STATE OF NEW YORK

4642

2019-2020 Regular Sessions

IN SENATE

March 19, 2019

Introduced by Sen. METZGER -- 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:

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

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

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

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

(3) "Credit-eligible capital contribution" means an investment of cash by a person in a rural business growth fund that equals the amount specified on a tax credit certificate issued by the department under subparagraph (B) of paragraph six of subdivision (b) of this section. The investment shall purchase an equity interest in the rural business 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.

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issued by the rural growth fund that meets all of the following criteria:

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

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

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

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

(5) "Jobs created" means the number of persons employed by a rural business concern having received a growth investment from a rural business growth fund during the taxable year which shall be determined by ascertaining the number of such individuals employed full-time by such rural business concern on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during each taxable year following its initial growth investment, by adding together the number of such individuals ascertained on each of such dates and dividing the sum so obtained by the number of dates occurring within such taxable year in the amount that such number exceeds the jobs retained number. An individual employed full-time means an employee in a job consisting of at least thirty-five hours per week, or two or more employees who are in jobs that together constitute the equivalent of a job of at least thirty-five hours per week.

(6) "Jobs retained" means the number of persons employed by a rural business concern having received a growth investment from a rural business growth fund during the taxable year which shall be determined by ascertaining the number of such individuals employed full-time by such rural business concern on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during the year in which the rural business concern received its initial growth investment from a rural business growth fund, by adding together the number of such individuals ascertained on each of such dates and dividing the sum so obtained by the number of dates occurring within such taxable year. An individual employed full-time means an employee in a job consisting of at least thirty-five hours per week, or two or more employees who are in jobs that together constitute the equivalent of a job of at least thirty-five hours per week.

(7) A business's "principal business operations" are in New York state if New York state is its principal place of business and at least eighty percent of the business's employees work in New York state, or the business has agreed to use the proceeds of a rural growth investment to relocate at least eighty percent of its employees to New York state within twelve months of receiving the investment by a rural business growth fund.

(8) "Rural area" shall have the same meaning as defined in subdivision seven of section four hundred eighty-one of the executive law.

(9) "Rural business concern" means an operating company that, at the time of the initial investment in the company by a rural business growth fund employs no more than one hundred fifty full-time equivalent employees or has earned not more than ten million dollars in net income for the preceding taxable year, and meets either of the following criteria:

(A) The business's principal business operations are located in a rural area in New York state and is an agricultural enterprise or is related to the use of agricultural products or forest products, or is an enterprise in one of the following industries: manufacturing, computer hardware or software, tourism, agribusiness development to stimulate the development and implementation of new and alternative production, processing, storage, distribution and marketing technology and improvements for New York food, agriculture and forest products or if not engaged in any of these industries, the department determines that the investment will be beneficial to the qualified location and the economic growth of New York state; or

(B) The business produces or provides any goods principally used by farmers, ranchers, or producers and harvesters of aquatic products in their business operations, or is involved in the processing and marketing of agricultural products, farm supply, and input suppliers, provided that such business is located in a municipality, as defined in section four hundred eighty-one of the executive law, in New York state with a population of less than fifty thousand. For the purposes of this section, "net income" means federal adjusted gross income as required to be reported under the Internal Revenue Code less federal and state taxes imposed on or measured by income. Any business which is classified as a rural business concern at the time of the initial investment in said business by a rural business growth fund shall remain classified as a rural business concern and may receive follow-on investments from any rural business growth fund, and such follow-on investments shall qualify as a rural growth investment provided it otherwise meets the definition of rural business concern with the exception of the employee limitation and net income limitation in such definition.

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

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

(12) "Tax credit certificate" means the document issued by the department to a person who has made a credit-eligible capital contribution to a rural business growth fund.

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

(14) "Department", as used in this section, means the department of economic development.

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

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

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

(ii) As of the date the application is submitted, the applicant has invested more than one hundred million dollars in operating companies in rural areas located inside or outside of New York state and at least twenty-five million dollars in operating companies located in New York state. In computing investments under this subdivision, the applicant may include investments made by affiliates of the applicant.

(C) An estimate of the number of (i) jobs that will be created in the rural areas of New York state as a result of the applicant's rural growth investments, (ii) jobs that will be retained in the rural areas of New York state as a result of the applicants rural growth investments, and (iii) the anticipated average wage per job.

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

(E) A signed affidavit from each investor successfully solicited by the applicant to make a credit eligible capital contribution in support of the business plan. Each affidavit shall include information sufficient for the department to identify the investor and shall state the amount of the investor's credit-eligible capital contribution.

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

(G) A strategy, as part of its business plan, to prioritize efforts to invest in businesses that are environmentally sensitive and utilize resources that promote a clean environment and energy conservation.

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

(3) The department shall deny an application submitted under this section if any of the following are true: (A) The application is incomplete.

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

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

(D) The revenue impact assessment submitted under subparagraph (D) of paragraph one of this subdivision does not demonstrate that the applicant's business plan will result in a positive economic impact on this state over a ten-year period that exceeds the credit eligible capital contributions sought by the applicant.

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

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

(4) If the department denies an application under paragraph three of this subdivision, the department shall send notice of its determination

of the applicant. The notice shall include the reasons that the application was denied. If the application was denied for any reason other than the reason specified in subparagraph (F) of paragraph three of this subdivision, the applicant may provide additional information to the department to complete, clarify, or cure defects in the application. The additional information must be submitted within thirty days after the date the notice of denial was sent by the department. If the person or entity submits additional information within thirty days, the department shall reconsider the application within thirty days after receiving such additional information. If after submission of additional information, the application is approved, then the submission date shall be the date of the original submission of the application. If the person or entity does not submit additional information within thirty days after the notice of denial was sent, the applicant may submit a new application with a new submission date at any time.

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

(6) If the department approves such application, the department shall: (A) issue a written notice certifying that the applicant qualifies as a rural business growth fund and specifying the amount of the applicant's eligible investment authority and the number of jobs created and jobs retained required of the rural business growth fund determined by multiplying the estimated number of jobs created and jobs retained set forth in the rural business growth fund's application by a fraction, the numerator of which is the investment authority awarded to the rural business growth fund and the denominator of which is the investment authority for which the rural business growth fund applied; (B) to each investor whose affidavit was included in the application, issue a tax credit certificate specifying the amount of the investor's credit-eligible capital contribution; and (C) to the commissioner, a copy of each tax credit certificate issued under subparagraph (B) of this paragraph.

(7) A rural business growth fund shall complete all of the following within sixty days of receiving the written notice issued under paragraph six of this subdivision:

(A) Collect the credit-eligible capital contributions from each investor whose credit-eligible capital contributions are described in affidavits submitted pursuant to subparagraph (E) of paragraph one of this subdivision.

(B) Collect one or more investments of cash, which shall purchase an equity interest in the rural growth fund or a debt instrument issued by the rural growth fund at par value or premium, with a maturity date of at least five years from the closing date that, when added to the contributions collected under subparagraph (A) of this paragraph, equal the fund's eligible investment authority. At least ten percent of the fund's eligible investment authority shall be comprised of equity investments contributed by affiliates of the rural business growth fund, including employees, officers, and directors of such affiliates.

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

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

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

(c) Revocation of certification and penalties. (1) The department shall revoke a tax credit certificate issued under subdivision (b) of this section if any of the following occur with respect to a rural business growth fund before the fund exits the program under paragraph five of this subdivision.

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

(B) After investing one hundred percent of its eligible investment authority in rural growth investments in this state, the rural business growth fund fails to maintain that investment until the seventh anniversary of the closing date. For the purposes of this section, an investment is "maintained" even if the investment is sold or repaid so long as the rural business growth fund reinvests an amount equal to the capital returned or recovered by the fund from the original investment, exclusive of any profits realized, in other rural growth investments in this state within twelve months of the receipt of such capital. Amounts received periodically by a rural business growth fund shall be treated as continually invested in rural growth investments if the amounts are reinvested in one or more rural growth investments by the end of the following calendar year. A rural business growth fund is not required to reinvest capital returned from rural growth investments in the six months immediately preceding the seventh anniversary of the closing date, and such rural growth investments shall be considered held continuously by the rural growth fund through the seventh anniversary of the closing date.

(C) The rural business growth fund invests more than the greater of five million dollars or twenty percent of its eligible investment authority in the same rural business concern, including amounts invested in affiliates of the rural business concern but excluding amounts reinvested in the rural business growth fund with repaid or redeemed rural business growth investments, provided such reinvestments shall not count towards the requirement of subparagraph (A) of this paragraph.

(D) The rural business growth fund makes a rural growth investment in a rural business concern that directly or indirectly through an affiliate owns, has the right to acquire an ownership interest, make a loan to, or make an investment in the rural business growth fund, an affiliate of the rural business growth fund, or an investor in the rural business growth fund. This paragraph does not apply to investments in

publicly traded securities by a rural business concern or an owner or affiliate of such concern.

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

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

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

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

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

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

(6) A rural business growth fund is subject to a penalty in the amount provided by paragraph seven of this subdivision if:

(A) the rural business growth fund authorizes a distribution to the rural business growth fund's equity or debt holders in an amount that, when added to all previous distributions to the rural business growth fund's equity and debt holders and any previous penalties under this section, exceeds the rural business growth fund's investment authority; and

(B) the number of jobs created and jobs retained as reported in each of the annual reports submitted under paragraph one of subdivision (d) of this section is less than the number of jobs created and jobs

retained as set forth in the rural business growth fund's notice of approval pursuant to subparagraph (A) of paragraph six of subdivision (b) of this section.

(7) The amount of the penalty pursuant to paragraph six of this subdivision shall be equal to the amount of the tax credit certificate issued under subparagraph (B) of paragraph six of subdivision (b) of this section multiplied by a fraction:

(A) the numerator of which is the number of jobs created and jobs retained set forth in the rural business growth fund's notice of approval under subparagraph (A) of paragraph six of subdivision (b) of this section less the sum of jobs created and jobs retained reported to the department annually pursuant to paragraph one of subdivision (d) of this section; and

(B) the denominator of which is the number of jobs created and jobs retained set forth in the rural business growth fund's notice of approval under subparagraph (A) of paragraph six of subdivision (b) of this section.

(8) Before making a distribution to the rural business growth fund's equity holders, the rural business growth fund shall deduct the amount of the penalty as calculated pursuant to paragraph seven of this subdivision from the amount otherwise authorized to be distributed to the equity holders and pay the penalty to the department.

(9) A rural business growth fund shall, prior to making a rural growth investment, request from the department a written determination as to whether the business entity in which it proposes to invest qualifies as a rural business concern. Such request shall be in a form prescribed by the department. Rural business concern determination requests shall be accepted, reviewed, and approved on a rolling basis. The department, not later than the twentieth business day after the date of receipt of such request, provided the request includes all of the required information to perform such review, shall notify the rural business growth fund of its determination. If the department fails to notify such fund of its determination within such twenty business days, the business in which the rural business growth fund proposes to invest shall be deemed to qualify as a rural business concern.

(d) Reports. (1) A rural business growth fund shall submit a report to the department on or before the fifth business day after each anniversary of the closing date until the rural business growth fund has exited the program in accordance with paragraph five of subdivision (c) of this section. The report shall document the rural business growth fund's growth investments and shall include, but shall not be limited to:

(A) A bank statement showing each rural growth investment;

(B) The name, location, and industry of each rural business concern receiving a rural growth investment, including either the determination notice described by paragraph nine of subdivision (c) of this section or evidence that such determination was requested and no notice was provided;

(C) The number of jobs created and jobs retained in the preceding twelve month reporting period as a result of the rural business growth fund's rural growth investments as of the last day of that period;

(D) The average annual salary of the jobs described by subparagraph (C) of this paragraph; and

(E) Any other information deemed pertinent by the rural business growth fund or required by the department.

(2) The department shall adopt rules necessary to implement this subdivision.

§ 2. Section 1511 of the tax law is amended by adding a new subdivision (dd) to read as follows:

(dd) 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-four 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) The taxpayer may claim credits authorized by the tax credit certificate in the taxable year in which the third, fourth and fifth anniversaries of the closing date in connection with which the certificate issued occurs, provided that the maximum amount of credit for a tax year that may be claimed is up to one-third of the amount stated on the tax credit certificate, 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-q to read as follows:

§ 187-q. 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-four 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. The taxpayer may claim credits authorized by the tax credit certificate in the taxable year in which the third, fourth, and fifth anniversaries of the closing date in connection with which the certificate issued occurs, provided that the maximum amount of credit for a tax year that may be claimed is up to one-third of the amount stated on the tax credit certificate, exclusive of amounts carried forward pursuant to subdivision three of this section. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three of this article.

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 53 to read as follows:

53. Credit for certain investments to a rural business growth fund. (1) Allowance of credit. 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-four 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) Amount of credit claimed. The taxpayer may claim credits authorized by the tax credit certificate in the taxable year in which the third, fourth, and fifth anniversaries of the closing date in connection with which the certificate issued occurs, provided that the maximum amount of credit for a tax year that may be claimed is up to one-third of the amount stated on the tax credit certificate, exclusive of amounts carried forward pursuant to paragraph three of this subdivision.

(3) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, the excess shall be treated as an overpayment of tax to be credited in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, further, notwithstanding the provisions of subsection (c) of section one thousand eighty-eight of this chapter, no interest shall be paid thereon.

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

§ 99-ff. 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-four 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-four 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, 2019.