

5583--A

2013-2014 Regular Sessions

I N A S S E M B L Y

March 4, 2013

Introduced by M. of A. MAGEE, BRINDISI, STECK, TEDISCO, STIRPE, TITONE, MILLER, SKOUFIS, KEARNS, OTIS, ROBERTS, CAHILL, SKARTADOS, BOYLAND, JAFFEE, COOK, FINCH, ZEBROWSKI -- Multi-Sponsored by -- M. of A. ARROYO, BARCLAY, BLANKENBUSH, CROUCH, DUPREY, FRIEND, GOODELL, HAWLEY, HEVESI, McKEVITT, McLAUGHLIN, MONTESANO, PALMESANO, SIMANOWITZ, THIELE, WALTER -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to farm savings accounts

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

1 Section 1. The tax law is amended by adding a new section 41 to read
2 as follows:

3 S 41. FARM SAVINGS ACCOUNTS. 1. DEFINITIONS. (A) QUALIFIED FARMER. FOR
4 PURPOSES OF THIS SECTION, THE TERM "QUALIFIED FARMER" MEANS, WITH
5 RESPECT TO ANY TAXABLE YEAR, ANY INDIVIDUAL WHO, DURING SUCH YEAR, WAS
6 ENGAGED IN THE TRADE OR BUSINESS OF FARMING.

7 (B) FARM SAVINGS ACCOUNT. FOR PURPOSES OF THIS SECTION, THE TERM "FARM
8 SAVINGS ACCOUNT" MEANS A TRUST CREATED OR ORGANIZED IN THE UNITED STATES
9 AS A FARM SAVINGS ACCOUNT EXCLUSIVELY FOR THE PURPOSE OF MAKING QUALI-
10 FIED DISTRIBUTIONS FOR PURPOSES OF FARM SUSTAINABILITY, BUT ONLY IF THE
11 WRITTEN GOVERNING INSTRUMENT CREATING THE TRUST MEETS THE FOLLOWING
12 REQUIREMENTS:

13 (I) NO CONTRIBUTION WILL BE ACCEPTED UNLESS IT IS IN CASH.

14 (II) THE TRUSTEE IS A BANK, CREDIT UNION OR OTHER APPROPRIATE INSTITU-
15 TION THAT DEMONSTRATES ADMINISTRATION OF THE TRUST IN A MANNER THAT IS
16 CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION.

17 (III) THE ASSETS OF THE TRUST WILL NOT BE COMMINGLED WITH OTHER PROP-
18 ERTY EXCEPT IN A COMMON TRUST FUND OR COMMON INVESTMENT FUND.

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

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1 (IV) THE INTEREST OF AN INDIVIDUAL IN THE BALANCE IN HIS OR HER
2 ACCOUNT IS NONFORFEITABLE.

3 (C) QUALIFIED DISTRIBUTION. THE TERM "QUALIFIED DISTRIBUTION" MEANS
4 ANY AMOUNT PAID FROM A FARM SAVINGS ACCOUNT TO THE ACCOUNT BENEFICIARY
5 EXCLUSIVELY FOR PURPOSES OF FARM SUSTAINABILITY.

6 (D) ACCOUNT BENEFICIARY. THE TERM "ACCOUNT BENEFICIARY" MEANS THE
7 INDIVIDUAL OR BUSINESS ON WHOSE BEHALF THE FARM SAVINGS ACCOUNT WAS
8 ESTABLISHED.

9 2. PROGRAM DESCRIPTION. (A) DEDUCTIONS ALLOWED. IN THE CASE OF A QUAL-
10 IFIED FARMER, THERE SHALL BE ALLOWED AS A DEDUCTION FOR THE TAXABLE YEAR
11 AN AMOUNT EQUAL TO THE AGGREGATE AMOUNT PAID IN CASH DURING SUCH TAXABLE
12 YEAR BY OR ON BEHALF OF SUCH INDIVIDUAL TO A FARM SAVINGS ACCOUNT OF
13 SUCH INDIVIDUAL.

14 (B) CONTRIBUTION REQUIREMENT. THERE SHALL BE NO MINIMUM OR MAXIMUM
15 CONTRIBUTION REQUIREMENT. HOWEVER, AGGREGATE CONTRIBUTIONS MAY NOT
16 EXCEED TOTAL INCOME DERIVED FROM FARMING DURING A GIVEN TAXABLE YEAR.

17 (C) TAX TREATMENT OF ACCOUNTS. A FARM SAVINGS ACCOUNT IS EXEMPT FROM
18 TAXATION UNDER THIS CHAPTER UNLESS SUCH ACCOUNT HAS CEASED TO BE A FARM
19 SAVINGS ACCOUNT.

20 (D) TERMINATION OF ACCOUNTS. IF THE ACCOUNT BENEFICIARY CEASES TO
21 ENGAGE IN THE TRADE OR BUSINESS OF FARMING, ALL FARM SAVINGS ACCOUNTS OF
22 SUCH INDIVIDUAL SHALL CEASE TO BE SUCH ACCOUNTS AND THE BALANCE OF ALL
23 SUCH ACCOUNTS SHALL BE TREATED AS (I) DISTRIBUTED TO SUCH INDIVIDUAL,
24 AND (II) NOT PAID IN A QUALIFIED DISTRIBUTION.

25 (E) TAX TREATMENT OF DISTRIBUTIONS. (I) GENERAL. IN GENERAL, ANY
26 AMOUNT PAID OR DISTRIBUTED OUT OF A FARM SAVINGS ACCOUNT SHALL BE
27 INCLUDED IN GROSS INCOME.

28 (II) ADDITIONAL TAX ON NON-QUALIFIED DISTRIBUTIONS. (1) IN ADDITION TO
29 ANY OTHER TAX IMPOSED BY THIS CHAPTER, ANY NON-QUALIFIED DISTRIBUTION
30 FROM A FARM SAVINGS ACCOUNT SHALL BE SUBJECT TO A FIFTEEN PERCENT
31 SURCHARGE ON THE AMOUNT OF SUCH NON-QUALIFYING DISTRIBUTION.

32 (2) CLAUSE ONE OF THIS SUBPARAGRAPH SHALL NOT APPLY IF THE PAYMENT OR
33 DISTRIBUTION IS MADE AFTER THE ACCOUNT BENEFICIARY BECOMES DISABLED OR
34 DIES.

35 (III) ROLLOVER CONTRIBUTIONS. FOR PURPOSES OF THIS SECTION, ANY AMOUNT
36 PAID OR DISTRIBUTED FROM A FARM SAVINGS ACCOUNT TO THE ACCOUNT BENEFICI-
37 ARY SHALL BE TREATED AS A QUALIFIED DISTRIBUTION TO THE EXTENT THE
38 AMOUNT RECEIVED IS PAID INTO A FARM SAVINGS ACCOUNT FOR THE BENEFIT OF
39 SUCH BENEFICIARY NOT LATER THAN THE SIXTIETH DAY AFTER THE DAY ON WHICH
40 THE BENEFICIARY RECEIVES THE PAYMENT OR DISTRIBUTION.

41 (IV) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE. THE TRANSFER OF AN INDI-
42 VIDUAL'S INTEREST IN A FARM SAVINGS ACCOUNT TO AN INDIVIDUAL'S SPOUSE OR
43 FORMER SPOUSE UNDER A DIVORCE OR SEPARATION INSTRUMENT SHALL NOT BE
44 CONSIDERED A TAXABLE TRANSFER MADE BY SUCH INDIVIDUAL NOTWITHSTANDING
45 ANY OTHER PROVISION OF THIS SECTION, AND SUCH INTEREST SHALL, AFTER SUCH
46 TRANSFER, BE TREATED AS A FARM SAVINGS ACCOUNT WITH RESPECT TO WHICH
47 SUCH SPOUSE IS THE ACCOUNT BENEFICIARY.

48 (V) TREATMENT AFTER DEATH OF ACCOUNT BENEFICIARY. (1) TREATMENT IF
49 DESIGNATED BENEFICIARY IS SPOUSE. IF THE ACCOUNT BENEFICIARY'S SURVIVING
50 SPOUSE ACQUIRES SUCH BENEFICIARY'S INTEREST IN A FARM SAVINGS ACCOUNT BY
51 REASON OF BEING THE DESIGNATED BENEFICIARY OF SUCH ACCOUNT AT THE DEATH
52 OF THE ACCOUNT BENEFICIARY, SUCH FARM SAVINGS ACCOUNT SHALL BE TREATED
53 AS IF THE SPOUSE WERE THE ACCOUNT BENEFICIARY.

54 (2) OTHER CASES. IF, BY REASON OF THE DEATH OF THE ACCOUNT BENEFICI-
55 ARY, ANY PERSON ACQUIRES THE ACCOUNT BENEFICIARY'S INTEREST IN A FARM

1 SAVINGS ACCOUNT IN A CASE TO WHICH CLAUSE ONE OF THIS SUBPARAGRAPH DOES
2 NOT APPLY:

3 (A) SUCH ACCOUNT SHALL CEASE TO BE A FARM SAVINGS ACCOUNT AS OF THE
4 DATE OF DEATH, AND

5 (B) AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THE ASSETS IN SUCH
6 ACCOUNT ON SUCH DATE SHALL BE INCLUDED IN SUCH PERSON'S GROSS INCOME FOR
7 THE TAXABLE YEAR WHICH INCLUDES SUCH DATE IF SUCH PERSON IS NOT THE
8 ESTATE OF SUCH BENEFICIARY; OR IF SUCH PERSON IS THE ESTATE OF SUCH
9 BENEFICIARY, IN SUCH BENEFICIARY'S GROSS INCOME FOR THE LAST TAXABLE
10 YEAR OF SUCH BENEFICIARY.

11 S 2. Subsection (b) of section 612 of the tax law is amended by adding
12 a new paragraph 40 to read as follows:

13 (40) ANY NON-QUALIFYING DISTRIBUTIONS MADE FROM A FARM SAVINGS
14 ACCOUNT. THIS SHALL NOT INCLUDE ANY DISTRIBUTIONS THAT ARE EXEMPT FROM
15 TAXATION AS SPECIFIED IN PARAGRAPH (E) OF SUBDIVISION TWO OF SECTION
16 FORTY-ONE OF THIS CHAPTER.

17 S 3. Subsection (c) of section 612 of the tax law is amended by adding
18 a new paragraph 41 to read as follows:

19 (41) AN AMOUNT EQUAL TO ANY QUALIFIED CONTRIBUTION TO A FARM SAVINGS
20 ACCOUNT ESTABLISHED PURSUANT TO SECTION FORTY-ONE OF THIS CHAPTER.

21 S 4. Subdivision 4 of section 209 of the tax law, as amended by
22 section 2 of part FF-1 of chapter 57 of the laws of 2008, is amended to
23 read as follows:

24 4. Corporations liable to tax under sections one hundred eighty-three
25 to one hundred eighty-five, inclusive, corporations taxable under arti-
26 cles thirty-two and thirty-three of this chapter, any trust company
27 organized under a law of this state all of the stock of which is owned
28 by not less than twenty savings banks organized under a law of this
29 state, bank holding companies filing a combined return in accordance
30 with subdivision (f) of section fourteen hundred sixty-two of this chap-
31 ter, a captive REIT or a captive RIC filing a combined return under
32 either subdivision (f) of section fourteen hundred sixty-two or subdivi-
33 sion (f) of section fifteen hundred fifteen of this chapter, [and] hous-
34 ing companies organized and operating pursuant to the provisions of
35 article two or article five of the private housing finance law [and],
36 housing development fund companies organized pursuant to the provisions
37 of article eleven of the private housing finance law, AND FARM SAVINGS
38 ACCOUNTS PROPERLY ESTABLISHED UNDER SECTION FORTY-ONE OF THIS CHAPTER,
39 shall not be subject to tax under this article.

40 S 5. Section 601 of the tax law is amended by adding a new subsection
41 (g-1) to read as follows:

42 (G-1) FARM SAVINGS ACCOUNTS. ANY FARM SAVINGS ACCOUNT PROPERLY ESTAB-
43 LISHED UNDER SECTION FORTY-ONE OF THIS CHAPTER SHALL NOT BE SUBJECT TO
44 TAX UNDER THIS ARTICLE.

45 S 6. This act shall take effect immediately and shall apply to taxable
46 years commencing after such effective date. Effective immediately, the
47 commissioner of taxation and finance may add, amend, or repeal any rule
48 or regulation necessary to timely implement the provisions of this act
49 on its effective date.