

3692--A

2013-2014 Regular Sessions

I N S E N A T E

February 11, 2013

Introduced by Sens. RITCHIE, MAZIARZ -- 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 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (2) OTHER CASES. IF, BY REASON OF THE DEATH OF THE ACCOUNT BENEFICI-
53 ARY, ANY PERSON ACQUIRES THE ACCOUNT BENEFICIARY'S INTEREST IN A FARM
54 SAVINGS ACCOUNT IN A CASE TO WHICH CLAUSE ONE OF THIS SUBPARAGRAPH DOES
55 NOT APPLY:

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

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

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

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

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

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

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

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

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

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

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