

STATE OF NEW YORK

4727

2017-2018 Regular Sessions

IN SENATE

February 24, 2017

Introduced by Sens. SEWARD, AKSHAR, AMEDORE, FUNKE, GALLIVAN, GRIFFO, LITTLE, ORTT, SAVINO, SERINO, TEDISCO, VALESKY -- 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 providing insurance corporations with a tax credit for investments made in rural business growth funds; and to amend the state finance law, in relation to establishing the New York agriculture and rural jobs fund

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. New York agriculture and rural jobs credit. (a) Definitions. For
4 the purpose of this section the following terms shall have the following
5 meanings:

6 (1) "Affiliate" means a person that directly, or indirectly through
7 one or more intermediaries, controls, is controlled by, or is under
8 common control with another person. For the purposes of this division, a
9 person is "controlled by" another person if the controlling person
10 holds, directly or indirectly, the majority voting or ownership interest
11 in the controlled person or has control over the day-to-day operations
12 of the controlled person by contract or by law.

13 (2) "Closing date" means the date on which a rural business growth
14 fund has collected all of the amounts specified by subparagraphs (A) and
15 (B) of paragraph seven of subdivision (b) of this section.

16 (3) "Credit-eligible capital contribution" means an investment of cash
17 by a person in a rural business growth fund that equals the amount spec-
18 ified on a tax credit certificate issued by the department under subpar-
19 agraph (B) of paragraph six of subdivision (b) of this section. The
20 investment shall purchase an equity interest in the rural business
21 growth fund or purchase, at par value or premium, a debt instrument

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

LBD08845-01-7

1 issued by the rural growth fund that meets all of the following crite-
2 ria:

3 (A) The debt instrument has an original maturity date of at least five
4 years after the date of issuance.

5 (B) The debt instrument has a repayment schedule that is not faster
6 than a level principal amortization over five years.

7 (C) The debt instrument has no interest, distribution, or payment
8 features dependent on the rural business growth fund's profitability or
9 the success of the rural growth investments.

10 (4) "Eligible investment authority" means the amount stated on the
11 notice issued under subparagraph (A) of paragraph six of subdivision (b)
12 of this section certifying the rural business growth fund. At least
13 sixty-five percent of a rural business growth fund's eligible investment
14 authority shall be comprised of credit-eligible capital contributions.

15 (5) A business's "principal business operations" are in this state if
16 at least eighty percent of the business's employees reside in this
17 state, the individuals who receive eighty percent of the business's
18 payroll reside in this state, or the business has agreed to use the
19 proceeds of a rural growth investment to relocate at least eighty
20 percent of its employees to this state or pay at least eighty percent of
21 its payroll to individuals residing in this state.

22 (6) "Rural area" means either of the following:

23 (A) An area of the state not in a city or town that has a population
24 of more than fifty thousand inhabitants according to the latest decenni-
25 al census of the United States or in the urbanized area contiguous and
26 adjacent to a city or town that has a population of more than fifty
27 thousand inhabitants; or

28 (B) Any area determined to be "rural in character" by the under-secre-
29 tary of agriculture for rural development within the United States
30 department of agriculture.

31 (7) "Rural business concern" means an operating company that, at the
32 time if the initial investment in the company by a rural business growth
33 fund, has its principal business operations in this state, has fewer
34 than two hundred fifty employees or not more than fifteen million
35 dollars in net income for the preceding taxable year, and meets either
36 of the following criteria:

37 (A) The business's principal business operations are located in a
38 rural area; or

39 (B) The business produces or provides any goods or services normally
40 used by farmers, ranchers, or producers and harvesters of aquatic
41 products in their business operations, or to improve the welfare or
42 livelihood of such persons, or is involved in the processing and market-
43 ing of agricultural products, farm supply, and input suppliers. For the
44 purposes of this section, "net income" means federal adjusted gross
45 income as required to be reported under the Internal Revenue Code less
46 federal and state taxes imposed on or measured by income. Any business
47 which is classified as a rural business concern at the time of the
48 initial investment in said business by a rural business growth fund
49 shall remain classified as a rural business concern and may receive
50 follow-on investments from any rural business growth fund, and such
51 follow-on investments shall be rural growth investments even though such
52 business may not meet the definition of a rural business concern at the
53 time of such follow-on investments.

54 (8) "Rural business growth fund" means an entity certified by the
55 department under this section.

1 (9) "Rural growth investment" means any capital or equity investment
2 in a rural business concern or any loan to a rural business concern with
3 a term of at least one year.

4 (10) "Taxable year" when used in reference to an insurance company
5 means the calendar year ending on the thirty-first day of December next
6 preceding the day the annual report is required to be returned under
7 subdivision (d) of this section.

8 (b) Certification. (1) On and after August first, two thousand seven-
9 teen, an applicant that has developed a business plan to invest in rural
10 business concerns in this state and has successfully solicited private
11 investors to make capital contributions in support of the plan may apply
12 to the department for certification as a rural business growth fund. The
13 application shall include all of the following:

14 (A) The total eligible investment authority sought by the applicant
15 under the business plan;

16 (B) Documents and other evidence sufficient to prove, to the satisfac-
17 tion of the department, that the applicant meets all of the following
18 criteria: (i) The applicant or an affiliate of the applicant is licensed
19 as a rural business investment company under 7 U.S.C. 2009cc, or as a
20 small business investment company under 15 U.S.C. 681.

21 (ii) As of the date the application is submitted, the applicant has
22 invested more than one hundred million dollars in operating companies,
23 including at least fifty million dollars in operating companies located
24 in rural areas. In computing investments under this division, the appli-
25 cant may include investments made by affiliates of the applicant.

26 (C) An estimate of the number of jobs that will be created or retained
27 in this state as a result of the applicant's rural growth investments;

28 (D) A revenue impact assessment for the applicant's proposed rural
29 growth investments prepared by a nationally recognized third-party inde-
30 pendent economic forecasting firm using a dynamic economic forecasting
31 model. The revenue impact assessment shall analyze the applicant's
32 business plan over the ten years following the date the application is
33 submitted to the department.

34 (E) A signed affidavit from each investor successfully solicited by
35 the applicant to make a credit eligible capital contribution in support
36 of the business plan. Each affidavit shall include information suffi-
37 cient for the tax commissioner to identify the investor and shall state
38 the amount of the investor's credit-eligible capital contribution.

39 (F) A nonrefundable application fee of five thousand dollars.

40 (2) The department shall review and make a determination with respect
41 to each application submitted under paragraph one of this subdivision
42 within thirty days of receipt. The department shall review and make
43 determinations on the applications in the order in which the applica-
44 tions are received by the department. Applications received by the
45 department on the same day shall be deemed to have been received simul-
46 taneously. Except as provided in paragraph four of subdivision (c) of
47 this section, the department shall not approve more than one hundred
48 million dollars in eligible investment authority or more than sixty-five
49 million dollars in credit-eligible capital contributions.

50 (3) The department shall deny an application submitted under this
51 section if any of the following are true: (A) The application is incom-
52 plete.

53 (B) The application fee is not paid in full.

54 (C) The applicant does not satisfy all the criteria described in
55 subparagraph (B) of paragraph one of this subdivision.

1 (D) The revenue impact assessment submitted under subparagraph (D) of
2 paragraph one of this subdivision does not demonstrate that the appli-
3 cant's business plan will result in a positive economic impact on this
4 state over a ten-year period that exceeds the eligible investment
5 authority sought by the applicant.

6 (E) The credit-eligible capital contributions described in affidavits
7 submitted under subparagraph (E) of paragraph one of this subdivision do
8 not equal sixty-five percent of the total amount of eligible investment
9 authority sought under the applicant's business plan.

10 (F) The department has already approved the maximum amount of eligible
11 investment authority and credit-eligible capital contributions allowed
12 under paragraph two of this subdivision.

13 (4) If the department denies an application under paragraph three of
14 this subdivision, the department shall send notice of its determination
15 of the applicant. The notice shall include the reasons that the applica-
16 tion was denied. If the application was denied for any reason other than
17 the reason specified in subparagraph (F) of paragraph three of this
18 subdivision, the applicant may provide additional information to the
19 department to complete, clarify, or cure defects in the application.
20 The additional information must be submitted within thirty days after
21 the date the notice of denial was sent by the department. If the person
22 or entity submits additional information within thirty days, the depart-
23 ment shall reconsider the application within thirty days after receiving
24 such additional information. If after submission of additional informa-
25 tion, the department approves the application, then the submission date
26 shall be the date of the original submission of the application. If the
27 person or entity does not submit additional information within thirty
28 days after the notice of denial was sent, the applicant may submit a new
29 application with a new submission date at any time.

30 (5) Of approving multiple simultaneously submitted applications would
31 result in exceeding the overall eligible investment limit prescribed by
32 paragraph two of this subdivision, the department shall proportionally
33 reduce the eligible investment authority and the credit-eligible capital
34 contributions for each approved application as necessary to avoid
35 exceeding the limit.

36 (6) The department shall not deny a rural business growth fund appli-
37 cation or reduce the requested eligible investment authority for reasons
38 other than those described in paragraphs three and five of this subdivi-
39 sion. If the department approves such application, the department shall
40 issue all of the following notices: (A) To the applicant, a written
41 notice certifying that the applicant qualifies as a rural business
42 growth fund and specifying the amount of the applicant's eligible
43 investment authority; (B) To each investor whose affidavit was included
44 in the application, a tax credit certificate specifying the amount of
45 the investor's credit-eligible capital contribution; (C) To the commis-
46 sioner, a copy of each tax credit certificate issued under subparagraph
47 (B) of paragraph six of this subdivision.

48 (7) A rural business growth fund shall complete all of the following
49 within sixty days of receiving the certification issued under subpara-
50 graph (A) of paragraph six of this subdivision:

51 (A) Collect the credit-eligible capital contributions from each inves-
52 tor issued a tax credit certificate under subparagraph (B) of paragraph
53 six of this subdivision;

54 (B) Collect one or more investments of cash, which shall purchase an
55 equity interest in the rural growth fund or a debt instrument issued by
56 the rural growth fund at par value or premium, with a maturity date of

1 at least five years from the closing date that, when added to the
2 contributions collected under subparagraph (A) of this paragraph, equal
3 the fund's eligible investment authority. At least ten percent of the
4 fund's eligible investment authority shall be comprised of equity
5 investments contributed by affiliates of the rural business growth fund,
6 including employees, officers, and directors of such affiliates.

7 (C) Send to the department documentation sufficient to prove that the
8 amounts described in subparagraphs (A) and (B) of this paragraph have
9 been collected. If the rural business growth fund fails to fully comply
10 with this paragraph, the fund's certification shall lapse.

11 (8) Eligible investment authority and corresponding credit-eligible
12 capital contributions that lapse under paragraph seven of this subdivi-
13 sion do not count toward limits on total eligible investment authority
14 and credit-eligible capital contributions prescribed in paragraph two of
15 this subdivision. Once eligible investment authority has lapsed, the
16 department shall first award lapsed authority pro rata to each rural
17 business growth fund that was awarded less than the requested eligible
18 investment authority under paragraph five of this subdivision. Any
19 remaining eligible investment authority may be awarded by the department
20 to new applicants.

21 (9) Application fees submitted to the department pursuant to subpara-
22 graph (F) of paragraph one of this subdivision shall be credited to the
23 New York agriculture and rural jobs fund, created in section ninety-
24 nine-aa of the state finance law.

25 (c) Revocation of certification. (1) The department shall revoke a tax
26 credit certificate issued under subdivision (b) of this section if any
27 of the following occur with respect to a rural business growth fund
28 before the fund exits the program under paragraph five of this subdivi-
29 sion.

30 (A) The rural business growth fund in which the credit-eligible capi-
31 tal contribution was made does not invest sixty percent of its eligible
32 investment authority in rural growth investments in this state within
33 two years of the closing date and one hundred percent of its eligible
34 investment authority in rural growth investments in this state within
35 three years of the closing date.

36 (B) After investing one hundred percent of its eligible investment
37 authority in rural growth investments in this state, the rural business
38 growth fund fails to maintain that investment until the fifth anniver-
39 sary of the closing date, including the reinvestment of such investment.
40 For the purposes of this section, an investment is "maintained" even if
41 the investment is sold or repaid so long as the rural business growth
42 fund reinvests an amount equal to the capital returned or recovered by
43 the fund from the original investment, exclusive of any profits real-
44 ized, in other rural growth investments in this state within twelve
45 months of the receipt of such capital. Amounts received periodically by
46 a rural business growth fund shall be treated as continually invested in
47 rural growth investments if the amounts are reinvested in one or more
48 rural growth investments by the end of the following calendar year. A
49 rural business growth fund is not required to reinvest capital returned
50 from rural growth investments in the six months immediately preceding
51 the fifth anniversary of the closing date, and such rural growth invest-
52 ments shall be considered held continuously by the rural growth fund
53 through the fifth anniversary of the closing date.

54 (C) The rural business growth fund invests more than the greater of
55 seven million five hundred thousand dollars or twenty percent of its
56 eligible investment authority in the same rural business concern,

1 including amounts invested in affiliates of the rural business concern
2 but excluding amounts reinvested in the rural business growth fund with
3 repaid or redeemed rural business growth investments, provided such
4 reinvestments shall not count towards the requirement of subparagraph
5 (A) of this paragraph.

6 (D) The rural business growth fund makes a rural growth investment in
7 a rural business concern that directly or indirectly through an affil-
8 iate owns, has the right to acquire an ownership interest, make a loan
9 to, or make an investment in the rural business growth fund, an affil-
10 iate of the rural business growth fund, or an investor in the rural
11 business growth fund. This paragraph does not apply to investments in
12 publicly traded securities by a rural business concern or an owner or
13 affiliate of such concern.

14 (2) Before taking action under paragraph one of this subdivision, the
15 department shall notify the rural business growth fund of the reasons
16 for the pending action. If the rural business growth fund corrects the
17 violations, other than violations of subparagraph (D) of paragraph one
18 of this subdivision, outlined in the notice to the satisfaction of the
19 department within one hundred eighty days of the date of the notice was
20 sent, the department shall not revoke the tax credit certificates or
21 levy a fine.

22 (3) If the department revokes a tax credit certificate under paragraph
23 one of this subdivision, the commissioner shall make an assessment for
24 the amount of the credit claimed by the certificate holder before the
25 certificate was revoked. The commissioner shall make the assessment
26 within one year after the certificate has been revoked.

27 (4) If tax credit certificates are revoked under paragraph one of this
28 subdivision, the associated eligible investment authority and credit-el-
29 igible capital contributions do not count toward the limit on total
30 eligible investment authority and credit-eligible capital contributions
31 described by paragraph two of subdivision (b) of this section. The
32 department shall first award reverted authority pro rata to each rural
33 business growth fund that was awarded less than the requested eligible
34 investment authority under paragraph five of subdivision (b) of this
35 section. Any remaining eligible investment authority may be awarded by
36 the department to new applicants.

37 (5) (A) On or after the fifth anniversary of the closing date, a rural
38 business growth fund that has not committed any of the acts described in
39 paragraph one of this subdivision may apply to the department to exit
40 the program as a rural business growth fund and no longer be subject to
41 regulation under this section. The department shall respond to the
42 application within thirty days after receiving such application. In
43 evaluating such request the fact that no tax credit certificates have
44 been revoked with respect to the rural business growth fund shall be
45 sufficient evidence to prove that the fund is eligible to exit the
46 program. The department shall not unreasonably deny an application
47 submitted under this subdivision.

48 (B) The department shall send notice of its determination with respect
49 to an application submitted under subparagraph (A) of this paragraph to
50 the rural business growth fund. If the application is denied, the notice
51 shall include the reasons for the determination.

52 (C) The department shall not revoke a tax credit certificate due to
53 any actions of a rural business growth fund that occur after the date
54 the fund's application for exiting the program is approved under subpar-
55 agraph (A) of this paragraph.

1 (6) If the number of jobs created or retained by the rural business
2 concern that received rural growth investments from the rural business
3 growth fund is:

4 (A) Less than sixty percent of the number projected in the approved
5 rural business growth fund's business plan filed as part of its applica-
6 tion for certification under subdivision (b) of this section, then the
7 state shall receive twenty percent of any distribution or payment to an
8 equity holder in an approved rural business growth fund in excess of the
9 sum of the amount of equity capital invested in the fund by such equity
10 holder and an amount equal to any projected increase in the equity hold-
11 er's federal or state tax liability, including penalties and interest,
12 related to the equity holder's ownership, management, or operation of
13 the fund; or

14 (B) Greater than sixty percent but less than eighty percent of the
15 number projected in the approved rural business growth fund's business
16 plan filed as part of its application for certification under subdivi-
17 sion (b) of this section, then the state shall receive ten percent of
18 any distribution or payment to an equity holder in an approved rural
19 business growth fund in excess of the sum of the amount of equity capi-
20 tal invested in the fund by such equity holder and an amount equal to
21 any projected increase in the equity holder's federal or state tax
22 liability, including penalties and interest, related to the equity hold-
23 er's ownership, management, or operation of the fund.

24 (7) A rural business growth fund may, prior to making a rural growth
25 investment, request from the department a written determination as to
26 whether the business entity in which it proposes to invest qualifies as
27 a rural business concern.

28 (d) Reports. (1) Each rural business growth fund shall submit a report
29 to the department on or before the fifth business day after the second
30 and third anniversaries of the closing date. The report shall provide
31 documentation as to the rural growth investments made by the rural busi-
32 ness growth fund. Such documentation shall include the following:

33 (A) A bank statement of the rural business growth fund displaying each
34 rural growth investment;

35 (B) The name and location of each rural business concern in which the
36 rural business growth fund has made a rural growth investment, including
37 evidence that the business concern was qualified at the time the invest-
38 ment was made.

39 (2) On or before the last day of February of each year following the
40 year in which the report required under paragraph one of this subdivi-
41 sion is due, the rural business growth fund shall submit an annual
42 report to the department including the following:

43 (A) The number of employment positions created or retained as a result
44 of the fund's rural growth investments as of the last day of the preced-
45 ing calendar year;

46 (B) The average annual salary of the positions described in subpara-
47 graph (A) of this paragraph;

48 (C) Any other information required by the department.

49 (3) The department shall adopt rules necessary to implement this
50 subdivision.

51 § 2. Section 1511 of the tax law is amended by adding a new subdivi-
52 sion (dd) to read as follows:

53 (dd) Credit for certain investments to a rural business growth fund.

54 (1) There is hereby allowed a nonrefundable tax credit for taxpayers
55 that made a credit-eligible capital contribution to a rural business
56 growth fund and were issued a tax credit certificate under subparagraph

(B) of paragraph six of subdivision (b) of section forty-three of this chapter. The credit may be claimed against the tax imposed by this article and section one thousand one hundred twelve of the insurance law. The credit may not be sold, transferred, or allocated to any entity other than an affiliate of the taxpayer.

(2) On the closing date, the taxpayer shall earn a vested credit equal to the amount of the taxpayer's credit-eligible capital contribution to the rural business growth fund, as specified on the tax credit certificate. The taxpayer may claim up to twenty-five percent of the eligible investment authority for the taxable year containing the third anniversary date of the closing date, exclusive of amounts carried forward pursuant to paragraph three of this subdivision. The taxpayer may claim up to twenty percent of the eligible investment authority for the taxable years that include the fourth and fifth anniversary dates of the closing date, exclusive of amounts carried forward pursuant to paragraph three of this subdivision.

(3) If the amount of the credit for a taxable year exceeds the tax otherwise due for that year, the excess shall be carried forward to ensuing taxable years until fully used. A taxpayer claiming a credit under this section shall submit a copy of the tax credit certificate with the taxpayer's return for each taxable year for which the credit is claimed.

§ 3. The tax law is amended by adding a new section 187-t to read as follows:

187-t. Credit for certain investments to a rural business growth fund.
1. There is hereby allowed a nonrefundable tax credit for taxpayers that made a credit-eligible capital contribution to a rural business growth fund and were issued a tax credit certificate under subparagraph (B) of paragraph six of subdivision (b) of section forty-three of this chapter. The credit may be claimed against the tax imposed by this article. The credit may not be sold, transferred, or allocated to any entity other than an affiliate of the taxpayer.

2. On the closing date, the taxpayer shall earn a vested credit equal to the amount of the taxpayer's credit-eligible capital contribution to the rural business growth fund, as specified on the tax credit certificate. The taxpayer may claim up to twenty-five percent of the eligible investment authority for the taxable year containing the third anniversary date of the closing date, exclusive of amounts carried forward pursuant to subdivision three of this section. The taxpayer may claim up to twenty percent of the eligible investment authority for the taxable years that include the fourth and fifth anniversary dates of the closing date, exclusive of amounts carried forward pursuant to subdivision three of this section.

3. If the amount of the credit for a taxable year exceeds the tax otherwise due for that year, the excess shall be carried forward to ensuing taxable years until fully used. A taxpayer claiming a credit under this section shall submit a copy of the tax credit certificate with the taxpayer's return for each taxable year for which the credit is claimed.

§ 4. Section 210-B of the tax law is amended by adding a new subdivision 52 to read as follows:

52. Credit for certain investments to a rural business growth fund.
(1) There is hereby allowed a nonrefundable tax credit for taxpayers that made a credit-eligible capital contribution to a rural business growth fund and were issued a tax credit certificate under subparagraph (B) of paragraph six of subdivision (b) of section forty-three of this

chapter. The credit may be claimed against the tax imposed by this article. The credit may not be sold, transferred, or allocated to any entity other than an affiliate of the taxpayer.

(2) On the closing date, the taxpayer shall earn a vested credit equal to the amount of the taxpayer's credit-eligible capital contribution to the rural business growth fund, as specified on the tax credit certificate. The taxpayer may claim up to twenty-five percent of the eligible investment authority for the taxable year containing the third anniversary date of the closing date, exclusive of amounts carried forward pursuant to paragraph three of this subdivision. The taxpayer may claim up to twenty percent of the eligible investment authority for the taxable years that include the fourth and fifth anniversary dates of the closing date, exclusive of amounts carried forward pursuant to paragraph three of this subdivision.

(3) If the amount of the credit for a taxable year exceeds the tax otherwise due for that year, the excess shall be carried forward to ensuing taxable years until fully used. A taxpayer claiming a credit under this section shall submit a copy of the tax credit certificate with the taxpayer's return for each taxable year for which the credit is claimed.

§ 5. The state finance law is amended by adding a new section 99-aa to read as follows:

§ 99-aa. New York agriculture and rural jobs fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "New York agriculture and rural jobs fund".

2. Such fund shall consist of all application fees submitted pursuant to subparagraph (F) of paragraph one of subdivision (b) of section forty-three of the tax law, and all other moneys appropriated, credited, or transferred thereto from any other fund or source pursuant to law.

3. Moneys of the fund, following appropriation by the legislature shall be expended only for the purposes of providing funding for the New York agriculture and rural jobs credit set forth in section forty-three of the tax law. Moneys shall be paid out of the fund on the audit and warrant of the state comptroller on vouchers approved and certified by the commissioner of taxation and finance. Any interest received by the comptroller on moneys on deposit in the New York agriculture and rural jobs fund shall be retained in and become part of such fund.

§ 6. This act shall take effect July 1, 2017.