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

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I N A S S E M B L Y

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Introduced by M. of A. DelMONTE, J. RIVERA, KOON, FIELDS, GUNTHER, CLARK, GORDON, GABRYSZAK -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, GLICK, MARKEY, MAYERSOHN, REILLY -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, the county law and the tax law, in relation to granting partial deduction of interest income in the calculation of the franchise tax on business corporations and the personal income tax involving certain sales of land used in the production of fruit or fruit products

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

Section 1. Section 16 of the agriculture and markets law is amended by adding a new subdivision 44 to read as follows:

44. IN CONSULTATION WITH THE COMMISSIONER OF TAXATION AND FINANCE, FOR THE PURPOSES OF THE ADMINISTRATION OF SUBPARAGRAPH EIGHTEEN OF PARAGRAPH (A) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT AND PARAGRAPH THIRTY-NINE OF SUBSECTION (C) OF SECTION SIX HUNDRED TWELVE OF THE TAX LAW, THE COMMISSIONER SHALL PROMULGATE REGULATIONS DEFINING "FRUIT" AND "FRUIT PRODUCTS".

S 2. The county law is amended by adding a new section 220-b to read as follows:

S 220-B. CONSERVATION EASEMENTS IN CONNECTION WITH CERTAIN LAND USED IN THE AGRICULTURAL PRODUCTION OF FRUIT AND FRUIT PRODUCTS. 1. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (B) OF SECTION TWO OF THIS CHAPTER, THE BOARD OF SUPERVISORS OR COUNTY LEGISLATURE OF EVERY COUNTY SHALL, UPON APPLICATION FOR A CONSERVATION EASEMENT FILED WITH SUCH COUNTY, FOR PROPERTY WITHIN SUCH COUNTY, NOT MORE THAN SIX MONTHS PRIOR TO THE CLOSE OF THE TAXABLE YEAR OR THE YEAR NEXT SUCCEEDING SUCH YEAR, FOR WHICH A DEDUCTION IS OR WILL BE SOUGHT TO BE CLAIMED BY A TAXPAYER PURSUANT TO ARTICLE NINE-A OR ARTICLE TWENTY-TWO OF THE TAX LAW, ACCEPT SUCH APPLICATION AND OFFER TO PERMIT A NOT-FOR-PROFIT CONSERVATION

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

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ORGANIZATION OR PUBLIC BODY WITHIN SUCH COUNTY, WITHIN WHOSE TERRITORY THE SUBJECT PROPERTY IS LOCATED, OTHER THAN THE STATE, TO ACCEPT OR UNDERTAKE TO ACCEPT A CONSERVATION EASEMENT IN CONNECTION WITH THE ADMINISTRATION OF SUBPARAGRAPH EIGHTEEN OF PARAGRAPH (A) OF SUBDIVISION NINE OF SECTION TWO HUNDRED EIGHT OR PARAGRAPH THIRTY-NINE OF SUBSECTION (C) OF SECTION SIX HUNDRED TWELVE OF THE TAX LAW, PERTAINING TO FRUIT AND FRUIT PRODUCTS PRODUCED OR PROCESSED ON LAND IN AGRICULTURAL PRODUCTION AND RECEIVING OR ELIGIBLE TO RECEIVE AN AGRICULTURAL ASSESSMENT.

2. IN THE EVENT THAT AN APPLICATION FOR A CONSERVATION EASEMENT IS SUBMITTED TO A COUNTY LESS THAN SIX MONTHS PRIOR TO THE CLOSE OF SUCH TAXPAYER'S TAXABLE YEAR, THE SIX-MONTH PERIOD PROVIDED FOR IN SUBDIVISION ONE OF THIS SECTION FOR THE COUNTY TO SECURE A NOT-FOR-PROFIT CONSERVATION ORGANIZATION OR PUBLIC BODY WITHIN SUCH COUNTY, WITHIN WHOSE TERRITORY THE SUBJECT PROPERTY IS LOCATED, OTHER THAN THE STATE, TO TAKE AND ACCEPT SUCH CONSERVATION EASEMENT OR FOR THE COUNTY ITSELF TO DO SO, SHALL APPLY AND RUN FROM THE DATE OF THE FILING OF SUCH APPLICATION, AND THE CONSERVATION EASEMENT, IF TAKEN AND ACCEPTED WITHIN SUCH LATTER SIX-MONTH PERIOD, SHALL BE DEEMED TO MEET THE REQUIREMENT FOR TAX DEDUCTIBILITY PURSUANT TO SAID PROVISIONS OF SECTIONS TWO HUNDRED EIGHT AND SIX HUNDRED TWELVE OF THE TAX LAW WITH RESPECT TO THE TIMELINESS OF THE APPLICATION FOR AND TAKING AND ACCEPTING OF SUCH CONSERVATION EASEMENT.

3. FOR THE PURPOSES OF THIS SECTION, THE TERM "CONSERVATION EASEMENT" HAS THE MEANING THEREOF WITHIN THE CONTEMPLATION OF TITLE THREE OF ARTICLE FORTY-NINE OF THE ENVIRONMENTAL CONSERVATION LAW.

S 3. Paragraph (a) of subdivision 9 of section 208 of the tax law is amended by adding a new subparagraph 18 to read as follows:

(18) (A) FIFTY PERCENT OF THE MORTGAGE INTEREST ACCRUING TO A TAXPAYER AS PAYMENT ON ACCOUNT OF INDEBTEDNESS INCURRED TO THE TAXPAYER BY A PERSON WHO HAS PURCHASED FROM THE TAXPAYER AND GIVEN SUCH TAXPAYER A MORTGAGE ON THE REAL PROPERTY PURCHASED BY SUCH PERSON AS SECURITY FOR THE PAYMENT OF SUCH INDEBTEDNESS TO THE TAXPAYER:

(I) FOR NOT MORE THAN FIFTY ACRES OF ONE OR MORE CONTIGUOUS PARCELS OF LAND SUBJECT TO SUCH MORTGAGE, WHICH LAND IS USED IN AGRICULTURAL PRODUCTION OR HAS BEEN USED IN AGRICULTURAL PRODUCTION WITHIN THE PAST FIVE YEARS IN THE TAXPAYER'S TAXABLE YEAR OF SALE OR THE YEAR NEXT SUCCEEDING SUCH YEAR. IN THE EVENT SUCH MORTGAGE AND INTEREST PAID IS FOR MORE THAN FIFTY ACRES OF LAND, THE DEDUCTION GRANTED PURSUANT TO THIS SUBPARAGRAPH SHALL ONLY APPLY TO THAT RATIO OF THE INTEREST PAID WHICH IS EQUAL TO THE RATIO BETWEEN FIFTY ACRES AND THE TOTAL AREA OF THE LAND UPON WHICH THE INTEREST IS PAID;

(II) WHICH LAND HAS OR IS ELIGIBLE TO HAVE AN AGRICULTURAL ASSESSMENT IN THE TAXPAYER'S TAXABLE YEAR OF SALE OR THE YEAR NEXT SUCCEEDING SUCH YEAR;

(III) WHICH LAND IS USED OR HAS BEEN USED IN THE PAST FIVE YEARS FOR THE CULTIVATION OF FRUIT OR FRUIT PRODUCTS IN THE TAXPAYER'S TAXABLE YEAR OF SALE OR THE YEAR NEXT SUCCEEDING SUCH YEAR; AND

(IV) WHICH LAND IS, IN THE TAXPAYER'S TAXABLE YEAR OF SALE OR THE YEAR NEXT SUCCEEDING SUCH YEAR, AND CONTINUES TO BE SUBJECT TO A CONSERVATION EASEMENT THAT LIMITS THE USE OF SUCH LAND TO AGRICULTURAL PRODUCTION, WHICH CONSERVATION EASEMENT IS IN COMPLIANCE WITH TITLE THREE OF ARTICLE FORTY-NINE OF THE ENVIRONMENTAL CONSERVATION LAW AND SECTION TWO HUNDRED TWENTY-B OF THE COUNTY LAW.

(B) IN NO EVENT SHALL THE TAXPAYER BE AUTHORIZED TO DEDUCT INTEREST FOR MORE THAN FIFTY ACRES OF LAND SUBJECT TO SEPARATE MORTGAGES BY AND SALES OF LAND TO ANY SINGLE PURCHASER.

(C) IN THE EVENT THAT THE PURCHASER DEFAULTS ON THE PAYMENT OF THE INDEBTEDNESS, THE TAXPAYER SHALL NOT BE PERMITTED TO DEDUCT THE AMOUNT OF INTEREST DUE AND OWING UNTIL SUCH TIME AS THE TAXPAYER ACTUALLY RECEIVES PAYMENT OF SUCH INTEREST.

(D) IN THE EVENT THAT SUCH PARCEL OF LAND IS PURCHASED BY:

(I) NOT MORE THAN THREE NATURAL PERSONS, EACH OF WHOM IS NOT MORE THAN THIRTY-FIVE YEARS OF AGE; OR

(II) A CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY, EACH OF WHOSE STOCKHOLDERS, PARTNERS OR MEMBERS, RESPECTIVELY, TOTALING NO MORE THAN THREE, IS A NATURAL PERSON NOT MORE THAN THIRTY-FIVE YEARS OF AGE;

SEVENTY-FIVE PERCENT OF THE INTEREST MAY BE DEDUCTED IN LIEU OF FIFTY PERCENT AS PROVIDED IN CLAUSE (A) OF THIS SUBPARAGRAPH.

(E) A TAXPAYER TAKING THE DEDUCTION AUTHORIZED BY THIS SUBPARAGRAPH SHALL FILE WITH THE DEPARTMENT CERTIFIED COPIES OF THE DEED, MORTGAGE, AND INSTRUMENT OF INDEBTEDNESS EITHER WITH THE FIRST TAX RETURN ON WHICH THE DEDUCTION AUTHORIZED BY THIS SUBPARAGRAPH IS TAKEN OR PRIOR THERETO.

(F) FOR THE PURPOSES OF THIS SUBPARAGRAPH, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

(I) "AGRICULTURAL ASSESSMENT" HAS THE MEANING THAT IT HAS FOR THE PURPOSES OF ARTICLE TWENTY-FIVE-AA OF THE AGRICULTURE AND MARKETS LAW.

(II) "FRUIT" AND "FRUIT PRODUCTS" HAVE THE MEANINGS DEFINED THEREFOR BY THE COMMISSIONER OF AGRICULTURE AND MARKETS IN REGULATIONS PROMULGATED FOR THE PURPOSES OF THIS SUBPARAGRAPH.

(III) "LAND USED IN AGRICULTURAL PRODUCTION" HAS THE MEANING DEFINED THEREFOR IN ARTICLE TWENTY-FIVE-AA OF THE AGRICULTURE AND MARKETS LAW.

S 4. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 39 to read as follows:

(39) (A) FIFTY PERCENT OF THE MORTGAGE INTEREST RECEIVED BY A TAXPAYER AS PAYMENT ON ACCOUNT OF INDEBTEDNESS INCURRED TO THE TAXPAYER BY A PERSON WHO HAS PURCHASED FROM THE TAXPAYER AND GIVEN SUCH TAXPAYER A MORTGAGE ON THE REAL PROPERTY PURCHASED BY SUCH PERSON AS SECURITY FOR THE PAYMENT OF SUCH INDEBTEDNESS TO THE TAXPAYER:

(I) FOR NOT MORE THAN FIFTY ACRES OF ONE OR MORE CONTIGUOUS PARCELS OF LAND SUBJECT TO SUCH MORTGAGE, WHICH LAND IS USED IN AGRICULTURAL PRODUCTION OR HAS BEEN USED IN AGRICULTURAL PRODUCTION WITHIN THE PAST FIVE YEARS IN THE TAXPAYER'S TAXABLE YEAR OF SALE OR THE YEAR NEXT SUCCEEDING SUCH YEAR. IN THE EVENT SUCH MORTGAGE AND INTEREST PAID IS FOR MORE THAN FIFTY ACRES OF LAND, THE DEDUCTION GRANTED PURSUANT TO THIS SUBPARAGRAPH SHALL ONLY APPLY TO THAT RATIO OF THE INTEREST PAID WHICH IS EQUAL TO THE RATIO BETWEEN FIFTY ACRES AND THE TOTAL AREA OF THE LAND UPON WHICH THE INTEREST IS PAID;

(II) WHICH LAND HAS OR IS ELIGIBLE TO HAVE AN AGRICULTURAL ASSESSMENT IN THE TAXPAYER'S TAXABLE YEAR OF SALE OR THE YEAR NEXT SUCCEEDING SUCH YEAR;

(III) WHICH LAND IS USED OR HAS BEEN USED IN THE PAST FIVE YEARS FOR THE CULTIVATION OF FRUIT OR PROCESSING OF FRUIT PRODUCTS IN THE TAXPAYER'S TAXABLE YEAR OF SALE OR THE YEAR NEXT SUCCEEDING SUCH YEAR; AND

(IV) WHICH LAND IS, IN THE TAXPAYER'S TAXABLE YEAR OF SALE OR THE YEAR NEXT SUCCEEDING SUCH YEAR, AND CONTINUES TO BE SUBJECT TO A CONSERVATION EASEMENT THAT LIMITS THE USE OF SUCH LAND TO AGRICULTURAL PRODUCTION, WHICH CONSERVATION EASEMENT IS IN COMPLIANCE WITH TITLE THREE OF ARTICLE FORTY-NINE OF THE ENVIRONMENTAL CONSERVATION LAW AND SECTION TWO HUNDRED TWENTY-B OF THE COUNTY LAW.

(B) IN NO EVENT SHALL THE TAXPAYER BE AUTHORIZED TO DEDUCT INTEREST FOR MORE THAN FIFTY ACRES OF LAND SUBJECT TO SEPARATE MORTGAGES BY AND SALES OF LAND TO ANY SINGLE PURCHASER.

(C) IN THE EVENT THAT THE PURCHASER DEFAULTS ON THE PAYMENT OF THE INDEBTEDNESS AND THE TAXPAYER FORECLOSES ON THE MORTGAGE, THE TAXPAYER SHALL NOT BE PERMITTED TO DEDUCT THE AMOUNT OF INTEREST DUE AND OWING UNTIL SUCH TIME AS THE TAXPAYER ACTUALLY RECEIVES PAYMENT OF SUCH INTEREST.

(D) IN THE EVENT THAT SUCH PARCEL OF LAND IS PURCHASED BY:

(I) NOT MORE THAN THREE NATURAL PERSONS, EACH OF WHOM IS NOT MORE THAN THIRTY-FIVE YEARS OF AGE; OR

(II) A CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY, EACH OF WHOSE STOCKHOLDERS, PARTNERS, OR MEMBERS, RESPECTIVELY, TOTALING NO MORE THAN THREE, IS A NATURAL PERSON NOT MORE THAN THIRTY-FIVE YEARS OF AGE;

SEVENTY-FIVE PERCENT OF THE INTEREST MAY BE DEDUCTED IN LIEU OF FIFTY PERCENT AS PROVIDED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH.

(E) A TAXPAYER TAKING THE DEDUCTION AUTHORIZED BY THIS PARAGRAPH SHALL FILE WITH THE DEPARTMENT CERTIFIED COPIES OF THE DEED, MORTGAGE, AND INSTRUMENT OF INDEBTEDNESS EITHER WITH THE FIRST TAX RETURN ON WHICH THE DEDUCTION AUTHORIZED BY THIS PARAGRAPH IS TAKEN OR PRIOR THERETO.

(F) FOR THE PURPOSES OF THIS PARAGRAPH, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

(I) "AGRICULTURAL ASSESSMENT" HAS THE MEANING THAT IT HAS FOR THE PURPOSES OF ARTICLE TWENTY-FIVE-AA OF THE AGRICULTURE AND MARKETS LAW.

(II) "FRUIT" AND "FRUIT PRODUCTS" HAVE THE MEANINGS DEFINED THEREFOR BY THE COMMISSIONER OF AGRICULTURE AND MARKETS IN REGULATIONS PROMULGATED FOR THE PURPOSES OF THIS PARAGRAPH.

(III) "LAND USED IN AGRICULTURAL PRODUCTION" HAS THE MEANING DEFINED THEREFOR IN ARTICLE TWENTY-FIVE-AA OF THE AGRICULTURE AND MARKETS LAW.

S 5. This act shall take effect immediately and shall apply to taxable years beginning on or after January first of the year in which it shall have become a law; provided that any and all rules and regulations and any other measures necessary to implement any provision of this act shall be promulgated and taken, respectively, immediately and, if deemed necessary, on an emergency basis.