

4340

2011-2012 Regular Sessions

I N S E N A T E

March 30, 2011

Introduced by Sen. RITCHIE -- 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, the tax law, the vehicle and traffic law and the environmental conservation law, in relation to reducing farm-based taxes, fees and regulatory burdens to help grow the agricultural economy and benefit family farms

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

1 Section 1. Legislative intent. The legislature finds that viable farms
2 and the protection of working farmland are of paramount importance to
3 the economic and environmental wellbeing of New York state. The local-
4 ly-focused, diverse food supply New York farms provide is of critical
5 importance to the health and welfare of all New York citizens. With
6 agriculture facing ever increasing global competition, New York state is
7 committed to helping grow and expand our farms. In aid of this goal,
8 reducing farm-based taxes, fees and regulatory burdens that do not
9 recognize the unique nature and benefits of agriculture is an important
10 step in achieving successful, sustainable family farms.

11 S 2. Subdivision 3 of section 303-b of the agriculture and markets law
12 is amended by adding a new paragraph c to read as follows:

13 C. THE NOTICE SHALL ALSO BE PROVIDED TO ALL LANDOWNERS WITH LAND BEING
14 PROPOSED FOR INCLUSION IN AN AGRICULTURAL DISTRICT. LANDOWNERS SHALL
15 HAVE THE OPTION TO RECEIVE THIS NOTICE EITHER THROUGH WRITTEN COMMUNI-
16 CATION OR THROUGH ELECTRONIC COMMUNICATION.

17 S 3. Subdivision 12 of section 210 of the tax law is amended by adding
18 a new paragraph (e-1) to read as follows:

19 (E-1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, FOR
20 TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE,
21 IF THE CREDIT ALLOWED UNDER THIS SUBDIVISION IS GREATER THAN THE TAX DUE
22 IN ANY TAXABLE YEAR FOR A TAXPAYER WHOSE PRIMARY SOURCE OF INCOME IS
23 DERIVED FROM OPERATING A FARM OPERATION OR COMMERCIAL HORSE BOARDING

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

LBD08417-01-1

1 OPERATION, SUCH TAXPAYER MAY ELECT TO TREAT THE AMOUNT BY WHICH SUCH
2 CREDIT EXCEEDS SUCH TAX DUE AS AN OVER-PAYMENT OF TAX TO BE REFUNDED IN
3 ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF
4 THIS CHAPTER. FOR PURPOSES OF THIS PARAGRAPH, THE TERMS "FARM OPERATION"
5 AND "COMMERCIAL HORSE BOARDING OPERATION" SHALL HAVE THE SAME MEANINGS
6 AS SUCH TERMS ARE DEFINED IN SECTION THREE HUNDRED ONE OF THE AGRICUL-
7 TURE AND MARKETS LAW.

8 S 4. Subsection (a) of section 606 of the tax law is amended by adding
9 a new paragraph 5-a to read as follows:

10 (5-A) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION, FOR
11 TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE,
12 IF THE CREDIT ALLOWED UNDER THIS SUBSECTION IS GREATER THAN THE TAX DUE
13 IN ANY TAXABLE YEAR FOR A TAXPAYER WHOSE PRIMARY SOURCE OF INCOME IS
14 DERIVED FROM OPERATING A FARM OPERATION OR COMMERCIAL HORSE BOARDING
15 OPERATION, SUCH TAXPAYER MAY ELECT TO TREAT THE AMOUNT BY WHICH SUCH
16 CREDIT EXCEEDS SUCH TAX DUE AS AN OVER-PAYMENT OF TAX TO BE REFUNDED IN
17 ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS
18 ARTICLE. FOR PURPOSES OF THIS PARAGRAPH, THE TERMS "FARM OPERATION" AND
19 "COMMERCIAL HORSE BOARDING OPERATION" SHALL HAVE THE SAME MEANINGS AS
20 SUCH TERMS ARE DEFINED IN SECTION THREE HUNDRED ONE OF THE AGRICULTURE
21 AND MARKETS LAW.

22 S 5. Subparagraph (C) of paragraph 1 of subdivision (i) of section
23 1136 of the tax law, as added by section 1 of subpart G of part V-1 of
24 chapter 57 of the laws of 2009, is amended to read as follows:

25 (C) Every wholesaler, as defined by section three of the alcoholic
26 beverage control law, if it has made a sale of an alcoholic beverage, as
27 defined by section four hundred twenty of this chapter, without collect-
28 ing sales or use tax during the period covered by the return, except (i)
29 a sale to a person that has furnished an exempt organization certificate
30 to the wholesaler for that sale; or (ii) a sale to another wholesaler
31 whose license under the alcoholic beverage control law does not allow it
32 to make retail sales of the alcoholic beverage. For each vendor, opera-
33 tor, or recipient to whom the wholesaler has made a sale without
34 collecting sales or compensating use tax, the return must include the
35 total value of those sales made during the period covered by the return
36 (excepting the sales described in clauses (i) and (ii) of this subpara-
37 graph) and the vendor's, operator's or recipient's state liquor authori-
38 ty license number, along with the information required by paragraph two
39 of this subdivision. THE PROVISIONS OF THIS SUBPARAGRAPH SHALL NOT
40 APPLY TO A FARM WINERY AS DEFINED IN SECTION THREE OF THE ALCOHOLIC
41 BEVERAGE CONTROL LAW.

42 S 6. Subparagraphs (A) and (B) of paragraph 3 of subsection (c) of
43 section 658 of the tax law, as amended by section 1 of part H-1 of chap-
44 ter 57 of the laws of 2009, are amended to read as follows:

45 (A) Every subchapter K limited liability company, every limited
46 liability company that is a disregarded entity for federal income tax
47 purposes, and every partnership which has any income derived from New
48 York sources, determined in accordance with the applicable rules of
49 section six hundred thirty-one of this article as in the case of a
50 nonresident individual, shall, within thirty days after the last day of
51 the taxable year, make a payment of a filing fee. SUCH DEADLINE SHALL
52 NOT APPLY TO FARMS, COMMERCIAL HORSE BOARDING OPERATIONS OR AGRICULTURAL
53 SERVICE PROVIDERS SUBJECT TO THE FEE, WHICH SHALL, WITHIN ONE HUNDRED
54 TWENTY DAYS AFTER THE LAST DAY OF THE TAXABLE YEAR, MAKE PAYMENT OF ANY
55 REQUIRED FILING FEE. The amount of the filing fee is the amount set
56 forth in subparagraph (B) of this paragraph. The minimum filing fee is

twenty-five dollars for taxable years beginning in two thousand eight and thereafter. Limited liability companies that are disregarded entities for federal income tax purposes must pay a filing fee of twenty-five dollars for taxable years beginning on or after January first, two thousand eight.

(B) The filing fee will be based on the New York source gross income of the limited liability company or partnership for the taxable year immediately preceding the taxable year for which the fee is due. If the limited liability company or partnership does not have any New York source gross income for the taxable year immediately preceding the taxable year for which the fee is due, the limited liability company or partnership shall pay the minimum filing fee. Partnerships, other than limited liability partnerships under article eight-B of the partnership law and foreign limited liability partnerships, with less than one million dollars in New York source gross income are exempt from the filing fee. New York source gross income is the sum of the partners' or members' shares of federal gross income from the partnership or limited liability company derived from or connected with New York sources, determined in accordance with the provisions of section six hundred thirty-one of this article as if those provisions and any related provisions expressly referred to a computation of federal gross income from New York sources. For this purpose, federal gross income is computed without any allowance or deduction for cost of goods sold, EXCEPT THAT FOR COMPANIES ENGAGED PRIMARILY IN FARMING, COMMERCIAL HORSE BOARDING OR AGRICULTURAL SERVICE PROVIDERS, THE TERM FEDERAL GROSS INCOME SHALL MEAN NET INCOME AS REPORTED FOR FEDERAL TAX PURPOSES.

The amount of the filing fee for taxable years beginning on or after January first, two thousand eight will be determined in accordance with the following table:

If the New York source gross income is:	The fee is:
not more than \$100,000	\$25
more than \$100,000 but not over \$250,000	\$50
more than \$250,000 but not over \$500,000	\$175
more than \$500,000 but not over \$1,000,000	\$500
more than \$1,000,000 but not over \$5,000,000	\$1,500
more than \$5,000,000 but not over \$25,000,000	\$3,000
Over \$25,000,000	\$4,500

S 7. Subparagraph 4 of paragraph (d) of subdivision 1 of section 210 of the tax law, as added by section 2 of part AA-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(4) Notwithstanding subparagraphs one and two of this paragraph, for taxable years beginning on or after January first, two thousand eight, the amount prescribed by this paragraph for New York S corporations will be determined in accordance with the following table:

If New York receipts are:	The fixed dollar minimum tax is:
not more than \$100,000	\$ 25
more than \$100,000 but not over \$250,000	\$ 50
more than \$250,000 but not over \$500,000	\$ 175
more than \$500,000 but not over \$1,000,000	\$ 300
more than \$1,000,000 but not over \$5,000,000	\$1,000
more than \$5,000,000 but not over \$25,000,000	\$3,000
Over \$25,000,000	\$4,500

1 Otherwise the amount prescribed by this paragraph will be determined in
2 accordance with the following table:

3	If New York receipts are:	The fixed dollar minimum tax is:
4	not more than \$100,000	\$ 25
5	more than \$100,000 but not over \$250,000	\$ 75
6	more than \$250,000 but not over \$500,000	\$ 175
7	more than \$500,000 but not over \$1,000,000	\$ 500
8	more than \$1,000,000 but not over \$5,000,000	\$1,500
9	more than \$5,000,000 but not over \$25,000,000	\$3,500
10	Over \$25,000,000	\$5,000

11 For purposes of this paragraph, New York receipts are the receipts
12 computed in accordance with subparagraph two of paragraph (a) of subdi-
13 vision three of this section for the taxable year, EXCEPT THAT FOR
14 CORPORATIONS ENGAGED PRIMARILY IN FARMING, COMMERCIAL HORSE BOARDING OR
15 PROVIDING AGRICULTURAL SERVICES, THE TERM NEW YORK RECEIPTS SHALL REFER
16 TO NET FARM INCOME AS REPORTED FOR FEDERAL TAX PURPOSES.

17 S 8. Subsection (b) of section 800 of the tax law, as added by section
18 1 of part C of chapter 25 of the laws of 2009, is amended to read as
19 follows:

20 (b) Employer. Employer means an employer required by section six
21 hundred seventy-one of this chapter to deduct and withhold tax from
22 wages, that has a payroll expense in excess of two thousand five hundred
23 dollars in any calendar quarter; other than

24 (1) any agency or instrumentality of the United States;

25 (2) the United Nations; [or]

26 (3) an interstate agency or public corporation created pursuant to an
27 agreement or compact with another state or the Dominion of Canada[.];

28 (4) EMPLOYERS PRIMARILY ENGAGED IN FARMING, COMMERCIAL HORSE BOARDING
29 OPERATIONS OR PROVIDING AGRICULTURAL SERVICES;

30 (5) SOIL AND WATER CONSERVATION DISTRICTS AS DEFINED IN SECTION THREE
31 OF THE SOIL AND WATER CONSERVATION DISTRICTS LAW; OR

32 (6) COOPERATIVE EXTENSIONS AS LISTED IN SECTION TWO HUNDRED
33 TWENTY-FOUR OF THE COUNTY LAW.

34 S 9. Section 499-b of the vehicle and traffic law, as added by section
35 1 of part B of chapter 25 of the laws of 2009, is amended to read as
36 follows:

37 S 499-b. Collection of supplemental fee. All registrants of motor
38 vehicles who reside in the metropolitan commuter transportation district
39 shall pay to the commissioner or his or her agent the supplemental
40 registration fee provided for in this article upon registration or
41 renewal of motor vehicles subject to registration fees pursuant to the
42 following sections of this chapter: paragraph a of subdivision six of
43 section four hundred one; schedules A, B, C, [E,] F (EXCEPT AGRICULTURAL
44 SPRAYERS), G, I and K of subdivision seven of section four hundred one;
45 paragraph a of subdivision eight of section four hundred one, EXCEPT
46 LIVESTOCK TRAILERS; paragraph a of subdivision five of section four
47 hundred ten; and section four hundred eleven-b.

48 S 10. Subdivision 3 of section 504 of the tax law, as amended by chap-
49 ter 194 of the laws of 1963, is amended to read as follows:

50 3. [Owned and operated] OPERATED by a farmer and used exclusively by
51 such farmer in transporting his own agricultural commodities and
52 products, pulpwood or livestock, including the packed, processed, or
53 manufactured products thereof, that were originally grown or raised on
54 his farm, lands or orchard, or when used to transport supplies and

1 equipment to his farm or orchard that are consumed and used thereon or
2 when operated by a farmer in transporting farm products from a farm
3 contiguous to his own.

4 S 11. Paragraph 1 of schedule E of subdivision 7 of section 401 of the
5 vehicle and traffic law, as amended by section 9 of part G of chapter 59
6 of the laws of 2009, is amended to read as follows:

7 1. For each agricultural truck, the annual fee of two dollars and
8 [fifty-one cents] ONE CENT for each five hundred pounds maximum gross
9 weight, or fraction thereof.

10 S 12. Section 72-0602 of the environmental conservation law is amended
11 by adding a new subdivision q-1 to read as follows:

12 Q-1. \$25.00 PER ACRE DISTURBED PLUS \$25.00 PER FUTURE IMPERVIOUS ACRE
13 FOR ANY FACILITY THAT IS PART OF A FARM OPERATION AS DEFINED IN SECTION
14 THREE HUNDRED ONE OF THE AGRICULTURE AND MARKETS LAW, DISCHARGING OR
15 AUTHORIZED TO DISCHARGE PURSUANT TO A SPDES PERMIT FOR STORMWATER
16 DISCHARGES FROM CONSTRUCTION ACTIVITY. FOR THE PURPOSES OF THIS SUBDIVI-
17 SION, ACRES DISTURBED ARE ACRES SUBJECT TO CLEARING, GRADING, OR EXCA-
18 VATING IN THE CONSTRUCTION AREA SUBJECT TO SPDES PERMITTING AND FUTURE
19 IMPERVIOUS ACRES ARE ACRES THAT WILL BE NEWLY PAVED WITH AN IMPERVIOUS
20 SUBSTANCE OR ROOFED DURING CONSTRUCTION;

21 S 13. Subdivision t of section 72-0602 of the environmental conserva-
22 tion law, as amended by section 1 of part JJ of chapter 59 of the laws
23 of 2009, is relettered subdivision u and amended and a new subdivision t
24 is added to read as follows:

25 T. \$50.00 FOR A WINERY OR DISTILLERY DISCHARGING OR AUTHORIZED TO
26 DISCHARGE PURSUANT TO A GENERAL PERMIT;

27 u. \$100.00 for any facility, other than a municipal separate storm
28 sewer as defined by 40 CFR S122.26 (b) (8), discharging or authorized to
29 discharge pursuant to a general permit unless a specific fee is imposed
30 pursuant to subdivisions a through [s] T of this section for such
31 discharge or authorization to discharge.

32 S 14. This act shall take effect immediately, provided however, that
33 section two of this act shall take effect on the ninetieth day after it
34 shall have become a law, provided further that sections three and four
35 of this act shall apply to any tax year commencing on or after January
36 1, 2012.