

1005--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations 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 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 (u) to read as follows:  
3 (U) 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 REAL  
8 PROPERTY TAXES PAID ON SUCH LAND. IN NO EVENT SHALL THE CREDIT ALLOWED  
9 UNDER THIS SUBSECTION IN COMBINATION WITH ANY OTHER CREDIT FOR SUCH REAL  
10 PROPERTY TAXES UNDER THIS SECTION EXCEED THE TOTAL AMOUNT OF SUCH TAXES  
11 PAID DURING THE TAXABLE YEAR.  
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.

LBD01138-02-4

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

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

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

17 (D) "FORESTRY STEWARDSHIP" SHALL MEAN PARTICIPATION IN A FOREST  
18 CERTIFICATION PROGRAM (SUCH AS FOREST STEWARDSHIP COUNCIL CERTIFICATION,  
19 SUSTAINABLE FORESTRY INITIATIVE, AMERICAN TREE FARM PROGRAM, ETC.)  
20 RECOGNIZED IN THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSER-  
21 VATION.

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

26 (4) A LANDOWNER MAY MAKE APPLICATION TO THE DEPARTMENT OF ENVIRON-  
27 MENTAL CONSERVATION, ON FORMS PRESCRIBED BY SUCH DEPARTMENT, TO HAVE  
28 LAND INCLUDED IN THE NEW YORK STATE HABITAT CONSERVATION AND FORESTRY  
29 STEWARDSHIP PROGRAM. IF, BASED ON AN INSPECTION OF THE LAND BY THE  
30 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OR A WILDLIFE BIOLOGIST CERTI-  
31 FIED BY THE WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE  
32 AMERICAN FISHERIES SOCIETY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
33 DETERMINES THAT SUCH LAND IS AN ELIGIBLE TRACT, IT SHALL NOTIFY THE  
34 LANDOWNER THAT THE LAND IS ELIGIBLE FOR INCLUSION IN THE NEW YORK STATE  
35 HABITAT CONSERVATION AND FORESTRY STEWARDSHIP PROGRAM.

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

43 (A) FOR FORESTRY STEWARDSHIP AGREEMENTS, A DESCRIPTION OF THE PARTIC-  
44 IPATION IN A FOREST CERTIFICATION PROGRAM FOR A PERIOD OF NOT LESS THAN  
45 FIVE YEARS;

46 (B) FOR HABITAT CONSERVATION AGREEMENTS, A REQUIREMENT THAT THE LAND-  
47 OWNER DEVELOP A HABITAT CONSERVATION PLAN AND IMPLEMENT THE PLAN FOR A  
48 PERIOD OF NOT LESS THAN FIVE YEARS;

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

54 (D) A REQUIREMENT THAT THE LANDOWNER'S OBLIGATIONS CONCERNING THE LAND  
55 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 THEREON.

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 (U) 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 48 to read as follows:

38 48. 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 REAL  
43 PROPERTY TAXES PAID ON SUCH LAND. IN NO EVENT SHALL THE CREDIT ALLOWED  
44 UNDER THIS SUBDIVISION IN COMBINATION WITH ANY OTHER CREDIT FOR SUCH  
45 REAL PROPERTY TAXES UNDER THIS SECTION EXCEED THE TOTAL AMOUNT OF SUCH  
46 TAXES PAID DURING THE TAXABLE YEAR.

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,

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

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

9 (C) "APPROVED HABITAT CONSERVATION PLAN" SHALL MEAN A PLAN, APPROVED  
10 BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, FOR THE MANAGEMENT OF  
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16 CERTIFICATION PROGRAM (SUCH AS FOREST STEWARDSHIP COUNCIL CERTIFICATION,  
17 SUSTAINABLE FORESTRY INITIATIVE, AMERICAN TREE FARM PROGRAM, ETC.)  
18 RECOGNIZED IN THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSER-  
19 VATION.

20 (3) THERE IS HEREBY CREATED A NEW YORK STATE FORESTRY STEWARDSHIP AND  
21 HABITAT CONSERVATION PROGRAM FOR THE PURPOSE OF PROVIDING FORESTED LANDS  
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32 LANDOWNER THAT THE LAND IS ELIGIBLE FOR INCLUSION IN THE NEW YORK STATE  
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37 AGREEMENTS SHALL BE FOR A MINIMUM DURATION OF FIVE YEARS, AND SHALL  
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50 DESCRIPTION OF PARTICIPATION IN A FOREST CERTIFICATION PROGRAM FOR A  
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 2 AND INDEXED AS SUCH IN THE OFFICE OF THE RECORDING OFFICER FOR THE COUN-  
 3 TY OR COUNTIES WHERE THE LAND IS SITUATE IN THE MANNER PRESCRIBED BY  
 4 ARTICLE NINE OF THE REAL PROPERTY LAW; AND THAT ANY SUBSEQUENT INSTRU-  
 5 MENT OF CONVEYANCE RELATING TO THE PROPERTY ENCUMBERED BY THE AGREEMENT  
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 12 ANT TO THIS SUBDIVISION SHALL NOT EXCEED TEN THOUSAND DOLLARS IN ANY  
 13 GIVEN YEAR.

14 (7) IF THE AMOUNT OF THE CREDIT UNDER THIS SUBDIVISION FOR ANY TAXABLE  
 15 YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE  
 16 TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORD-  
 17 ANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS  
 18 CHAPTER, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

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

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

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

37 (XXXVII) FOREST STEWARDSHIP AND	AMOUNT OF CREDIT UNDER
38 HABITAT CONSERVATION	SUBDIVISION FORTY-EIGHT OF
39 CREDIT UNDER SUBSECTION (U)	SECTION TWO HUNDRED TEN

40 S 6. This act shall take effect immediately.