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

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 30, 2009

Introduced by M. of A. THIELE, WALKER, ALFANO -- Multi-Sponsored by -- M. of A. BARRA, CROUCH, GIGLIO, SPANO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, the state finance law and the environmental conservation law, in relation to establishing a credit against income tax for certain real property donations

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

Section 1. The tax law is amended by adding a new section 171-t to read as follows:

S 171-T. CREDIT FOR CERTAIN REAL PROPERTY DONATIONS VERIFICATION. THE DEPARTMENT SHALL VERIFY THE AMOUNT OF TAX CREDITS TAKEN EACH FISCAL YEAR WHICH WERE ALLOWED PURSUANT TO SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN OR SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER. UPON SUCH VERIFICATION, THE COMMISSIONER SHALL TRANSFER SUCH AMOUNT FROM THE REAL PROPERTY DONATION CREDIT TRANSITORY FUND AS DEFINED IN SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW TO THE CREDIT OF THE GENERAL FUND.

S 2. Section 210 of the tax law is amended by adding a new subdivision 41 to read as follows:

41. CREDIT FOR CERTAIN REAL PROPERTY DONATIONS. (A) ANY CORPORATION THAT MAKES A QUALIFIED DONATION OF INTEREST IN REAL PROPERTY LOCATED IN NEW YORK DURING THE TAXABLE YEAR THAT IS USEFUL FOR PUBLIC BEACH ACCESS OR USE, PUBLIC ACCESS TO PUBLIC WATERS OR TRAILS, FISH AND WILDLIFE CONSERVATION, OR OTHER SIMILAR LAND CONSERVATION PURPOSES, AS DETERMINED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION OR THE COMMISSIONER OF THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, SHALL BE ALLOWED A CREDIT AGAINST THE TAXES IMPOSED BY THIS ARTICLE EQUAL TO TWENTY-FIVE PERCENT OF THE FAIR MARKET VALUE OF THE DONATED PROPERTY INTEREST. TO BE ELIGIBLE FOR SUCH CREDIT, THE INTEREST IN REAL PROPERTY SHALL BE DONATED TO THE STATE AND APPROVED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION OR THE COMMISSIONER OF THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, AS SET FORTH IN SECTION 56-0307 OF THE ENVIRONMENTAL CONSERVATION LAW OR SECTION NINETY-TWO-S OF THE STATE

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

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FINANCE LAW, AS A DONATION QUALIFIED FOR A CREDIT UNDER THIS SECTION. THE CREDIT ALLOWED UNDER THIS SECTION SHALL NOT EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS FOR ANY FOUR CONSECUTIVE TAX YEARS.

(B) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, 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 FIFTEEN TAXABLE YEARS NEXT FOLLOWING SUCH TAXABLE YEAR AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 3. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) CREDIT FOR CERTAIN REAL PROPERTY DONATIONS. (1) A TAXPAYER THAT MAKES A QUALIFIED DONATION OF INTEREST IN REAL PROPERTY LOCATED IN NEW YORK DURING THE TAXABLE YEAR THAT IS USEFUL FOR PUBLIC BEACH ACCESS OR USE, PUBLIC ACCESS TO PUBLIC WATERS OR TRAILS, FISH AND WILDLIFE CONSERVATION, OR OTHER SIMILAR LAND CONSERVATION PURPOSES, AS DETERMINED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION OR THE COMMISSIONER OF THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, SHALL BE ALLOWED A CREDIT AGAINST THE TAXES IMPOSED BY THIS ARTICLE EQUAL TO TWENTY-FIVE PERCENT OF THE FAIR MARKET VALUE OF THE DONATED PROPERTY INTEREST. TO BE ELIGIBLE FOR THIS CREDIT, THE INTEREST IN REAL PROPERTY MUST BE DONATED TO THE STATE AND APPROVED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION OR THE COMMISSIONER OF THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, AS SET FORTH IN SECTION 56-0307 OF THE ENVIRONMENTAL CONSERVATION LAW OR SECTION NINETY-TWO-S OF THE STATE FINANCE LAW, AS A DONATION QUALIFIED FOR A CREDIT UNDER THIS SECTION. THE CREDIT ALLOWED UNDER THIS SECTION SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS FOR ANY FOUR CONSECUTIVE TAX YEARS.

(2) IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE TEN TAXABLE YEARS NEXT FOLLOWING SUCH TAXABLE YEAR AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(3) IN THE CASE OF PROPERTY OWNED BY A MARRIED COUPLE, IF BOTH SPOUSES ARE REQUIRED TO FILE SEPARATE NEW YORK STATE INCOME TAX RETURNS, THE CREDIT ALLOWED BY THIS SUBSECTION MAY BE CLAIMED BY EITHER SPOUSE OR PARTIALLY BY BOTH SPOUSES WITH THE SUM TOTAL OF THE CREDITS CLAIMED BY BOTH TAXPAYERS IN ALL TAX YEARS NOT EXCEEDING THE AMOUNT OF THE CREDIT EARNED UNDER PARAGRAPH ONE OF THIS SUBSECTION. IF ONLY ONE SPOUSE IS REQUIRED TO FILE A NEW YORK STATE INCOME TAX RETURN, THAT SPOUSE MAY CLAIM THE CREDIT ALLOWED BY THIS SUBSECTION ON A SEPARATE RETURN.

S 4. The state finance law is amended by adding a new section 99-q to read as follows:

S 99-Q. REAL PROPERTY DONATION CREDIT TRANSITORY FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL REVENUE FUND TO BE KNOWN AS THE "REAL PROPERTY DONATION CREDIT TRANSITORY FUND" WHICH SHALL CONSIST OF THE REAL PROPERTY DONATION CREDIT TRANSITORY ACCOUNT.

2. THE REAL PROPERTY DONATION CREDIT TRANSITORY ACCOUNT SHALL CONSIST OF ALL MONEYS CREDITED OR TRANSFERRED THERETO FROM THE ENVIRONMENTAL PROTECTION FUND OR FROM THE SALE OF BONDS PURSUANT TO THE CLEAN WATER, CLEAN AIR BOND ACT OF 1996 AS FULL FUNDING FOR TAX CREDITS APPROVED AS COMPENSATION FOR LAND DONATED TO THE STATE IN ACCORDANCE WITH PROVISIONS OF SECTION 56-0307 OF THE ENVIRONMENTAL CONSERVATION LAW OR SECTION

NINETY-TWO-S OF THIS ARTICLE AND SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN OR SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX OF THE TAX LAW. THE FULL AMOUNT OF TAX CREDITS EARNED BY TAXPAYERS UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN AND SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX OF THE TAX LAW SHALL BE CREDITED OR TRANSFERRED THERETO FROM THE ENVIRONMENTAL PROTECTION FUND AT THE TIME OF APPROVAL.

3. MONEYS IN THE REAL PROPERTY DONATION CREDIT TRANSITORY FUND MAY BE INVESTED BY THE COMPTROLLER PURSUANT TO SECTION NINETY-EIGHT-A OF THIS ARTICLE, AND ANY INCOME RECEIVED BY THE COMPTROLLER SHALL BE USED FOR THE PURPOSES OF SUCH FUND.

4. THE MONEYS HELD IN OR CREDITED TO THE FUND SHALL BE EXPENDED FOR LAND CONSERVATION PURPOSES, AND MAY NOT BE INTERCHANGED OR COMMINGLED WITH ANY OTHER ACCOUNT OR FUND BUT MAY BE COMMINGLED WITH ANY OTHER FUND OR ACCOUNT FOR INVESTMENT PURPOSES.

5. IF THE COMMISSIONER OF TAXATION AND FINANCE DETERMINES THAT ANY OF THE CREDITS EARNED UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN OR SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX OF THE TAX LAW WERE NOT REDEEMED, THE AMOUNT OF UNREDEEMED CREDITS SHALL BE CREDITED OR TRANSFERRED TO THE ENVIRONMENTAL PROTECTION FUND.

S 5. Paragraph (d) of subdivision 6 of section 92-s of the state finance law, as amended by section 13 of part E of chapter 61 of the laws of 2000, is amended to read as follows:

(d) Moneys from the open space account shall be available, pursuant to appropriation, for any open space land conservation project INCLUDING TAX CREDITS FOR CERTAIN REAL PROPERTY DONATIONS PURSUANT TO SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN AND SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX OF THE TAX LAW, bio-diversity stewardship and research pursuant to chapter five hundred fifty-four of the laws of nineteen hundred ninety-three, for the purposes of agricultural and farmland protection activities as authorized by article twenty-five-AAA of the agriculture and markets law, non-point source abatement and control projects pursuant to section 17-1409 of the environmental conservation law and section eleven-b of the soil and water conservation districts law, for Long Island Central Pine Barrens area planning or Long Island south shore estuary reserve planning pursuant to title thirteen of article fifty-four of the environmental conservation law, and for operation and management of the Albany Pine Bush preserve commission pursuant to subdivision two of section 54-0303 of the environmental conservation law.

S 6. Subdivision 4 of section 56-0307 of the environmental conservation law, as added by chapter 413 of the laws of 1996, is amended to read as follows:

4. The cost of an open space land conservation project shall include the cost of preparation of a management plan for the preservation and beneficial enjoyment of the land acquired pursuant to this section except where such considerations have already been undertaken as part of any existing plan applicable to the newly acquired land. THE COST OF AN OPEN SPACE LAND CONSERVATION PROJECT SHALL BE DEEMED TO INCLUDE TAX CREDITS FOR CERTAIN REAL PROPERTY DONATIONS PURSUANT TO SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN AND SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX OF THE TAX LAW, WHEN SUCH TAX CREDIT REPLACES ANY OTHER COMPENSATION FOR THE STATE ACQUIRING TITLE TO THE PROPERTY.

S 7. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.