STATE OF NEW YORK

1394

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

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:

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

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

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

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

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.

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

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

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

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

(C) The conservation easement credit approval board shall notify the eligible donor of its decision within sixty days of receiving an application or within thirty days of receiving a resubmission.

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

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

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

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

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

all issues affecting the conservation easement credit, including, but not limited to, the appraisal, notifications, correspondence from and with the department and the IRS, audit examinations, assessments, settlement agreements, and the statute of limitations and extensions thereof. Final resolutions of disputes regarding a conservation easement credit between the department and a tax-matters representative, including administrative and judicial decisions, shall be binding on transferees.

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

(i) Administration. (1) To administer the conservation, open space and farmland protection credit trading program, the department is authorized:

(A) to require additional information from an eligible donor or transferee regarding the appraisal value of the easement, the amount of the conservation easement program, the validity of the conservation easement credit, and other relevant matters; and

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

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

(A) The conservation easement credit approval board shall consist of three members as follows: a representative of the department who is knowledgeable about appraisal valuations; a representative of the department of environmental conservation who is knowledgeable about conservation values; and a representative of the state attorney general's office who is knowledgeable about the legal requirements for qualified real property interests.

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

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

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

(B) Whether the conservation values arguably comply with the requirements pursuant to paragraph (c) of this subdivision.

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

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

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

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

(C) Value of conservation easement credits approved by the conservation easement credit approval board;

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

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

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

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

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

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

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

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

(2) 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.

(3) For purposes of this subsection 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 purposes of this subsection.

(4) For purposes of this subsection 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.

(5) 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.

(6) 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.

(7) Limitations on use of conservation easement credits. (A) 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.

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

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

(ii) 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).

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

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

(ii) 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.

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

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

§ 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.