

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 5, 2011

IN SENATE -- Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

IN ASSEMBLY -- Introduced by M. of A. SAYWARD -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a forestry stewardship and habitat conservation credit for personal income and business franchise taxes

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

1 Section 1. Section 606 of the tax law is amended by adding a new
2 subsection (aaa) to read as follows:
3 (AAA) FORESTRY STEWARDSHIP AND HABITAT CONSERVATION CREDIT. (1) IN THE
4 CASE OF A TAXPAYER WHO OWNS LAND THAT IS SUBJECT TO AN AGREEMENT WITH
5 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, BY WHICH SUCH LAND IS
6 COMMITTED TO FORESTRY STEWARDSHIP, OR HABITAT CONSERVATION, OR BOTH,
7 THERE SHALL BE ALLOWED A CREDIT FOR TWENTY-FIVE PERCENT OF THE ALLOWABLE
8 SCHOOL DISTRICT, COUNTY AND TOWN AND REAL PROPERTY TAXES ON SUCH LAND.
9 IN NO EVENT SHALL THE CREDIT ALLOWED UNDER THIS SUBSECTION IN COMBINA-
10 TION WITH ANY OTHER CREDIT FOR SUCH SCHOOL DISTRICT, COUNTY AND TOWN
11 REAL PROPERTY TAXES UNDER THIS SECTION EXCEED SUCH TAXES.
12 (2) FOR THE PURPOSES OF THIS SUBSECTION:
13 (A) "ELIGIBLE TRACT" SHALL MEAN A TRACT OF LAND OF AT LEAST
14 TWENTY-FIVE CONTIGUOUS ACRES THAT HAS BEEN INSPECTED BY THE DEPARTMENT
15 OF ENVIRONMENTAL CONSERVATION, A WILDLIFE BIOLOGIST CERTIFIED BY THE
16 WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE AMERICAN
17 FISHERIES SOCIETY, AND BASED ON SUCH INSPECTION IS DETERMINED BY THE
18 DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO BE: VALUABLE HABITAT FOR
19 WILDLIFE, FISH, SHELLFISH OR CRUSTACEA; OR SAFE AND SUITABLE FOR FISH OR

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

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WILDLIFE-RELATED RECREATION, INCLUDING FISHING, HUNTING, TRAPPING AND WILDLIFE OBSERVATION; OR BOTH. LAND DIVIDED ONLY BY FEDERAL, STATE, COUNTY OR TOWN ROADS, EASEMENTS OR RIGHTS-OF-WAY, OR ENERGY TRANSMISSION CORRIDORS OR SIMILAR FACILITIES SHALL BE CONSIDERED CONTIGUOUS FOR PURPOSES OF THIS SECTION.

(B) "AGREEMENT" SHALL MEAN A WRITTEN AGREEMENT BETWEEN THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE OWNER OF AN ELIGIBLE TRACT, EXECUTED BY BOTH PARTIES, BY WHICH THE ELIGIBLE TRACT IS COMMITTED TO HABITAT CONSERVATION, OR FORESTRY STEWARDSHIP, OR BOTH, FOR A PERIOD OF NOT LESS THAN FIVE YEARS.

(C) "APPROVED HABITAT CONSERVATION PLAN" SHALL MEAN A PLAN, APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, FOR THE MANAGEMENT OF AN ELIGIBLE TRACT WHICH SHALL CONTAIN REQUIREMENTS AND STANDARDS WITH WHICH THE OWNER OF THE ELIGIBLE TRACT MUST COMPLY IN ORDER TO CONSERVE THE VALUE OF THE LAND AS WILDLIFE, FISH, SHELLFISH, OR CRUSTACEA HABITAT.

(D) "FORESTRY STEWARDSHIP" SHALL MEAN PARTICIPATION IN A FOREST CERTIFICATION PROGRAM (SUCH AS FOREST STEWARDSHIP COUNCIL CERTIFICATION, SUSTAINABLE FORESTRY INITIATIVE, AMERICAN TREE FARM PROGRAM, ETC.) RECOGNIZED IN THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

(3) THERE IS HEREBY CREATED A NEW YORK STATE FORESTRY STEWARDSHIP AND HABITAT CONSERVATION PROGRAM FOR THE PURPOSE OF PROVIDING FORESTED LANDS IN THE STATE AND CONSERVING THE VALUE OF LAND IN THE STATE AS WILDLIFE, FISH, SHELLFISH OR CRUSTACEA HABITAT.

(4) A LANDOWNER MAY MAKE APPLICATION TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ON FORMS PRESCRIBED BY SUCH DEPARTMENT, TO HAVE LAND INCLUDED IN THE NEW YORK STATE HABITAT CONSERVATION AND FORESTRY STEWARDSHIP PROGRAM. IF, BASED ON AN INSPECTION OF THE LAND BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OR A WILDLIFE BIOLOGIST CERTIFIED BY THE WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE AMERICAN FISHERIES SOCIETY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION DETERMINES THAT SUCH LAND IS AN ELIGIBLE TRACT, IT SHALL NOTIFY THE LANDOWNER THAT THE LAND IS ELIGIBLE FOR INCLUSION IN THE NEW YORK STATE HABITAT CONSERVATION AND FORESTRY STEWARDSHIP PROGRAM.

(5) THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY, IN ITS DISCRETION, ENTER INTO AGREEMENTS WITH OWNERS OF ELIGIBLE TRACTS FOR PURPOSES OF FORESTRY STEWARDSHIP, OR HABITAT CONSERVATION, OR BOTH. SUCH AGREEMENTS SHALL BE FOR A MINIMUM DURATION OF FIVE YEARS, AND SHALL CONTAIN A DESCRIPTION OF THE PROPERTY THAT IS THE SUBJECT OF THE AGREEMENT, AND SUCH TERMS AND CONDITIONS AS THE DEPARTMENT DEEMS APPROPRIATE, INCLUDING, BUT NOT LIMITED TO:

(A) FOR FORESTRY STEWARDSHIP AGREEMENTS, A DESCRIPTION OF THE PARTICIPATION IN A FOREST CERTIFICATION PROGRAM FOR A PERIOD OF NOT LESS THAN FIVE YEARS;

(B) FOR HABITAT CONSERVATION AGREEMENTS, A REQUIREMENT THAT THE LANDOWNER DEVELOP A HABITAT CONSERVATION PLAN AND IMPLEMENT THE PLAN FOR A PERIOD OF NOT LESS THAN FIVE YEARS;

(C) FOR HABITAT CONSERVATION AND FORESTRY STEWARDSHIP AGREEMENTS, A REQUIREMENT THAT THE LANDOWNER DEVELOP A HABITAT CONSERVATION PLAN AND IMPLEMENT THE PLAN FOR A PERIOD OF NOT LESS THAN FIVE YEARS; AND A DESCRIPTION OF PARTICIPATION IN A FOREST CERTIFICATION PROGRAM FOR A PERIOD OF NOT LESS THAN FIVE YEARS;

(D) A REQUIREMENT THAT THE LANDOWNER'S OBLIGATIONS CONCERNING THE LAND UNDER THE TERMS OF THE AGREEMENT, AS WELL AS ANY BENEFITS, SHALL PASS TO

1 ANY SUCCESSOR IN INTEREST TO SUCH LAND FOR THE DURATION OF THE TERM OF
2 THE AGREEMENT; AND

3 (E) A REQUIREMENT THAT A COPY OF THE AGREEMENT SHALL BE DULY RECORDED
4 AND INDEXED AS SUCH IN THE OFFICE OF THE RECORDING OFFICER FOR THE COUN-
5 TY OR COUNTIES WHERE THE LAND IS SITUATE IN THE MANNER PRESCRIBED BY
6 ARTICLE NINE OF THE REAL PROPERTY LAW; AND THAT ANY SUBSEQUENT INSTRU-
7 MENT OF CONVEYANCE RELATING TO THE PROPERTY ENCUMBERED BY THE AGREEMENT
8 SHALL REFERENCE, BY BOOK AND PAGE NUMBER, THE AGREEMENT; AND THAT SUCH
9 INSTRUMENT SHALL ALSO SPECIFY THAT THE PROPERTY IS SUBJECT TO THE
10 RESTRICTIONS CONTAINED IN THE AGREEMENT; AND THAT AN INSTRUMENT FOR THE
11 PURPOSE OF CREATING, CONVEYING, MODIFYING OR TERMINATING THE AGREEMENT
12 SHALL NOT BE EFFECTIVE UNLESS RECORDED.

13 (6) THE AMOUNT OF THE CREDIT THAT MAY BE CLAIMED BY A TAXPAYER PURSU-
14 ANT TO THIS SUBSECTION SHALL NOT EXCEED TEN THOUSAND DOLLARS IN ANY
15 GIVEN YEAR.

16 (7) IF THE AMOUNT OF THE CREDIT UNDER THIS SUBSECTION FOR ANY TAXABLE
17 YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE
18 TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORD-
19 ANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTI-
20 CLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREIN.

21 S 2. Paragraph 4 of subsection (n) of section 606 of the tax law, as
22 amended by section 2 of part F of chapter 62 of the laws of 2006, is
23 amended to read as follows:

24 (4) Qualified agricultural property. For purposes of this subsection,
25 the term "qualified agricultural property" means land located in this
26 state which is used in agricultural production, and land improvements,
27 structures and buildings (excluding buildings used for the taxpayer's
28 residential purpose) located on such land which are used or occupied to
29 carry out such production. Qualified agricultural property also includes
30 land set aside or retired under a federal supply management or soil
31 conservation program or land that at the time it becomes subject to a
32 conservation easement, as defined under subsection (kk) of this section,
33 met the requirements under this paragraph, AND LAND THAT AT THE TIME IT
34 BECOMES SUBJECT TO AN AGREEMENT AS DEFINED IN SUBSECTION (AAA) OF THIS
35 SECTION MET THE REQUIREMENTS UNDER THIS PARAGRAPH.

36 S 3. Section 210 of the tax law is amended by adding a new subdivision
37 43 to read as follows:

38 43. FORESTRY STEWARDSHIP AND HABITAT CONSERVATION CREDIT. (1) IN THE
39 CASE OF A TAXPAYER WHO OWNS LAND THAT IS SUBJECT TO AN AGREEMENT WITH
40 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, BY WHICH SUCH LAND IS
41 COMMITTED TO FORESTRY STEWARDSHIP, OR HABITAT CONSERVATION, OR BOTH,
42 THERE SHALL BE ALLOWED A CREDIT FOR TWENTY-FIVE PERCENT OF THE ALLOW-
43 ABLE SCHOOL DISTRICT, COUNTY AND TOWN AND REAL PROPERTY TAXES ON SUCH
44 LAND. IN NO EVENT SHALL THE CREDIT ALLOWED UNDER THIS SUBDIVISION IN
45 COMBINATION WITH ANY OTHER CREDIT FOR SUCH SCHOOL DISTRICT, COUNTY AND
46 TOWN REAL PROPERTY TAXES UNDER THIS SECTION EXCEED SUCH TAXES.

47 (2) FOR THE PURPOSES OF THIS SUBDIVISION:

48 (A) "ELIGIBLE TRACT" SHALL MEAN A TRACT OF LAND OF AT LEAST
49 TWENTY-FIVE CONTIGUOUS ACRES THAT HAS BEEN INSPECTED BY THE DEPARTMENT
50 OF ENVIRONMENTAL CONSERVATION, A WILDLIFE BIOLOGIST CERTIFIED BY THE
51 WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE AMERICAN
52 FISHERIES SOCIETY, AND BASED ON SUCH INSPECTION IS DETERMINED BY THE
53 DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO BE: VALUABLE HABITAT FOR
54 WILDLIFE, FISH, SHELLFISH OR CRUSTACEA; OR SAFE AND SUITABLE FOR FISH OR
55 WILDLIFE-RELATED RECREATION, INCLUDING FISHING, HUNTING, TRAPPING AND
56 WILDLIFE OBSERVATION; OR BOTH. LAND DIVIDED ONLY BY FEDERAL, STATE,

COUNTY OR TOWN ROADS, EASEMENTS OR RIGHTS-OF-WAY, OR ENERGY TRANSMISSION CORRIDORS OR SIMILAR FACILITIES SHALL BE CONSIDERED CONTIGUOUS FOR PURPOSES OF THIS SECTION.

(B) "AGREEMENT" SHALL MEAN A WRITTEN AGREEMENT BETWEEN THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE OWNER OF AN ELIGIBLE TRACT, EXECUTED BY BOTH PARTIES, BY WHICH THE ELIGIBLE TRACT IS COMMITTED TO HABITAT CONSERVATION, OR FORESTRY STEWARDSHIP, OR BOTH, FOR A PERIOD OF NOT LESS THAN FIVE YEARS.

(C) "APPROVED HABITAT CONSERVATION PLAN" SHALL MEAN A PLAN, APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, FOR THE MANAGEMENT OF AN ELIGIBLE TRACT WHICH SHALL CONTAIN REQUIREMENTS AND STANDARDS WITH WHICH THE OWNER OF THE ELIGIBLE TRACT MUST COMPLY IN ORDER TO CONSERVE THE VALUE OF THE LAND AS WILDLIFE, FISH, SHELLFISH, OR CRUSTACEA HABITAT.

(D) "FORESTRY STEWARDSHIP" SHALL MEAN PARTICIPATION IN A FOREST CERTIFICATION PROGRAM (SUCH AS FOREST STEWARDSHIP COUNCIL CERTIFICATION, SUSTAINABLE FORESTRY INITIATIVE, AMERICAN TREE FARM PROGRAM, ETC.) RECOGNIZED IN THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

(3) THERE IS HEREBY CREATED A NEW YORK STATE FORESTRY STEWARDSHIP AND HABITAT CONSERVATION PROGRAM FOR THE PURPOSE OF PROVIDING FORESTED LANDS IN THE STATE AND CONSERVING THE VALUE OF LAND IN THE STATE AS WILDLIFE, FISH, SHELLFISH OR CRUSTACEA HABITAT.

(4) A LANDOWNER MAY MAKE APPLICATION TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ON FORMS PRESCRIBED BY SUCH DEPARTMENT, TO HAVE LAND INCLUDED IN THE NEW YORK STATE HABITAT CONSERVATION AND FORESTRY STEWARDSHIP PROGRAM. IF, BASED ON AN INSPECTION OF THE LAND BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OR A WILDLIFE BIOLOGIST CERTIFIED BY THE WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE AMERICAN FISHERIES SOCIETY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION DETERMINES THAT SUCH LAND IS AN ELIGIBLE TRACT, IT SHALL NOTIFY THE LANDOWNER THAT THE LAND IS ELIGIBLE FOR INCLUSION IN THE NEW YORK STATE HABITAT CONSERVATION AND FORESTRY STEWARDSHIP PROGRAM.

(5) THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY, IN ITS DISCRETION, ENTER INTO AGREEMENTS WITH OWNERS OF ELIGIBLE TRACTS FOR PURPOSES OF HABITAT CONSERVATION, OR FORESTRY STEWARDSHIP, OR BOTH. SUCH AGREEMENTS SHALL BE FOR A MINIMUM DURATION OF FIVE YEARS, AND SHALL CONTAIN A DESCRIPTION OF THE PROPERTY THAT IS THE SUBJECT OF THE AGREEMENT, AND SUCH TERMS AND CONDITIONS AS THE DEPARTMENT DEEMS APPROPRIATE, INCLUDING, BUT NOT LIMITED TO:

(A) FOR FORESTRY STEWARDSHIP AGREEMENTS, A DESCRIPTION OF THE PARTICIPATION IN A FOREST CERTIFICATION PROGRAM FOR A PERIOD OF NOT LESS THAN FIVE YEARS;

(B) FOR HABITAT CONSERVATION AGREEMENTS, A REQUIREMENT THAT THE LANDOWNER DEVELOP A HABITAT CONSERVATION PLAN AND IMPLEMENT THE PLAN FOR A PERIOD OF NOT LESS THAN FIVE YEARS;

(C) FOR HABITAT CONSERVATION AND FORESTRY STEWARDSHIP AGREEMENTS, A REQUIREMENT THAT THE LANDOWNER DEVELOP A HABITAT CONSERVATION PLAN AND IMPLEMENT THE PLAN FOR A PERIOD OF NOT LESS THAN FIVE YEARS; AND A DESCRIPTION OF PARTICIPATION IN A FOREST CERTIFICATION PROGRAM FOR A PERIOD OF NOT LESS THAN FIVE YEARS;

(D) A REQUIREMENT THAT THE LANDOWNER'S OBLIGATIONS CONCERNING THE LAND UNDER THE TERMS OF THE AGREEMENT, AS WELL AS ANY BENEFITS, SHALL PASS TO ANY SUCCESSOR IN INTEREST TO SUCH LAND FOR THE DURATION OF THE TERM OF THE AGREEMENT; AND

(E) A REQUIREMENT THAT A COPY OF THE AGREEMENT SHALL BE DULY RECORDED AND INDEXED AS SUCH IN THE OFFICE OF THE RECORDING OFFICER FOR THE COUNTY OR COUNTIES WHERE THE LAND IS SITUATE IN THE MANNER PRESCRIBED BY ARTICLE NINE OF THE REAL PROPERTY LAW; AND THAT ANY SUBSEQUENT INSTRUMENT OF CONVEYANCE RELATING TO THE PROPERTY ENCUMBERED BY THE AGREEMENT SHALL REFERENCE, BY BOOK AND PAGE NUMBER, THE AGREEMENT; AND THAT SUCH INSTRUMENT SHALL ALSO SPECIFY THAT THE PROPERTY IS SUBJECT TO THE RESTRICTIONS CONTAINED IN THE AGREEMENT; AND THAT AN INSTRUMENT FOR THE PURPOSE OF CREATING, CONVEYING, MODIFYING OR TERMINATING THE AGREEMENT SHALL NOT BE EFFECTIVE UNLESS RECORDED.

(6) THE AMOUNT OF THE CREDIT THAT MAY BE CLAIMED BY A TAXPAYER PURSUANT TO THIS SUBDIVISION SHALL NOT EXCEED TEN THOUSAND DOLLARS IN ANY GIVEN YEAR.

(7) IF THE AMOUNT OF THE CREDIT UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS CHAPTER, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREIN.

S 4. Paragraph (d) of subdivision 22 of section 210 of the tax law, as amended by section 4 of part F of chapter 62 of the laws of 2006, is amended to read as follows:

(d) Qualified agricultural property. For purposes of this subdivision, the term "qualified agricultural property" means land located in this state which is used in agricultural production, and land improvements, structures and buildings (excluding buildings used for the taxpayer's residential purpose) located on such land which are used or occupied to carry out such production. Qualified agricultural property also includes land set aside or retired under a federal supply management or soil conservation program [or], land that at the time it becomes subject to a conservation easement, as defined under subdivision thirty-eight of this section, met the requirements under this paragraph AND LAND THAT AT THE TIME IT BECOMES SUBJECT TO AN AGREEMENT AS DEFINED UNDER SUBDIVISION FORTY-THREE OF THIS SECTION, MET THE REQUIREMENTS UNDER THIS PARAGRAPH.

S 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxii) to read as follows:

(XXXII) FOREST STEWARDSHIP AND	AMOUNT OF CREDIT UNDER
HABITAT CONSERVATION	SUBDIVISION FORTY-THREE OF
CREDIT UNDER SUBSECTION (AAA)	SECTION TWO HUNDRED TEN

S 6. This act shall take effect immediately.