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

(PREFILED)

January 5, 2011

Introduced by M. of A. HAWLEY, CROUCH, BURLING, BUTLER, SAYWARD, McDONOUGH -- Multi-Sponsored by -- M. of A. BARCLAY, DUPREY, FINCH, KOLB, P. LOPEZ, J. MILLER, OAKS, RAIA, REILICH, TEDISCO, THIELE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the eligibility of farmers leasing land for the agricultural property tax credit

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

Section 1. Paragraphs (a) and (b) of subdivision 22 of section 210 of the tax law, paragraph (a) as amended by chapter 315 of the laws of 1998 and paragraph (b) as amended by chapter 297 of the laws of 2010, are amended to read as follows:

(a) General. In the case of a taxpayer which is an eligible farmer [or], an eligible farmer [who] WHICH has paid taxes pursuant to a land contract, OR AN ELIGIBLE FARMER WHICH HAS A LEASEHOLD INTEREST OF NOT FEWER THAN FIVE CONTINUOUS YEARS AS A LESSEE OF QUALIFIED AGRICULTURAL PROPERTY, there shall be allowed a credit for the allowable school district property taxes. The term "allowable school district property taxes" means the school district property taxes paid during the taxable year on qualified agricultural property, subject to the acreage limitation provided in paragraph (e) of this subdivision and the income limitation provided in paragraph (f) of this subdivision.

(b) Eligible farmer. For purposes of this subdivision, the term "eligible farmer" means a taxpayer whose federal gross income from farming for the taxable year is at least two-thirds of excess federal gross income. The term "eligible farmer" also includes a corporation other than the taxpayer of record for qualified agricultural land which has paid the school district property taxes on such land pursuant to a contract for the future purchase of such land OR WHICH HAS A LEASEHOLD INTEREST OF NOT FEWER THAN FIVE CONTINUOUS YEARS AS A LESSEE OF SUCH

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

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LAND; provided that such corporation has a federal gross income from farming for the taxable year which is at least two-thirds of excess federal gross income; and provided further that, in determining such income eligibility, a taxpayer may, for any taxable year, use the average of such federal gross income from farming for that taxable year and such income for the two consecutive taxable years immediately preceding such taxable year. Excess federal gross income means the amount of federal gross income from all sources for the taxable year in excess of thirty thousand dollars. For the purposes of this paragraph, payments from the state's farmland protection program, administered by the department of agriculture and markets, shall be included as federal gross income from farming for otherwise eligible farmers.

S 2. Paragraphs 1 and 2 of subsection (n) of section 606 of the tax law, paragraph 1 as amended by chapter 315 of the laws of 1998 and paragraph 2 as amended by chapter 297 of the laws of 2010, are amended to read as follows:

(1) General. In the case of a taxpayer who is an eligible farmer [or], an eligible farmer who has paid taxes pursuant to a land contract, OR AN ELIGIBLE FARMER WHO HAS A LEASEHOLD INTEREST OF NOT FEWER THAN FIVE CONTINUOUS YEARS AS A LESSEE OF QUALIFIED AGRICULTURAL PROPERTY, there shall be allowed a credit for the allowable school district property taxes. The term "allowable school district property taxes" means the school district property taxes paid during the taxable year on qualified agricultural property, subject to the acreage limitation provided in paragraph five of this subsection and the income limitation provided in paragraph six of this subsection. Such credit shall be allowed against the taxes imposed by this article for the taxable year reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess.

(2) Eligible farmer. For purposes of this subsection, the term "eligible farmer" means a taxpayer whose federal gross income from farming for the taxable year is at least two-thirds of excess federal gross income. The term "eligible farmer" also includes an individual other than the taxpayer of record for qualified agricultural land who has paid the school district property taxes on such land pursuant to a contract for the future purchase of such land OR WHO HAS A LEASEHOLD INTEREST OF NOT FEWER THAN FIVE CONTINUOUS YEARS AS A LESSEE OF SUCH LAND; provided that such individual has a federal gross income from farming for the taxable year which is at least two-thirds of excess federal gross income; and provided further that, in determining such income eligibility, a taxpayer may, for any taxable year, use the average of such federal gross income from farming for that taxable year and such income for the two consecutive taxable years immediately preceding such taxable year. Excess federal gross income means the amount of federal gross income from all sources for the taxable year reduced by the sum (not to exceed thirty thousand dollars) of those items included in federal gross income which consist of (i) earned income, (ii) pension payments, including social security payments, (iii) interest, and (iv) dividends. For purposes of this paragraph, the term "earned income" [shall mean] MEANS wages, salaries, tips and other employee compensation, and those items of gross income which are includible in the computation of net earnings from self-employment. For the purposes of this paragraph, payments from the state's farmland protection program, administered by the department

of agriculture and markets, shall be included as federal gross income from farming for otherwise eligible farmers.

S 3. 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 4. This act shall take effect immediately and shall apply to taxable years commencing on or after January 1, 2013.