

3692

2013-2014 Regular Sessions

I N S E N A T E

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Introduced by Sens. RITCHIE, MAZIARZ -- read twice and ordered printed,  
and when printed to be committed to the Committee on Investigations  
and Government Operations

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 38 to read  
2 as follows:

3 S 38. 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.

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

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

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1 (D) ACCOUNT BENEFICIARY. THE TERM "ACCOUNT BENEFICIARY" MEANS THE  
2 INDIVIDUAL OR BUSINESS ON WHOSE BEHALF THE FARM SAVINGS ACCOUNT WAS  
3 ESTABLISHED.

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

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

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

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

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

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

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

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

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

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

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

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

55 (B) AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THE ASSETS IN SUCH  
56 ACCOUNT ON SUCH DATE SHALL BE INCLUDED IN SUCH PERSON'S GROSS INCOME FOR

1 THE TAXABLE YEAR WHICH INCLUDES SUCH DATE IF SUCH PERSON IS NOT THE  
2 ESTATE OF SUCH BENEFICIARY; OR IF SUCH PERSON IS THE ESTATE OF SUCH  
3 BENEFICIARY, IN SUCH BENEFICIARY'S GROSS INCOME FOR THE LAST TAXABLE  
4 YEAR OF SUCH BENEFICIARY.

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

7 (40) ANY NON-QUALIFYING DISTRIBUTIONS MADE FROM A FARM SAVINGS  
8 ACCOUNT. THIS SHALL NOT INCLUDE ANY DISTRIBUTIONS THAT ARE EXEMPT FROM  
9 TAXATION AS SPECIFIED IN PARAGRAPH (E) OF SUBDIVISION TWO OF SECTION  
10 THIRTY-EIGHT OF THIS CHAPTER.

11 S 3. Subsection (c) of section 612 of the tax law is amended by adding  
12 a new paragraph 39 to read as follows:

13 (39) AN AMOUNT EQUAL TO ANY QUALIFIED CONTRIBUTION TO A FARM SAVINGS  
14 ACCOUNT ESTABLISHED PURSUANT TO SECTION THIRTY-EIGHT OF THIS CHAPTER.

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

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

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

36 (G-1) FARM SAVINGS ACCOUNTS. ANY FARM SAVINGS ACCOUNT PROPERLY ESTAB-  
37 LISHED UNDER SECTION THIRTY-EIGHT OF THIS CHAPTER SHALL NOT BE SUBJECT  
38 TO TAX UNDER THIS ARTICLE.

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