

# STATE OF NEW YORK

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1394

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## IN SENATE

January 9, 2017

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Introduced by Sen. COMRIE -- 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 the conservation, open space and farmland protection credit trading program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "Conservation, Open Space and Farmland Protection Credit Trading Program".

2 § 2. Legislative intent. Protection of our state natural resources is  
3 an important state policy. Conservation of open space, farmland and  
4 forest protection are important to a healthy and sustainable future. Not  
5 only does land conservation serve an important environmental and public  
6 health benefit such as water quality protection and pollution  
7 prevention, these conserved properties can provide a significant economic  
8 benefit to the people of this state. Farmers who participate in  
9 conservation easements avail themselves to funds to invest in diversifying  
10 and expanding their farm businesses, build new infrastructure,  
11 introduce new crops, purchase equipment or livestock, and perhaps most  
12 importantly, transfer family farms to the next generation of farmers.  
13 This program is designed to further the policies set out in article 49  
14 of the environmental conservation law and to increase incentives to  
15 landowners to conserve their land. This program creates a market for  
16 tradable conservation easement credits to stimulate land conservation in  
17 the state of New York.

18 § 3. Section 210-B of the tax law is amended by adding a new subdivision  
19 49 to read as follows:

20 49. Conservation, open space and farmland protection credit. (a) An  
21 eligible donor who donates qualified real property interest for a quali-  
22 fied conservation purpose to an eligible donee shall be allowed a credit  
23 owned by such taxpayer against the tax imposed by this article.  
24

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

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(b) The value of the credit shall equal fifty percent of the fair market value of the qualified real property donation calculated to exclude any short term capital gain pursuant to 26 U.S.C.A. § 170 (e) (1)(A). The amount of the tax credit shall not exceed one hundred thousand dollars for any contiguous parcels of land owned by the same landowner, or an entity in which the landowner has an interest. A taxpayer shall not be allowed any other tax credit against taxes imposed under this article for a conservation easement on such property.

(c) For purposes of this subdivision a qualified real property interest means a conservation easement as defined in article forty-nine of the environmental conservation law and the regulations promulgated thereunder or a full real property interest as defined under 26 U.S.C.A. § 170(h)(2) and corresponding regulation in 26 C.F.R. § 170-A-14(b). Either interest must be in fully instate land. Notwithstanding any other provision of law, a golf course does not qualify as a conservation easement for purpose of this subdivision.

(d) For purposes of this subdivision an "eligible donee" means a "public body" or a "not-for-profit conservation organization" as defined in article forty-nine of the environmental conservation law. In addition, to qualify as an eligible donee a "not-for-profit conservation organization" must be registered with the department of environmental conservation.

(e) Eligible donor means any person or entity who owns a qualified real property interest, including individuals, corporations, trusts and estates, partners in partnerships and other flow through entities, and both marriage partners.

(f) Any qualified donor holding a pre-approved conservation easement credit may sell or transfer in part, or in full, the conservation easement credit to another person or entity for use against tax imposed under this article. In order for the transferee or purchaser to apply the conservation easement tax credit against taxes for a particular year, the transferee must have acquired the conservation easement tax credit on or before the date upon which the transferee's taxes are due (without extensions) for the year in question.

(g) Limitations on use of conservation easement credits. (1) The conservation easement credit may not be used, by amendment or otherwise, against taxes owing for tax years prior to the year in which the conservation easement credit was earned or acquired by the taxpayer.

(2) Only one conservation easement credit may be earned per a qualified real property interest donation:

(A) If the qualified real property interest is held in common ownership, the conservation easement credit shall be allocated in proportion to respective ownership shares.

(B) If the qualified real property interest is held by a pass-through entity, the conservation easement credit shall be allocated as prescribed under 26 U.S.C.A. § 704(b) and corresponding regulations in 26 C.F.R. § 1.704A-1(b)(4)(ii).

(3) An eligible donor may earn only one conservation easement credit per income tax year.

(4)(A) The credit shall only apply for ten years following the qualified real property donation.

(B) In determining any carry-forward amount, the following rules apply: (i) The amount of conservation easement credit used in a taxable year, when combined with all other state income tax credits of the user, may not exceed the user's total state tax liability for the taxable year.

1 (ii) Any unused portion of conservation easement credit may be carried  
2 forward up to ten years. Any unused portion of a conservation easement  
3 credit shall survive the death of the individual and may be used or  
4 transferred by the decedent's estate.

5 (h) Approval process. (1) Before an eligible donor may use or transfer  
6 a conservation easement credit, an eligible donor shall attain approval  
7 from the easement credit approval board established by paragraph (i) of  
8 this subdivision. Receipt of approval from the easement credit approval  
9 board signifies only the satisfaction of the screening requirements  
10 pursuant to subparagraph three of paragraph (i) of this subdivision. The  
11 approval has no probative value in another state or federal administra-  
12 tive action, such as an audit review of the conservation easement credit  
13 used.

14 (A) The eligible donor shall submit to the conservation easement cred-  
15 it approval board an application for approval on a form created by the  
16 conservation easement credit approval board that contains information  
17 required by the conservation easement credit approval board to assess  
18 the criteria pursuant to subparagraph three of paragraph (i) of this  
19 subdivision. Such documents may include a draft or recorded conservation  
20 easement, a copy of a qualified appraisal, and any other required infor-  
21 mation. For the purposes of this subdivision a qualified appraisal means  
22 an appraisal in accordance with 26 C.F.R. § 170A-13(c)(4) and the  
23 Uniform Standards of Professional Appraisal Practice ("USPAP").

24 (B) An eligible donor may apply for conditional approval before a  
25 qualified real property interest donation has been recorded. If condi-  
26 tional approval is granted, the application must be resubmitted to the  
27 conservation easement credit approval board after the donation has been  
28 recorded for the limited purpose of demonstrating conformity with the  
29 draft documents.

30 (C) The conservation easement credit approval board shall notify the  
31 eligible donor of its decision within sixty days of receiving an appli-  
32 cation or within thirty days of receiving a resubmission.

33 (D) In the event of approval, the conservation easement credit  
34 approval board shall issue a tracking number to the donor. To use the  
35 conservation easement credit, the donor or transferee shall enter the  
36 tracking number on the appropriate tax forms issued by the department,  
37 thus indicating receipt of approval.

38 (E) The conservation easement credit approval board shall provide a  
39 brief statement of reasons for a decision to deny approval. Once the  
40 problems identified by the conservation easement credit approval board  
41 have been remedied, an eligible donor may resubmit the application for  
42 approval. Decisions to deny approval are not subject to appeal.

43 (2) The following rules and procedures must be followed to transfer a  
44 conservation easement credit:

45 (A) A transferor and a transferee shall notify the department of a  
46 conservation easement credit transfer. Both parties shall provide the  
47 conservation easement credit tracking number and amount transferred on  
48 the appropriate tax forms, which shall be filed with the income tax  
49 return for the year in which the conservation easement credit transfer  
50 is made. A transferee may not use a transferred conservation easement  
51 credit unless the transferor's written statement verifies the amount of  
52 conservation easement credit used by the transferee.

53 (B) The donor of a transferred conservation easement credit shall be  
54 the tax-matters representative in all matters with respect to the  
55 conservation easement credit. A tax-matters representative shall be  
56 responsible for representing and binding the transferees with respect to

1 all issues affecting the conservation easement credit, including, but  
2 not limited to, the appraisal, notifications, correspondence from and  
3 with the department and the IRS, audit examinations, assessments,  
4 settlement agreements, and the statute of limitations and extensions  
5 thereof. Final resolutions of disputes regarding a conservation easement  
6 credit between the department and a tax-matters representative, includ-  
7 ing administrative and judicial decisions, shall be binding on transfer-  
8 ees.

9 (C) In the event the transferred conservation easement credit is  
10 disallowed or devaluated in audit procedures, the department shall first  
11 make demands for payment of any additional tax, together with interest  
12 and penalties, from the conservation easement credit earning donor. In  
13 the event such payment demand is not voluntarily satisfied within appli-  
14 cable time limit, the department shall proceed to collection against the  
15 transferees on a pro rata basis.

16 (i) Administration. (1) To administer the conservation, open space and  
17 farmland protection credit trading program, the department is author-  
18 ized:

19 (A) to require additional information from an eligible donor or trans-  
20 feree regarding the appraisal value of the easement, the amount of the  
21 conservation easement program, the validity of the conservation easement  
22 credit, and other relevant matters; and

23 (B) to review, for good cause shown, and accept or reject, in whole or  
24 in part, all aspects relating to a conservation easement credit, includ-  
25 ing compliance with federal rules and regulations. In applying federal  
26 rules and regulations, the department shall determine whether a used  
27 conservation easement credit complies with the appropriate Internal  
28 Revenue Code sections and treasury regulations. Any positions taken by  
29 the United States Commissioner of the Internal Revenue Service and/or  
30 any federal courts should be considered but are not binding on the  
31 department.

32 (2) There is created the conservation easement credit approval board  
33 to administer the approval process set forth in this subdivision. The  
34 board shall review applications pursuant to criteria set forth in this  
35 subdivision.

36 (A) The conservation easement credit approval board shall consist of  
37 three members as follows: a representative of the department who is  
38 knowledgeable about appraisal valuations; a representative of the  
39 department of environmental conservation who is knowledgeable about  
40 conservation values; and a representative of the state attorney gener-  
41 al's office who is knowledgeable about the legal requirements for quali-  
42 fied real property interests.

43 (B) The board members shall be appointed administratively by the  
44 directors of the respective departments and may be changed from time to  
45 time at the pleasure of the appointing authority.

46 (3) The conservation easement credit approval board shall limit  
47 approval review to the following considerations:

48 (A) Whether the appraisal appears to meet minimum USPAP standards and  
49 IRS requirements for a qualified appraisal, and whether its valuation  
50 does not appear to be manifestly abusive.

51 (B) Whether the conservation values arguably comply with the require-  
52 ments pursuant to paragraph (c) of this subdivision.

53 (C) In the case of a conservation easement donation, whether the  
54 documentation required for the easement arguably complies with minimum  
55 standards for a qualified easement pursuant to article forty-nine of the  
56 environmental conservation law.

1     (4) The department shall issue a report every year summarizing by  
2 county the following annual totals:

3     (A) Number of qualified real property interest donations approved by  
4 the conservation easement credit approval board;

5     (B) Fair market value of qualified real property interest donations  
6 approved by the conservation easement credit approval board;

7     (C) Value of conservation easement credits approved by the conserva-  
8 tion easement credit approval board;

9     (D) Value of used conservation easement credits by class (eligible  
10 donors or transferees).

11     (E) Acreage of qualified real property interests donated approved by  
12 the conservation easement credit approval board, by donee class (land  
13 trust, government, other).

14     (j) The following agencies shall have the following rulemaking power:

15     (1) The department of environmental conservation shall promulgate  
16 rules for the implementation of the approval screen pursuant to para-  
17 graph (i) of this subdivision. Such rules shall be promulgated in  
18 accordance with the state's administrative procedure act statute.

19     (2) The department shall promulgate all other rules and regulations  
20 necessary to implement and administer this subdivision.

21     (k) Registration of not-for-profit organization. The department of  
22 environmental conservation shall promulgate all rules and regulations  
23 necessary to develop a registration and certification system for non-  
24 profit organizations to be eligible for credit under this subdivision.  
25 One requirement must be that the not-for-profit adopt the Land Trust  
26 Alliance "Best Standards and Practices". Such registration may be  
27 revoked by the conservation easement credit approval board, the depart-  
28 ment of environmental conservation or the attorney general upon a find-  
29 ing that the not-for-profit organization willfully and with the intent  
30 to defraud created an easement that does not match the value of the  
31 credit received.

32     § 4. Section 606 of the tax law is amended by adding a new subsection  
33 (ccc) to read as follows:

34     (ccc) Conservation, open space and farmland protection credit. (1) An  
35 eligible donor who donates qualified real property interest for a quali-  
36 fied conservation purpose to an eligible donee shall be allowed a credit  
37 owned by such taxpayer against the tax imposed by this article.

38     (2) The value of the credit shall equal fifty percent of the fair  
39 market value of the qualified real property donation calculated to  
40 exclude any short term capital gain pursuant to 26 U.S.C.A. § 170(e)  
41 (1)(A). The amount of the tax credit shall not exceed one hundred thou-  
42 sand dollars for any contiguous parcels of land owned by the same land-  
43 owner, or an entity in which the landowner has an interest.

44     (3) For purposes of this subsection a qualified real property interest  
45 means a conservation easement as defined in article forty-nine of the  
46 environmental conservation law and the regulations promulgated there-  
47 under or a full real property interest as defined under 26 U.S.C.A. §  
48 170(h)(2) and corresponding regulation in 26 C.F.R. § 170-A-14(b).  
49 Either interest must be in fully instate land. Notwithstanding any other  
50 provision of law, a golf course does not qualify as a conservation ease-  
51 ment for purposes of this subsection.

52     (4) For purposes of this subsection an "eligible donee" means a  
53 "public body" or a "not-for-profit conservation organization" as defined  
54 in article forty-nine of the environmental conservation law. In addi-  
55 tion, to qualify as an eligible donee a "not-for-profit conservation



1 organization" must be registered with the department of environmental  
2 conservation.

3 (5) Eligible donor means any person or entity who owns a qualified  
4 real property interest, including individuals, corporations, trusts and  
5 estates, partners in partnerships and other flow through entities, and  
6 both marriage partners.

7 (6) Any qualified donor holding a pre-approved conservation easement  
8 credit may sell or transfer in part, or in full, the conservation ease-  
9 ment credit to another person or entity for use against tax imposed  
10 under this article. In order for the transferee or purchaser to apply  
11 the conservation easement tax credit against taxes for a particular  
12 year, the transferee must have acquired the conservation easement tax  
13 credit on or before the date upon which the transferee's taxes are due  
14 (without extensions) for the year in question.

15 (7) Limitations on use of conservation easement credits. (A) The  
16 conservation easement credit may not be used, by amendment or otherwise,  
17 against taxes owing for tax years prior to the year in which the conser-  
18 vation easement credit was earned or acquired by the taxpayer.

19 (B) Only one conservation easement credit may be earned per qualified  
20 real property interest donation:

21 (i) If the qualified real property interest is held in common owner-  
22 ship, the conservation easement credit shall be allocated in proportion  
23 to respective ownership shares.

24 (ii) If the qualified real property interest is held by a pass-through  
25 entity, the conservation easement credit shall be allocated as  
26 prescribed under 26 U.S.C.A. § 704(b) and corresponding regulations in  
27 26 C.F.R. § 1.704A-1(b)(4)(ii).

28 (C) An eligible donor may earn only one conservation easement credit  
29 per income tax year.

30 (D)(i) The credit shall only apply for ten years following the quali-  
31 fied real property donation.

32 (ii) In determining any carry-forward amount, the following rules  
33 apply: (I) The amount of conservation easement credit used in a taxable  
34 year, when combined with all other state income tax credits of the user,  
35 may not exceed the user's total state tax liability for the taxable  
36 year.

37 (II) Any unused portion of conservation easement credit may be carried  
38 forward up to ten years. Any unused portion of a conservation easement  
39 credit shall survive the death of the individual and may be used or  
40 transferred by the decedent's estate.

41 (8) Approval process. Credits under this subsection shall be deter-  
42 mined in accordance with the procedures, rules and provisions set forth  
43 in paragraphs (h), (i), (j) and (k) of subdivision forty-nine of section  
44 two hundred ten-B of this chapter.

45 § 5. This act shall take effect on the first of January next succeed-  
46 ing the date on which it shall have become a law.