STATE OF NEW YORK

3835--A

2017-2018 Regular Sessions

IN SENATE

January 27, 2017

Introduced by Sens. RITCHIE, CARLUCCI, MARCHIONE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. The tax law is amended by adding a new section 44 to read as follows:

§ 44. Farm savings accounts. 1. Definitions. (a) Qualified farmer. For purposes of this section, the term "qualified farmer" means, with respect to any taxable year, any individual who, during such year, was engaged in the trade or business of farming.

(b) Farm savings account. For purposes of this section, the term "farm savings account" means a trust created or organized in the United States as a farm savings account exclusively for the purpose of making qualified distributions for purposes of farm sustainability, but only if the written governing instrument creating the trust meets the following requirements:

(i) No contribution will be accepted unless it is in cash.

(ii) The trustee is a bank, credit union or other appropriate institution that demonstrates administration of the trust in a manner that is consistent with the requirements of this section.

(iii) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(iv) The interest of an individual in the balance in his or her account is nonforfeitable.

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

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(c) Qualified distribution. The term "qualified distribution" means any amount paid from a farm savings account to the account beneficiary exclusively for purposes of farm sustainability.

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

2. Program description. (a) Deductions allowed. In the case of a qualified farmer, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by or on behalf of such individual to a farm savings account of such individual.

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

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

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

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

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

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

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

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

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

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

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

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

§ 2. Subsection (b) of section 612 of the tax law is amended by adding a new paragraph 43 to read as follows:

(43) 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-four of this chapter.

§ 3. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 44 to read as follows:

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

§ 4. 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-four of this chapter,** shall not be subject to tax under this article.

§ 5. 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-four of this chapter shall not be subject to tax under this article.

§ 6. This act shall take effect immediately and shall apply to taxable years commencing after such effective date.