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

4340--A

2011-2012 Regular Sessions

I N S E N A T E

March 30, 2011

Introduced by Sens. RITCHIE, GALLIVAN, GRISANTI, LAVALLE, LIBOUS, BONACIC, LARKIN, SEWARD, GRIFFO, DeFRANCISCO, YOUNG, BALL, O'MARA, VALESKY, McDONALD, LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture -- recommitted to the Committee on Agriculture in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. This act shall be known and may be cited as the "let New York farm act."

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

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

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

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

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S 4. Subdivision 12 of section 210 of the tax law is amended by adding a new paragraph (e-1) to read as follows:

(E-1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, IF THE CREDIT ALLOWED UNDER THIS SUBDIVISION IS GREATER THAN THE TAX DUE IN ANY TAXABLE YEAR FOR A TAXPAYER WHOSE PRIMARY SOURCE OF INCOME IS DERIVED FROM OPERATING A FARM OPERATION OR COMMERCIAL HORSE BOARDING OPERATION, SUCH TAXPAYER MAY ELECT TO TREAT THE AMOUNT BY WHICH SUCH CREDIT EXCEEDS SUCH TAX DUE AS AN OVER-PAYMENT OF TAX TO BE REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. FOR PURPOSES OF THIS PARAGRAPH, THE TERMS "FARM OPERATION" AND "COMMERCIAL HORSE BOARDING OPERATION" SHALL HAVE THE SAME MEANINGS AS SUCH TERMS ARE DEFINED IN SECTION THREE HUNDRED ONE OF THE AGRICULTURE AND MARKETS LAW.

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

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

S 6. Subparagraph (C) of paragraph 1 of subdivision (i) of section 1136 of the tax law, as added by section 1 of subpart G of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(C) Every wholesaler, as defined by section three of the alcoholic beverage control law, if it has made a sale of an alcoholic beverage, as defined by section four hundred twenty of this chapter, without collecting sales or use tax during the period covered by the return, except (i) a sale to a person that has furnished an exempt organization certificate to the wholesaler for that sale; or (ii) a sale to another wholesaler whose license under the alcoholic beverage control law does not allow it to make retail sales of the alcoholic beverage. For each vendor, operator, or recipient to whom the wholesaler has made a sale without collecting sales or compensating use tax, the return must include the total value of those sales made during the period covered by the return (excepting the sales described in clauses (i) and (ii) of this subparagraph) and the vendor's, operator's or recipient's state liquor authority license number, along with the information required by paragraph two of this subdivision. THE PROVISIONS OF THIS SUBPARAGRAPH SHALL NOT APPLY TO A FARM WINERY AS DEFINED IN SECTION THREE OF THE ALCOHOLIC BEVERAGE CONTROL LAW.

S 7. Subparagraphs (A) and (B) of paragraph 3 of subsection (c) of section 658 of the tax law, subparagraph (A) as amended by section 18 of part U of chapter 61 of the laws of 2011 and subparagraph (B) as amended by section 1 of part H-1 of chapter 57 of the laws of 2009, are amended to read as follows:

(A) Every subchapter K limited liability company, every limited liability company that is a disregarded entity for federal income tax purposes, and every partnership which has any income derived from New

York sources, determined in accordance with the applicable rules of section six hundred thirty-one of this article as in the case of a nonresident individual, shall, within sixty days after the last day of the taxable year, make a payment of a filing fee. SUCH DEADLINE SHALL NOT APPLY TO FARMS, COMMERCIAL HORSE BOARDING OPERATIONS OR AGRICULTURAL SERVICE PROVIDERS SUBJECT TO THE FEE, WHICH SHALL, WITHIN ONE HUNDRED TWENTY DAYS AFTER THE LAST DAY OF THE TAXABLE YEAR, MAKE PAYMENT OF ANY REQUIRED FILING FEE. The amount of the filing fee is the amount set 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 8. 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

Otherwise the amount prescribed by this paragraph 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	$ 75
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	$3,500
Over $25,000,000	$5,000

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

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

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

S 10. Paragraph 1 of schedule E of subdivision 7 of section 401 of the vehicle and traffic law, as amended by section 9 of part G of chapter 59 of the laws of 2009, is amended to read as follows:

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

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

Q-1. $25.00 PER ACRE DISTURBED PLUS $25.00 PER FUTURE IMPERVIOUS ACRE FOR ANY FACILITY THAT IS PART OF A FARM OPERATION AS DEFINED IN SECTION THREE HUNDRED ONE OF THE AGRICULTURE AND MARKETS LAW, DISCHARGING OR AUTHORIZED TO DISCHARGE PURSUANT TO A SPDES PERMIT FOR STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITY. FOR THE PURPOSES OF THIS SUBDIVISION, ACRES DISTURBED ARE ACRES SUBJECT TO CLEARING, GRADING, OR EXCAVATING IN THE CONSTRUCTION AREA SUBJECT TO SPDES PERMITTING AND FUTURE

IMPERVIOUS ACRES ARE ACRES THAT WILL BE NEWLY PAVED WITH AN IMPERVIOUS SUBSTANCE OR ROOFED DURING CONSTRUCTION;

S 12. Subdivision t of section 72-0602 of the environmental conservation law, as amended by section 1 of part JJ of chapter 59 of the laws of 2009, is relettered subdivision u and amended and a new subdivision t is added to read as follows:

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

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

S 13. This act shall take effect immediately, provided however, that section three of this act shall take effect on the ninetieth day after it shall have become a law, provided further that sections four and five of this act shall apply to any tax year commencing on or after January 1, 2013.