

# STATE OF NEW YORK

4840

2017-2018 Regular Sessions

## IN ASSEMBLY

February 3, 2017

Introduced by M. of A. MAGEE -- read once and referred to the Committee on Ways and Means

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 43 to read  
2 as follows:

3 § 43. 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.

24 (d) Account beneficiary. The term "account beneficiary" means the  
25 individual or business on whose behalf the farm savings account was  
26 established.

27 2. Program description. (a) Deductions allowed. In the case of a qual-  
28 ified farmer, there shall be allowed as a deduction for the taxable year  
29 an amount equal to the aggregate amount paid in cash during such taxable

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

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1 year by or on behalf of such individual to a farm savings account of  
2 such individual.

3 (b) Contribution requirement. There shall be no minimum or maximum  
4 contribution requirement. However, aggregate contributions may not  
5 exceed total income derived from farming during a given taxable year.

6 (c) Tax treatment of accounts. A farm savings account is exempt from  
7 taxation under this chapter unless such account has ceased to be a farm  
8 savings account.

9 (d) Termination of accounts. If the account beneficiary ceases to  
10 engage in the trade or business of farming, all farm savings accounts of  
11 such individual shall cease to be such accounts and the balance of all  
12 such accounts shall be treated as (i) distributed to such individual,  
13 and (ii) not paid in a qualified distribution.

14 (e) Tax treatment of distributions. (i) General. In general, any  
15 amount paid or distributed out of a farm savings account shall be  
16 included in gross income.

17 (ii) Additional tax on non-qualified distributions. (1) In addition to  
18 any other tax imposed by this chapter, any non-qualified distribution  
19 from a farm savings account shall be subject to a fifteen percent  
20 surcharge on the amount of such non-qualifying distribution.

21 (2) Clause one of this subparagraph shall not apply if the payment or  
22 distribution is made after the account beneficiary becomes disabled or  
23 dies.

24 (iii) Rollover contributions. For purposes of this section, any amount  
25 paid or distributed from a farm savings account to the account benefi-  
26 ciary shall be treated as a qualified distribution to the extent the  
27 amount received is paid into a farm savings account for the benefit of  
28 such beneficiary not later than the sixtieth day after the day on which  
29 the beneficiary receives the payment or distribution.

30 (iv) Transfer of account incident to divorce. The transfer of an indi-  
31 vidual's interest in a farm savings account to an individual's spouse or  
32 former spouse under a divorce or separation instrument shall not be  
33 considered a taxable transfer made by such individual notwithstanding  
34 any other provision of this section, and such interest shall, after such  
35 transfer, be treated as a farm savings account with respect to which  
36 such spouse is the account beneficiary.

37 (v) Treatment after death of account beneficiary. (1) Treatment if  
38 designated beneficiary is spouse. If the account beneficiary's surviving  
39 spouse acquires such beneficiary's interest in a farm savings account by  
40 reason of being the designated beneficiary of such account at the death  
41 of the account beneficiary, such farm savings account shall be treated  
42 as if the spouse were the account beneficiary.

43 (2) Other cases. If, by reason of the death of the account benefi-  
44 ciary, any person acquires the account beneficiary's interest in a farm  
45 savings account in a case to which clause one of this subparagraph does  
46 not apply:

47 (A) such account shall cease to be a farm savings account as of the  
48 date of death, and

49 (B) an amount equal to the fair market value of the assets in such  
50 account on such date shall be included in such person's gross income for  
51 the taxable year which includes such date if such person is not the  
52 estate of such beneficiary; or if such person is the estate of such  
53 beneficiary, in such beneficiary's gross income for the last taxable  
54 year of such beneficiary.

55 § 2. Subsection (b) of section 612 of the tax law is amended by adding  
56 a new paragraph 42 to read as follows:

(42) Any non-qualifying distributions made from a farm savings account. This shall not include any distributions that are exempt from taxation as specified in paragraph (e) of subdivision two of section forty-three of this chapter.

§ 3. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 42 to read as follows:

(42) An amount equal to any qualified contribution to a farm savings account established pursuant to section forty-three of this chapter.

§ 4. Subdivision 4 of section 209 of the tax law, as separately amended by section 2 of part FF-1 of chapter 57 of the laws of 2008 and section 5 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

4. Corporations liable to tax under sections one hundred eighty-three to one hundred eighty-five, inclusive, corporations taxable under article thirty-three of this chapter, any trust company organized under a law of this state all of the stock of which is owned by not less than twenty savings banks organized under a law of this state, a captive REIT or a captive RIC filing a combined return under subdivision (f) of section fifteen hundred fifteen of this chapter, and housing companies organized and operating pursuant to the provisions of article two or article five of the private housing finance law and housing development fund companies organized pursuant to the provisions of article eleven of the private housing finance law, and farm savings accounts properly established under section forty-three of this chapter, shall not be subject to tax under this article.

§ 5. Subdivision 4 of section 209 of the tax law, as amended by section 5 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

4. Corporations liable to tax under sections one hundred eighty-three to one hundred eighty-four-a, inclusive, corporations taxable under article thirty-three of this chapter, any trust company organized under a law of this state all of the stock of which is owned by not less than twenty savings banks organized under a law of this state, a captive REIT or a captive RIC filing a combined return under subdivision (f) of section fifteen hundred fifteen of this chapter, and housing companies organized and operating pursuant to the provisions of article two or article five of the private housing finance law and housing development fund companies organized pursuant to the provisions of article eleven of the private housing finance law, and farm savings accounts properly established under section forty-three of this chapter, shall not be subject to tax under this article.

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

(g-1) Farm savings accounts. Any farm savings account properly established under section forty-three of this chapter shall not be subject to tax under this article.

§ 7. This act shall take effect immediately and shall apply to taxable years commencing after such effective date; provided, however, that section five of this act shall take effect on the same date and in the same manner as section 5 of part A of chapter 59 of the laws of 2014, takes effect. Effective immediately, the commissioner of taxation and finance may add, amend, or repeal any rule or regulation necessary to timely implement the provisions of this act on its effective date.