

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:

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

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

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

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

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

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

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

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

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

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

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

53 2-b. Aid in the promotion, marketing, and sale of New York state
54 labelled wines, grapes [and], grape products, OTHER FRUITS AND ALL OTHER
55 FRUIT PRODUCTS in cooperation with the department of economic develop-
56 ment both within and outside the state and to provide promotion and

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

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

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

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

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

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

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

24 S 7. The opening paragraph and paragraph a of subdivision 3 of section
25 285 of the agriculture and markets law, as added by chapter 834 of the
26 laws of 1981, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ERTY WILL BE USED IN A MANNER DESCRIBED IN CLAUSE (I) OF THIS SUBPARA-
2 GRAPH.

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

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

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

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

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

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

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

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

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

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

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

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

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