TAXPAYER WHICH CONSTITUTES AN EVENT OF RECAPTURE DESCRIBED IN PARAGRAPH (E) OF THIS SUBDIVISION SHALL BE ASCRIBED TO THE AFFILIATE AND SHALL CONSTITUTE AN EVENT OF RECAPTURE WITH RESPECT TO THE CREDIT ALLOWED TO THE AFFILIATE PURSUANT TO THIS SUBDIVISION.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IN THE CASE OF THE CREDIT PROVIDED FOR UNDER THIS SUBDIVISION BEING ALLOWED TO, OR ASSERTED TO BE ALLOWED TO, AN AFFILIATE, PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COMMISSIONER SHALL HAVE THE SAME POWERS WITH RESPECT TO EXAMINING THE BOOKS AND RECORDS OF THE TAXPAYER, AND HAVE SUCH OTHER POWERS OF INVESTIGATION WITH RESPECT TO THE TAXPAYER, AS ARE AFFORDED UNDER THIS CHAPTER WITH RESPECT TO A TAXPAYER WHICH HAS DEDUCTED THE CREDIT ALLOWED UNDER THIS SECTION FROM TAX OTHERWISE DUE, AS IF IT WERE THE TAXPAYER WHICH HAD DEDUCTED SUCH CREDIT FROM TAX OTHERWISE DUE.

(III) THE TERM "AFFILIATE" SHALL MEAN A CORPORATION SUBSTANTIALLY ALL THE CAPITAL STOCK OF WHICH IS OWNED OR CONTROLLED EITHER DIRECTLY OR INDIRECTLY BY THE TAXPAYER, OR WHICH OWNS OR CONTROLS EITHER DIRECTLY OR INDIRECTLY SUBSTANTIALLY ALL THE CAPITAL STOCK OF THE TAXPAYER, OR SUBSTANTIALLY ALL THE CAPITAL STOCK OF WHICH IS OWNED OR CONTROLLED EITHER DIRECTLY OR INDIRECTLY BY INTERESTS WHICH OWN OR CONTROL EITHER DIRECTLY OR INDIRECTLY SUBSTANTIALLY ALL THE CAPITAL STOCK OF THE TAXPAYER.

S 10. Section 606 of the tax law is amended by adding two new subsections (qq) and (rr) to read as follows:

(QQ) VINEYARD GRAPE PLANTS CREDIT. (1) GENERAL. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR VINEYARD GRAPE PLANTS PLACED IN SERVICE DURING THE TAXABLE YEAR.

(2) VINEYARD GRAPE PLANTS. THE CREDIT UNDER THIS SUBSECTION FOR VINEYARD GRAPE PLANTS SHALL EQUAL SEVENTY-FIVE PERCENT OF THE COST OF ANY SUCH PLANTS WHICH ARE PLANTED WITHIN "LAND USED IN AGRICULTURAL PRODUCTION", AS DEFINED IN SUBDIVISION FOUR OF SECTION THREE HUNDRED ONE OF THE AGRICULTURE AND MARKETS LAW, WHETHER OR NOT SUCH LAND IS WITHIN AN AGRICULTURAL DISTRICT WITHIN THE MEANING OF ARTICLE TWENTY-FIVE-AA OF THE AGRICULTURE AND MARKETS LAW.

(3) DEFINITION. THE TERM "VINEYARD GRAPE PLANTS" MEANS NEW GRAPE PLANT MATERIAL USED TO PLANT NEW VINEYARDS OR REPLANT PRESENTLY OR PREVIOUSLY EXISTING OLD VINEYARDS.

(4) CARRYOVERS. IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBSECTION SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(5) CREDIT RECAPTURE. (A) IF, AT ANY TIME BEFORE THE END OF ITS RECOVERY PERIOD, VINEYARD GRAPE PLANTS CEASE TO BE QUALIFIED, A RECAPTURE AMOUNT MUST BE ADDED BACK IN THE YEAR IN WHICH SUCH CESSATION OCCURS.

(B) VINEYARD GRAPE PLANTS CEASE TO BE QUALIFIED IF:

(I) SUCH VINEYARD IS NOT ACTUALLY USED FOR CROP PRODUCTION FOR THE TEN YEARS NEXT SUCCEEDING THE PLANTING THEREOF; PROVIDED THAT CROP PRODUCTION SHALL NOT BE DEEMED TO REQUIRE HARVESTING; OR

(II) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SUBSECTION SELLS OR DISPOSES OF THE PROPERTY AND KNOWS OR HAS REASON TO KNOW THAT THE PROP-

ERTY WILL BE USED IN A MANNER DESCRIBED IN CLAUSE (I) OF THIS SUBPARAGRAPH.

(III) RECAPTURE AMOUNT. THE RECAPTURE AMOUNT IS EQUAL TO THE CREDIT ALLOWABLE UNDER THIS SUBSECTION MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE TOTAL RECOVERY PERIOD FOR THE PROPERTY MINUS THE NUMBER OF RECOVERY YEARS PRIOR TO, BUT NOT INCLUDING, THE RECAPTURE YEAR, AND THE DENOMINATOR OF WHICH IS THE TOTAL RECOVERY PERIOD.

(RR) FRUIT PROCESSING CAPITAL EQUIPMENT CREDIT. (1) GENERAL. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR CAPITAL EQUIPMENT THAT IS USED FOR THE PRODUCTION, MANUFACTURE OR STORAGE OF WINE, LIQUOR, ALCOHOL OR SPIRITS THAT PRIMARILY UTILIZE AGRICULTURAL PRODUCTS THAT ARE GROWN OR PRODUCED IN THE STATE THAT IS PLACED IN SERVICE DURING THE TAXABLE YEAR.

(2) CAPITAL EQUIPMENT FOR THE PRODUCTION, MANUFACTURE OR STORAGE OF WINE, LIQUOR, ALCOHOL OR SPIRITS. THE CREDIT UNDER THIS SUBSECTION FOR SUCH CAPITAL EQUIPMENT SHALL EQUAL FIFTY PERCENT OF THE COST OF ANY SUCH EQUIPMENT WHICH IS USED IN THIS STATE BY A TAXPAYER LICENSED UNDER SECTION SIXTY OR SEVENTY-FIVE OF THE ALCOHOLIC BEVERAGE CONTROL LAW THAT IS USED FOR THE PRODUCTION, MANUFACTURE, OR STORAGE OF WINE, LIQUOR, ALCOHOL OR SPIRITS THAT PRIMARILY UTILIZES AGRICULTURAL PRODUCTS THAT ARE GROWN OR PRODUCED IN THE STATE.

(3) DEFINITION. THE TERM "CAPITAL EQUIPMENT" MEANS, FOR THE PURPOSES OF THIS SUBSECTION, MACHINERY, TOOLS, PRESSES, PUMPS, COOPERAGE, OTHER STORAGE TANKS, APPLIANCES AND OTHER SIMILAR EQUIPMENT USED FOR THE PRODUCTION, MANUFACTURE, OR STORAGE OF WINE, LIQUOR, ALCOHOL OR SPIRITS.

(4) CARRYOVERS. IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBSECTION SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(5) CREDIT RECAPTURE. (I) IF, AT ANY TIME BEFORE THE END OF ITS RECOVERY PERIOD, SUCH CAPITAL EQUIPMENT CEASES TO BE QUALIFIED, A RECAPTURE AMOUNT MUST BE ADDED BACK IN THE YEAR IN WHICH SUCH CESSATION OCCURS.

(II) SUCH CAPITAL EQUIPMENT CEASES TO BE QUALIFIED IF:

(A) SUCH EQUIPMENT IS NOT ACTUALLY USED IN THIS STATE FOR THE PRODUCTION, MANUFACTURE OR STORAGE OF WINE, LIQUOR, ALCOHOL OR SPIRITS THAT PRIMARILY UTILIZES AGRICULTURAL PRODUCTS THAT ARE GROWN OR PRODUCED IN THE STATE BY A TAXPAYER LICENSED UNDER SECTION SIXTY OR SEVENTY-FIVE OF THE ALCOHOLIC BEVERAGE CONTROL LAW FOR THE TEN YEARS NEXT SUCCEEDING THE PLACEMENT OF SUCH EQUIPMENT IN SERVICE; UNLESS SUCH EQUIPMENT HAS A PERIOD OF PROBABLE USEFULNESS THAT IS LESS THAN TEN YEARS, IN WHICH CASE SUCH PERIOD OF PROBABLE USEFULNESS SHALL BE THE RECOVERY PERIOD; OR

(B) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SUBSECTION SELLS OR DISPOSES OF THE EQUIPMENT AND KNOWS OR HAS REASON TO KNOW THAT THE EQUIPMENT WILL BE USED IN A MANNER DESCRIBED IN CLAUSE (A) OF THIS SUBPARAGRAPH.

(III) RECAPTURE AMOUNT. THE RECAPTURE AMOUNT IS EQUAL TO THE CREDIT ALLOWABLE UNDER THIS SUBSECTION MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE TOTAL RECOVERY PERIOD FOR THE PROPERTY MINUS THE NUMBER OF RECOVERY YEARS PRIOR TO, BUT NOT INCLUDING, THE RECAPTURE YEAR, AND THE DENOMINATOR OF WHICH IS THE TOTAL RECOVERY PERIOD.

S 11. 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 12. This act shall take effect immediately; provided, however, that section eight of this act shall take effect on the same date and in the

same manner as chapter 571 of the laws of 2008 takes effect; and provided, further, that sections nine and ten of this act shall apply to taxable years commencing on or after January first of the year in which it shall have become a law.