602

2015-2016 Regular Sessions

IN SENATE

(PREFILED)

January 7, 2015

- Introduced by Sen. LITTLE -- 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 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 (ccc) to read as follows:

3 (CCC) 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 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, BY WHICH SUCH LAND IS THE 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 PROPERTY TAXES UNDER THIS SECTION EXCEED THE TOTAL AMOUNT OF SUCH TAXES 10 PAID DURING THE TAXABLE YEAR. 11

(2) FOR THE PURPOSES OF THIS SUBSECTION:

12

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 OF ENVIRONMENTAL CONSERVATION, A WILDLIFE BIOLOGIST CERTIFIED 15 ΒY THE WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE AMERICAN 16 FISHERIES SOCIETY, AND BASED ON SUCH INSPECTION IS DETERMINED 17 ΒY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO BE: VALUABLE HABITAT FOR 18 19 WILDLIFE, FISH, SHELLFISH OR CRUSTACEA; OR SAFE AND SUITABLE FOR FISH OR 20 WILDLIFE-RELATED RECREATION, INCLUDING FISHING, HUNTING, TRAPPING AND WILDLIFE OBSERVATION; OR BOTH. LAND DIVIDED ONLY BY FEDERAL, STATE, 21 COUNTY OR TOWN ROADS, EASEMENTS OR RIGHTS-OF-WAY, OR ENERGY TRANSMISSION 22

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

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CORRIDORS OR SIMILAR FACILITIES SHALL BE CONSIDERED CONTIGUOUS FOR 1 2 PURPOSES OF THIS SECTION. 3 "AGREEMENT" SHALL MEAN A WRITTEN AGREEMENT BETWEEN THE DEPARTMENT (B) 4 OF ENVIRONMENTAL CONSERVATION AND THE OWNER OF AN ELIGIBLE TRACT, 5 EXECUTED BY BOTH PARTIES, BY WHICH THE ELIGIBLE TRACT IS COMMITTED TO б HABITAT CONSERVATION, OR FORESTRY STEWARDSHIP, OR BOTH, FOR A PERIOD OF 7 NOT LESS THAN FIVE YEARS. (C) "APPROVED HABITAT CONSERVATION PLAN" SHALL MEAN A PLAN, APPROVED 8 9 BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, FOR THE MANAGEMENT OF 10 ELIGIBLE TRACT WHICH SHALL CONTAIN REQUIREMENTS AND STANDARDS WITH AN WHICH THE OWNER OF THE ELIGIBLE TRACT MUST COMPLY IN ORDER TO CONSERVE 11 12 THE VALUE OF THE LAND AS WILDLIFE, FISH, SHELLFISH, OR CRUSTACEA HABI-13 TAT. 14 (D) "FORESTRY STEWARDSHIP" SHALL MEAN PARTICIPATION IN A FOREST 15 CERTIFICATION PROGRAM (SUCH AS FOREST STEWARDSHIP COUNCIL CERTIFICATION, SUSTAINABLE FORESTRY INITIATIVE, AMERICAN TREE FARM PROGRAM, ETC.) 16 17 RECOGNIZED IN THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSER-18 VATION. 19 (3) THERE IS HEREBY CREATED A NEW YORK STATE FORESTRY STEWARDSHIP AND HABITAT CONSERVATION PROGRAM FOR THE PURPOSE OF PROVIDING FORESTED LANDS 20 21 THE STATE AND CONSERVING THE VALUE OF LAND IN THE STATE AS WILDLIFE, IN 22 FISH, SHELLFISH OR CRUSTACEA HABITAT. 23 (4) A LANDOWNER MAY MAKE APPLICATION TO THE DEPARTMENT OF ENVIRON-24 MENTAL CONSERVATION, ON FORMS PRESCRIBED BY SUCH DEPARTMENT, TO HAVE 25 LAND INCLUDED IN THE NEW YORK STATE HABITAT CONSERVATION AND FORESTRY STEWARDSHIP 26 PROGRAM. IF, BASED ON AN INSPECTION OF THE LAND BY THE 27 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OR A WILDLIFE BIOLOGIST CERTI-FIED BY THE WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY 28 THE AMERICAN FISHERIES SOCIETY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION 29 DETERMINES THAT SUCH LAND IS AN ELIGIBLE TRACT, IT SHALL NOTIFY THE 30 LANDOWNER THAT THE LAND IS ELIGIBLE FOR INCLUSION IN THE NEW YORK STATE 31 32 HABITAT CONSERVATION AND FORESTRY STEWARDSHIP PROGRAM. 33 DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY, (5) THE IN ITS 34 DISCRETION, ENTER INTO AGREEMENTS WITH OWNERS OF ELIGIBLE TRACTS FOR PURPOSES OF FORESTRY STEWARDSHIP, OR HABITAT CONSERVATION, OR BOTH. SUCH 35 AGREEMENTS SHALL BE FOR A MINIMUM DURATION OF FIVE YEARS, AND SHALL 36 37 CONTAIN A DESCRIPTION OF THE PROPERTY THAT IS THE SUBJECT OF THE AGREE-MENT, AND SUCH TERMS AND CONDITIONS AS THE DEPARTMENT DEEMS APPROPRIATE, 38 39 INCLUDING, BUT NOT LIMITED TO: 40 (A) FOR FORESTRY STEWARDSHIP AGREEMENTS, A DESCRIPTION OF THE PARTIC-IPATION IN A FOREST CERTIFICATION PROGRAM FOR A PERIOD OF NOT LESS THAN 41 42 FIVE YEARS; 43 (B) FOR HABITAT CONSERVATION AGREEMENTS, A REQUIREMENT THAT THE LAND-44 OWNER DEVELOP A HABITAT CONSERVATION PLAN AND IMPLEMENT THE PLAN FOR A 45 PERIOD OF NOT LESS THAN FIVE YEARS; 46 (C) FOR HABITAT CONSERVATION AND FORESTRY STEWARDSHIP AGREEMENTS, A 47 REQUIREMENT THAT THE LANDOWNER DEVELOP A HABITAT CONSERVATION PLAN AND 48 IMPLEMENT THE PLAN FOR A PERIOD OF NOT LESS THAN FIVE YEARS; AND A 49 DESCRIPTION OF PARTICIPATION IN A FOREST CERTIFICATION PROGRAM FOR A 50 PERIOD OF NOT LESS THAN FIVE YEARS; 51 (D) A REOUIREMENT THAT THE LANDOWNER'S OBLIGATIONS CONCERNING THE LAND UNDER THE TERMS OF THE AGREEMENT, AS WELL AS ANY BENEFITS, SHALL PASS TO 52 ANY SUCCESSOR IN INTEREST TO SUCH LAND FOR THE DURATION OF THE TERM OF 53 54 THE AGREEMENT; AND 55 (E) A REQUIREMENT THAT A COPY OF THE AGREEMENT SHALL BE DULY RECORDED 56 AND INDEXED AS SUCH IN THE OFFICE OF THE RECORDING OFFICER FOR THE COUN-

COUNTIES WHERE THE LAND IS SITUATE IN THE MANNER PRESCRIBED BY 1 ΤY OR 2 ARTICLE NINE OF THE REAL PROPERTY LAW; AND THAT ANY SUBSEQUENT INSTRU-3 MENT OF CONVEYANCE RELATING TO THE PROPERTY ENCUMBERED BY THE AGREEMENT 4 SHALL REFERENCE, BY BOOK AND PAGE NUMBER, THE AGREEMENT; AND THAT SUCH 5 INSTRUMENT SHALL ALSO SPECIFY THAT THE PROPERTY SUBJECT IS ТΟ THE RESTRICTIONS CONTAINED IN THE AGREEMENT; AND THAT AN INSTRUMENT FOR THE 6 7 PURPOSE OF CREATING, CONVEYING, MODIFYING OR TERMINATING THE AGREEMENT 8 SHALL NOT BE EFFECTIVE UNLESS RECORDED.

(6) THE AMOUNT OF THE CREDIT THAT MAY BE CLAIMED BY A TAXPAYER PURSU-9 10 ANT TO THIS SUBSECTION SHALL NOT EXCEED TEN THOUSAND DOLLARS IN ANY GIVEN YEAR. 11

12 (7) IF THE AMOUNT OF THE CREDIT UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE 13 14 TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORD-15 ANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTI-16 CLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

17 S 2. Paragraph 4 of subsection (n) of section 606 of the tax law, as 18 amended by section 2 of part F of chapter 62 of the laws of 2006, is 19 amended to read as follows:

20 (4) Qualified agricultural property. For purposes of this subsection, 21 term "qualified agricultural property" means land located in this the 22 state which is used in agricultural production, and land improvements, 23 structures and buildings (excluding buildings used for the taxpayer's 24 residential purpose) located on such land which are used or occupied to 25 carry out such production. Qualified agricultural property also includes 26 land set aside or retired under a federal supply management or soil 27 conservation program or land that at the time it becomes subject to a 28 conservation easement, as defined under subsection (kk) of this section, 29 the requirements under this paragraph, AND LAND THAT AT THE TIME IT met BECOMES SUBJECT TO AN AGREEMENT AS DEFINED IN SUBSECTION (CCC) 30 THIS OF SECTION MET THE REQUIREMENTS UNDER THIS PARAGRAPH. 31

32 3. Section 210-B of the tax law is amended by adding a new subdivi-S 33 sion 49 to read as follows:

34 49. FORESTRY STEWARDSHIP AND HABITAT CONSERVATION CREDIT. (1) IN THE 35 CASE OF A TAXPAYER WHO OWNS LAND THAT IS SUBJECT TO AN AGREEMENT WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, BY WHICH SUCH LAND IS 36 37 COMMITTED TO FORESTRY STEWARDSHIP, OR HABITAT CONSERVATION, OR BOTH, 38 THERE SHALL BE ALLOWED A CREDIT FOR TWENTY-FIVE PERCENT OF THE REAL TAXES PAID ON SUCH LAND. IN NO EVENT SHALL THE CREDIT ALLOWED 39 PROPERTY 40 UNDER THIS SUBDIVISION IN COMBINATION WITH ANY OTHER CREDIT FOR SUCH REAL PROPERTY TAXES UNDER THIS SECTION EXCEED THE TOTAL AMOUNT OF SUCH 41 42 TAXES PAID DURING THE TAXABLE YEAR. 43

(2) FOR THE PURPOSES OF THIS SUBDIVISION:

44 (A) "ELIGIBLE TRACT" SHALL MEAN A TRACT OF LAND OF AΤ LEAST 45 TWENTY-FIVE CONTIGUOUS ACRES THAT HAS BEEN INSPECTED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, A WILDLIFE BIOLOGIST CERTIFIED 46 ΒY THE 47 SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE AMERICAN WILDLIFE 48 FISHERIES SOCIETY, AND BASED ON SUCH INSPECTION IS DETERMINED ΒY THE 49 DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO BE: VALUABLE HABITAT FOR 50 WILDLIFE, FISH, SHELLFISH OR CRUSTACEA; OR SAFE AND SUITABLE FOR FISH OR 51 WILDLIFE-RELATED RECREATION, INCLUDING FISHING, HUNTING, AND TRAPPING WILDLIFE OBSERVATION; OR BOTH. LAND DIVIDED ONLY BY FEDERAL, STATE, 52 COUNTY OR TOWN ROADS, EASEMENTS OR RIGHTS-OF-WAY, OR ENERGY TRANSMISSION 53 54 CORRIDORS OR SIMILAR FACILITIES SHALL BE CONSIDERED CONTIGUOUS FOR 55 PURPOSES OF THIS SECTION.

(B) "AGREEMENT" SHALL MEAN A WRITTEN AGREEMENT BETWEEN THE DEPARTMENT 1 2 OF ENVIRONMENTAL CONSERVATION AND THE OWNER OF AN ELIGIBLE TRACT. 3 EXECUTED BY BOTH PARTIES, BY WHICH THE ELIGIBLE TRACT IS COMMITTED TO 4 HABITAT CONSERVATION, OR FORESTRY STEWARDSHIP, OR BOTH, FOR A PERIOD OF 5 NOT LESS THAN FIVE YEARS. 6 "APPROVED HABITAT CONSERVATION PLAN" SHALL MEAN A PLAN, APPROVED (C) 7 BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, FOR THE MANAGEMENT OF ELIGIBLE TRACT WHICH SHALL CONTAIN REQUIREMENTS AND STANDARDS WITH 8 AN WHICH THE OWNER OF THE ELIGIBLE TRACT MUST COMPLY IN ORDER TO CONSERVE 9 10 THE VALUE OF THE LAND AS WILDLIFE, FISH, SHELLFISH, OR CRUSTACEA HABI-11 TAT. 12 (D) "FORESTRY STEWARDSHIP" SHALL MEAN PARTICIPATION IN A FOREST CERTIFICATION PROGRAM (SUCH AS FOREST STEWARDSHIP COUNCIL CERTIFICATION, 13 14 SUSTAINABLE FORESTRY INITIATIVE, AMERICAN TREE FARM PROGRAM, ETC.) RECOGNIZED IN THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSER-15 16 VATION. 17 (3) THERE IS HEREBY CREATED A NEW YORK STATE FORESTRY STEWARDSHIP AND HABITAT CONSERVATION PROGRAM FOR THE PURPOSE OF PROVIDING FORESTED LANDS 18 19 THE STATE AND CONSERVING THE VALUE OF LAND IN THE STATE AS WILDLIFE, IN FISH, SHELLFISH OR CRUSTACEA HABITAT. 20 21 (4) A LANDOWNER MAY MAKE APPLICATION TO THE DEPARTMENT OF ENVIRON-22 MENTAL CONSERVATION, ON FORMS PRESCRIBED BY SUCH DEPARTMENT, TO HAVE 23 LAND INCLUDED IN THE NEW YORK STATE HABITAT CONSERVATION AND FORESTRY 24 STEWARDSHIP PROGRAM. IF, BASED ON AN INSPECTION OF THE LAND BY THE 25 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OR A WILDLIFE BIOLOGIST CERTI-26 FIED BY THE WILDLIFE SOCIETY, OR A FISHERIES BIOLOGIST CERTIFIED BY THE 27 AMERICAN FISHERIES SOCIETY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION THAT SUCH LAND IS AN ELIGIBLE TRACT, IT SHALL NOTIFY THE 28 DETERMINES LANDOWNER THAT THE LAND IS ELIGIBLE FOR INCLUSION IN THE NEW YORK STATE 29 HABITAT CONSERVATION AND FORESTRY STEWARDSHIP PROGRAM. 30 DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY, IN 31 (5) THEITS 32 DISCRETION, ENTER INTO AGREEMENTS WITH OWNERS OF ELIGIBLE TRACTS FOR 33 PURPOSES OF HABITAT CONSERVATION, OR FORESTRY STEWARDSHIP, OR BOTH. SUCH 34 AGREEMENTS SHALL BE FOR A MINIMUM DURATION OF FIVE YEARS, AND SHALL CONTAIN A DESCRIPTION OF THE PROPERTY THAT IS THE SUBJECT OF THE AGREE-35 MENT, AND SUCH TERMS AND CONDITIONS AS THE DEPARTMENT DEEMS APPROPRIATE, 36 37 INCLUDING, BUT NOT LIMITED TO: 38 (A) FOR FORESTRY STEWARDSHIP AGREEMENTS, A DESCRIPTION OF THE PARTIC-39 IPATION IN A FOREST CERTIFICATION PROGRAM FOR A PERIOD OF NOT LESS THAN 40 FIVE YEARS; (B) FOR HABITAT CONSERVATION AGREEMENTS, A REQUIREMENT THAT THE LAND-41 42 OWNER DEVELOP A HABITAT CONSERVATION PLAN AND IMPLEMENT THE PLAN FOR A 43 PERIOD OF NOT LESS THAN FIVE YEARS; 44 FOR HABITAT CONSERVATION AND FORESTRY STEWARDSHIP AGREEMENTS, A (C) 45 REQUIREMENT THAT THE LANDOWNER DEVELOP A HABITAT CONSERVATION PLAN AND IMPLEMENT THE PLAN FOR A PERIOD OF NOT LESS THAN FIVE YEARS; AND A 46 47 DESCRIPTION OF PARTICIPATION IN A FOREST CERTIFICATION PROGRAM FOR A 48 PERIOD OF NOT LESS THAN FIVE YEARS; 49 (D) A REQUIREMENT THAT THE LANDOWNER'S OBLIGATIONS CONCERNING THE LAND 50 UNDER THE TERMS OF THE AGREEMENT, AS WELL AS ANY BENEFITS, SHALL PASS TO 51 ANY SUCCESSOR IN INTEREST TO SUCH LAND FOR THE DURATION OF THE TERM OF 52 THE AGREEMENT; AND (E) A REQUIREMENT THAT A COPY OF THE AGREEMENT SHALL BE DULY RECORDED 53 54 AND INDEXED AS SUCH IN THE OFFICE OF THE RECORDING OFFICER FOR THE COUN-55 TY OR COUNTIES WHERE THE LAND IS SITUATE IN THE MANNER PRESCRIBED BY 56 ARTICLE NINE OF THE REAL PROPERTY LAW; AND THAT ANY SUBSEQUENT INSTRU-

MENT OF CONVEYANCE RELATING TO THE PROPERTY ENCUMBERED BY THE AGREEMENT 1 2 SHALL REFERENCE, BY BOOK AND PAGE NUMBER, THE AGREEMENT; AND THAT SUCH 3 SHALL ALSO SPECIFY THAT THE INSTRUMENT PROPERTY IS SUBJECT TO THE 4 RESTRICTIONS CONTAINED IN THE AGREEMENT; AND THAT AN INSTRUMENT FOR THE 5 PURPOSE OF CREATING, CONVEYING, MODIFYING OR TERMINATING THE AGREEMENT 6 SHALL NOT BE EFFECTIVE UNLESS RECORDED.

7 (6) THE AMOUNT OF THE CREDIT THAT MAY BE CLAIMED BY A TAXPAYER PURSU-8 ANT TO THIS SUBDIVISION SHALL NOT EXCEED TEN THOUSAND DOLLARS IN ANY 9 GIVEN YEAR.

10 (7) IF THE AMOUNT OF THE CREDIT UNDER THIS SUBDIVISION FOR ANY TAXABLE 11 YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE 12 TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORD-13 ANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS 14 CHAPTER, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

15 S 4. Paragraph (d) of subdivision 11 of section 210-B of the tax law, 16 as added by section 17 of part A of chapter 59 of the laws of 2014, is 17 amended to read as follows:

(d) Qualified agricultural property. For purposes of this subdivision, 18 19 the term "qualified agricultural property" means land located in this state which is used in agricultural production, and land improvements, 20 21 structures and buildings (excluding buildings used for the taxpayer's 22 residential purpose) located on such land which are used or occupied to 23 carry out such production. Qualified agricultural property also includes 24 land set aside or retired under a federal supply management or soil 25 conservation program [or], land that at the time it becomes subject to a 26 conservation easement met the requirements under this paragraph AND LAND TIME IT BECOMES SUBJECT TO AN AGREEMENT AS DEFINED UNDER 27 THAT AT THE SUBDIVISION FORTY-NINE OF THIS SECTION, MET THE REQUIREMENTS UNDER 28 THIS 29 PARAGRAPH.

30 S 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 31 of the tax law is amended by adding a new clause (xli) to read as 32 follows:

33	(XLI) FOREST STEWARDSHIP AND	AMOUNT OF CREDIT UNDER
34	HABITAT CONSERVATION	SUBDIVISION FORTY-NINE OF
35	CREDIT UNDER SUBSECTION (CCC)	SECTION TWO HUNDRED TEN-B
36	S 6. This act shall take effect	immediately.