

3317

2009-2010 Regular Sessions

I N A S S E M B L Y

January 26, 2009

Introduced by M. of A. MAGEE -- read once and referred 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:

1 Section 1. Section 3 of the agriculture and markets law, as amended by  
2 chapter 651 of the laws of 1946, is amended to read as follows:  
3 S 3. Declaration of policy and purposes. The agricultural industry is  
4 basic to the life of our state. It vitally concerns and affects the  
5 welfare, health, economic well-being and productive and industrial capa-  
6 bilities of all our people. It is the policy and duty of the state to  
7 promote, foster, and encourage the agricultural industry, with proper  
8 standards of living for those engaged therein; to design and establish  
9 long-range programs for its stabilization and profitable operation; to  
10 increase through education, research, regulation, and scientific means,  
11 the quantity, quality, and efficiency of its production; to improve its  
12 marketing system; to encourage adequate and skilled assistance for agri-  
13 cultural enterprises; to maintain at fair prices uncontrolled by specu-  
14 lation the instrumentalities and products of agriculture; to remove  
15 unnecessary or unfair costs and obstacles in the [transportation] TRANS-  
16 PORTATION, storage, processing, distribution, marketing, and sale of  
17 agricultural products; to prevent frauds in the traffic therein; to  
18 promote an expanded demand for the state's agricultural products and the  
19 intelligent uses thereof by consumers as pure and wholesome food; to  
20 protect the public health and to eliminate the evils of under-nourish-  
21 ment; to encourage the selection and consumption of food according to  
22 sound dietary and nutritional principles; and to make our people

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

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1 conscious of the bond of mutual self-interest between our urban and our  
2 rural populations.

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

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

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

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

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

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

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

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

49 2-b. Aid in the promotion, marketing, and sale of New York state  
50 labelled wines, grapes [and], grape products, OTHER FRUITS AND ALL OTHER  
51 FRUIT PRODUCTS in cooperation with the department of economic develop-  
52 ment both within and outside the state and to provide promotion and  
53 marketing advisement to wineries, farm wineries, micro-wineries, grape  
54 and other fruit growers and processors, and related trade organizations  
55 located within this state.

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

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

7 11. Establish a statewide advisory council which shall provide infor-  
8 mation to and advise the commissioner, as prescribed by him OR HER, on  
9 policy, planning and programs.

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

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

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

21 S 7. The opening paragraph and paragraph a of subdivision 3 of section  
22 285 of the agriculture and markets law, as added by chapter 834 of the  
23 laws of 1981, are amended to read as follows:

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

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

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

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

44 S 9. Section 210 of the tax law is amended by adding two new subdivi-  
45 sions 41 and 42 to read as follows:

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

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

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

4 (D) CARRYOVERS. IN NO EVENT SHALL THE CREDIT UNDER THIS SUBDIVISION BE  
5 ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE  
6 HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVI-  
7 SION ONE OF THIS SECTION. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF CRED-  
8 IT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX  
9 TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR  
10 MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED  
11 FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

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

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

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

19 (B) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SUBDIVISION SELLS OR  
20 DISPOSES OF THE PROPERTY AND KNOWS OR HAS REASON TO KNOW THAT THE PROP-  
21 ERTY WILL BE USED IN A MANNER DESCRIBED IN CLAUSE (A) OF THIS SUBPARA-  
22 GRAPH.

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

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

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

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

1 DIRECTLY OR INDIRECTLY SUBSTANTIALLY ALL THE CAPITAL STOCK OF THE  
2 TAXPAYER.

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

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

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

22 (D) CARRYOVERS. IN NO EVENT SHALL THE CREDIT UNDER THIS SUBDIVISION BE  
23 ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE  
24 HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVI-  
25 SION ONE OF THIS SECTION. PROVIDED, HOWEVER, THAT IF THE AMOUNT OF CRED-  
26 IT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX  
27 TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR  
28 MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED  
29 FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

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

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

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

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

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

51 (F) AFFILIATES. (I) IF A CREDIT UNDER THIS SUBDIVISION IS ALLOWED TO A  
52 TAXPAYER WITH RESPECT TO A TAXABLE YEAR, THE ACTION TAKEN BY SUCH  
53 TAXPAYER WHICH RESULTED IN SUCH CREDIT BEING ALLOWED THERETO MAY, AT THE  
54 ELECTION OF THE TAXPAYER AND AN AFFILIATE THEREOF, BE ASCRIBED TO SUCH  
55 AFFILIATE. WHERE SUCH AFFILIATE, BASED ON SUCH ASCRIPTION, IS ALLOWED  
56 SUCH CREDIT AND DEDUCTS FROM THE TAX OTHERWISE DUE THE AMOUNT OF SUCH

1 CREDIT, SUCH CREDIT SHALL BE DEEMED IN ALL RESPECTS TO HAVE BEEN ALLOWED  
2 TO SUCH AFFILIATE; PROVIDED THAT ANY ACTION OR INACTION BY THE TAXPAYER  
3 WHICH CONSTITUTES AN EVENT OF RECAPTURE DESCRIBED IN PARAGRAPH (E) OF  
4 THIS SUBDIVISION SHALL BE ASCRIBED TO THE AFFILIATE AND SHALL CONSTITUTE  
5 AN EVENT OF RECAPTURE WITH RESPECT TO THE CREDIT ALLOWED TO THE AFFIL-  
6 IATE PURSUANT TO THIS SUBDIVISION.

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

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

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

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

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

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

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

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

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

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

52 (II) THE TAXPAYER RECEIVING THE CREDIT UNDER THIS SUBSECTION SELLS OR  
53 DISPOSES OF THE PROPERTY AND KNOWS OR HAS REASON TO KNOW THAT THE PROP-  
54 erty WILL BE USED IN A MANNER DESCRIBED IN CLAUSE (I) OF THIS SUBPARA-  
55 GRAPH.

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

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

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

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

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

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

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

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

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

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

50 S 11. The commissioner of taxation and finance is authorized and  
51 directed to promulgate any rules and regulations necessary to implement  
52 the provisions of this act.

53 S 12. This act shall take effect immediately; provided, however, that  
54 section eight of this act shall take effect on the same date and in the  
55 same manner as chapter 571 of the laws of 2008 takes effect; and  
56 provided, further, that sections nine and ten of this act shall apply to

1 taxable years commencing on or after January first of the year in which  
2 it shall have become a law.