STATE OF NEW YORK

5755

2019-2020 Regular Sessions

IN SENATE

May 14, 2019

Introduced by Sen. METZGER -- (at request of the Department of Agriculture and Markets) -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to certain definitions and agricultural districts and assessments; and to amend the real property tax law, in relation to the farm buildings tax exemption and authorizing farms to challenge the denial of an agricultural value assessment through the small claims assessment review (SCAR) process

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 4 of section 301 of the agriculture and markets law, as amended by chapter 445 of the laws of 2002, the opening paragraph as amended by chapter 344 of the laws of 2012, paragraph a-1 as added by chapter 611 of the laws of 2008, paragraph c as amended by chapter 47 of the laws of 2011, paragraph h as amended by chapter 587 of the laws of 2005, paragraph i as added by chapter 252 of the laws of 2004, paragraph j as added by chapter 256 of the laws of 2006, paragraph k as added by chapter 341 of the laws of 2008, paragraph l as added by chapter 384 of the laws of 2011, paragraph m as added by chapter 547 of the laws of 2014 and paragraph n as added by chapter 192 of the laws of 2018, is amended to read as follows:

4. "Land used in agricultural production" means [~~not less than seven acres of~~] land used as a single operation [~~in the preceding two years~~] for the production for sale of crops, livestock or livestock products [~~of an average~~] **with annual** gross sales [~~value~~] of ten thousand dollars or more; or, not less than seven acres of land used [~~in the preceding two years~~] to support a commercial horse boarding operation or a commercial equine operation with annual gross receipts of ten thousand dollars or more. [~~Land used in agricultural production shall not include land or portions thereof used for processing or retail merchandising of such~~

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

LBD09100-01-9

~~crops, livestock or livestock products.~~] Land used in agricultural production shall also include:

a. Rented land which otherwise satisfies the requirements for eligibility for an agricultural assessment.

a-1. Land used by a not-for-profit institution for the purposes of agricultural research that is intended to improve the quality or quantity of crops, livestock or livestock products. Such land shall qualify for an agricultural assessment upon application made pursuant to paragraph [~~(a)~~] a of subdivision one of section three hundred five of this article, except that no minimum annual gross sales value shall be required.

b. Land of not less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products, exclusive of woodland products, which does not independently satisfy the annual gross sales [~~value~~] requirement[~~, where such land was used in such production for the preceding two years~~] and [~~currently~~] is currently being so used under a written rental arrangement of five or more years in conjunction with land which is eligible for an agricultural assessment.

c. Land used in support of a farm operation or land used in agricultural production, constituting a portion of a parcel, as identified on the assessment roll, which also contains land qualified for an agricultural assessment. Such land shall include land used for agricultural amusements which are produced from crops grown or produced on the farm, provided that such crops are harvested and marketed in the same manner as other crops produced on such farm. Such agricultural amusements shall include, but not be limited to, so-called "corn mazes" or "hay bale mazes".

d. Farm woodland which is part of land which is qualified for an agricultural assessment, provided, however, that such farm woodland attributable to any separately described and assessed parcel shall not exceed fifty acres.

e. Land set aside through participation in a federal conservation program pursuant to title one of the federal food security act of nineteen hundred eighty-five or any subsequent federal programs established for the purposes of replenishing highly erodible land which has been depleted by continuous tilling or reducing national surpluses of agricultural commodities and such land shall qualify for agricultural assessment upon application made pursuant to paragraph a of subdivision one of section three hundred five of this article, except that no minimum annual gross sales [~~value~~] shall be required.

f. Land of not less than seven acres used as a single operation [~~in the preceding two years~~] for the production for sale of crops, livestock or livestock products [~~of an average~~] with annual gross sales [~~value~~] of ten thousand dollars or more, or land of less than seven acres used as a single operation [~~in the preceding two years~~] for the production for sale of crops, livestock or livestock products [~~of an average~~] with annual gross sales [~~value~~] of fifty thousand dollars or more.

g. Land under a structure within which crops, livestock or livestock products are produced, provided that the sales of such crops, livestock or livestock products meet the annual gross sales requirements of [~~paragraph f of~~] this subdivision.

[~~h. Land that is owned or rented by a farm operation in its first or second year of agricultural production, or, in the case of a commercial horse boarding operation in its first or second year of operation, that consists of (1) not less than seven acres used as a single operation for~~

~~the production for sale of crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more; or (2) less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of fifty thousand dollars or more; or (3) land situated under a structure within which crops, livestock or livestock products are produced, provided that such crops, livestock or livestock products have an annual gross sales value of (i) ten thousand dollars or more, if the farm operation uses seven or more acres in agricultural production, or (ii) fifty thousand dollars or more, if the farm operation uses less than seven acres in agricultural production; or (4) not less than seven acres used as a single operation to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more.~~

~~i.~~] **h.** Land of not less than seven acres used as a single operation for the production for sale of orchard or vineyard crops when such land is used solely for the purpose of planting a new orchard or vineyard and when such land is also owned or rented by a newly established farm operation in its first, second, third or fourth year of agricultural production.

[~~j.~~] **i.** Land of not less than seven acres used as a single operation for the production and sale of Christmas trees when such land is used solely for the purpose of planting Christmas trees that will be made available for sale, whether dug for transplanting or cut from the stump and when such land is owned or rented by a newly established farm operation in its first, second, third, fourth or fifth year of agricultural production.

[~~k.~~] **j.** Land used to support an apiary products operation which is owned by the operation and consists of (i) not less than seven acres nor more than ten acres used as a single operation [~~in the preceding two years~~] for the production for sale of crops, livestock or livestock products [~~of an average~~] **with annual** gross sales [~~value~~] of ten thousand dollars or more or (ii) less than seven acres used as a single operation [~~in the preceding two years~~] for the production for sale of crops, livestock or livestock products [~~of an average~~] **with annual** gross sales [~~value~~] of fifty thousand dollars or more. The land used to support an apiary products operation shall include, but not be limited to, the land under a structure within which apiary products are produced, harvested and stored for sale; and a buffer area maintained by the operation between the operation and adjacent landowners. Notwithstanding any other provision of this subdivision, rented land associated with an apiary products operation is not eligible for an agricultural assessment based on this paragraph.

[~~l. Land that is owned or rented by a farm operation in its first or second year of agricultural production or in the case of a commercial equine operation, in its first or second year of operation, that consists of not less than seven acres and stabling at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated through the provision of commercial equine activities including, but not limited to riding lessons, trail riding activities or training of horses or through the production for sale of crops, livestock, and livestock products, or through both the provision of such commercial equine activities and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing.~~

~~m.~~] **k.** Land used in silvopasturing**, which is part of a single operation that otherwise satisfies the requirements for eligibility for an**

agricultural assessment, shall be limited to up to ten fenced acres per large livestock, including cattle, horses and camelids, and up to five fenced acres per small livestock, such as sheep, hogs, goats and poultry. For the purposes of this subdivision, "silvopasturing" shall mean the intentional combination of trees, forages and livestock managed as a single integrated practice for the collective benefit of each, including the planting of appropriate grasses and legume forages among trees for sound grazing and livestock husbandry.

l. Land or portions thereof used for processing or retail merchandising of crops, livestock or livestock products on land which is part of a farm operation, as defined in section three hundred one of this article, and used exclusively for the processing and marketing of agricultural and horticultural commodities which are grown on land which is part of such farm operation.

[~~n.~~] m. Land of not less than seven acres used as a single operation for the production for sale of hops when such land is used solely for the purpose of planting a new hopyard and when such land is also owned or rented by a newly established farm operation in its first, second, third or fourth year of agricultural production.

§ 2. Subdivision 9 of section 301 of the agriculture and markets law, as amended by chapter 440 of the laws of 1993, paragraphs c, d, e, and f as amended and paragraph g as added by chapter 536 of the laws of 2008, is amended to read as follows:

9. "Gross sales [~~value~~]" means the proceeds from the sale of:

a. Crops, livestock and livestock products produced on land used in agricultural production provided, however, that whenever a crop is processed before sale, the proceeds shall be based upon the market value of such crop in its unprocessed state;

b. Woodland products from farm woodland eligible to receive an agricultural assessment, not to exceed two thousand dollars annually;

c. Honey and beeswax produced by bees in hives located on an otherwise qualified farm operation but which does not independently satisfy the gross sales requirement;

d. Maple syrup, maple candy, maple sugar and maple cream processed from maple sap produced on land used in agricultural production in conjunction with the same or an otherwise qualified farm operation;

e. Or payments received by reason of land set aside pursuant to paragraph e of subdivision four of this section;

f. Compost, mulch or other organic biomass crops as defined in subdivision seventeen of this section produced on land used in agricultural production, not to exceed five thousand dollars annually;

[~~f.~~] g. Or payments received by thoroughbred breeders pursuant to section two hundred fifty-four of the racing, pari-mutuel wagering and breeding law; [~~and~~

~~g. Compost, mulch or other organic biomass crops as defined in subdivision sixteen of this section produced on land used in agricultural production, not to exceed five thousand dollars annually.~~]

h. Or in a commercial horse boarding operation as defined in subdivision thirteen of this section, the income received from the boarding of horses or through the production for sale of crops, livestock and livestock products or through both such boarding and such production; and

i. Or in a commercial equine operation as defined in subdivision eighteen of this section, the income received from fees generated through the provision of commercial equine activities including, but not limited to, riding lessons, trail riding activities or training of horses or through the production for sale of crops, livestock and livestock

products or through both commercial equine activities and such production.

§ 3. Subdivision 1 of section 305 of the agriculture and markets law is amended by adding a new paragraph f to read as follows:

f. The commissioner may initiate an investigation pursuant to section thirty-six of this chapter to determine if land was improperly denied an agricultural assessment pursuant to this section or section three hundred six of this article. If the commissioner finds after such investigation that land was improperly denied such assessment, he or she may issue an order pursuant to section thirty-six of this chapter to compel the assessor to approve the agricultural assessment as provided for in this order.

§ 4. Subdivision 4 of section 305 of the agriculture and markets law is amended by adding a new paragraph h-1 to read as follows:

h-1. Notwithstanding any other provision of law to the contrary, no above ground natural gas and electric transmission line facilities shall be sited on land in agricultural production which is located within an agricultural district, or land in agricultural production that qualifies for and is receiving an agricultural assessment pursuant to section three hundred six of this article. Nothing contained in this paragraph, however, shall be deemed to prohibit siting when:

(i) The owner of such land has entered into a written agreement which shall indicate his or her consent for site consideration; or

(ii) The applicant for a permit has made a commitment in the permit application to fund a farm land protection conservation easement within a reasonable proximity to the proposed project in an amount not less than the dollar value of any such farm land purchased for the project; or

(iii) The commissioner has determined that any such agricultural land to be taken, constitutes less than five percent of the land in agricultural production and the project sponsor has done everything practicable to minimize adverse impacts to the land in agricultural production.

§ 5. Subdivisions 2 and 8 of section 483 of the real property tax law, subdivision 2 as amended by chapter 35 of the laws of 2016, and subdivision 8 as amended by chapter 411 of the laws of 2001, are amended to read as follows:

2. The term "structures and buildings" shall include: (a) permanent and impermanent structures, including trellises and pergolas, made of metal, string or wood, and buildings or portions thereof used directly and exclusively in the raising and production for sale of agricultural and horticultural commodities or necessary for the storage thereof[~~, but not structures and buildings or portions thereof used for the processing of agricultural and horticultural commodities, or the retail merchandising of such commodities~~]; (b) structures and buildings located on land which is part of a farm operation, as defined in section three hundred one of the agriculture and markets law, and used exclusively for the processing and marketing of agricultural and horticultural commodities which are grown on land which is part of such farm operation; (c) structures and buildings used to provide housing for regular and essential employees and their immediate families who are primarily employed in connection with the operation of lands actively devoted to agricultural and horticultural use, but not including structures and buildings occupied as a residence by the applicant and his or her immediate family; [~~(c)~~] (d) structures and buildings used as indoor exercise arenas exclusively for training and exercising horses in connection with the raising and production for sale of agricultural and horticultural commodities or

in connection with a commercial horse boarding operation **or a commercial equine operation** as defined in section three hundred one of the agriculture and markets law. For purposes of this section, the term "indoor exercise arenas" shall not include [~~riding academies or~~] dude ranches; [~~(d)~~] **(e)** structures and buildings used in the production of maple syrup**, maple candy, maple sugar and maple cream**; [~~(e)~~] **(f)** structures and buildings used in the production of honey and beeswax including those structures and buildings used for the storage of bees. For purposes of this section, this shall not include those structures or buildings and portions thereof used for the sale of maple syrup or sale of honey and beeswax. The term "structures and buildings" shall not include silos, bulk milk tanks or coolers, or manure storage, handling and treatment facilities as such terms are used in section four hundred eighty-three-a of this title.

8. As used in this section, the term "agricultural and horticultural" shall include the [~~activity~~] **activities** of raising, breeding [~~and~~]**, training and/or** boarding of livestock, including commercial horse boarding operations **and commercial equine operations as defined in section three hundred one of the agriculture and markets law**.

§ 6. Paragraph (b) and the closing paragraph of subdivision 1 and subdivision 2 of section 730 of the real property tax law, paragraph (b) of subdivision 1 as amended by chapter 154 of the laws of 1993, the closing paragraph of subdivision 1 as added by chapter 114 of the laws of 2012, and subdivision 2 as amended by chapter 714 of the laws of 1982, are amended to read as follows:

(b) the property is: (i) improved by a one, two or three family owner-occupied structure used exclusively for residential purposes other than property subject to the assessment limitations of section five hundred eighty-one of this chapter and article nine-B of the real property law [~~or~~]**;** (ii) the property is unimproved and is not of sufficient size as determined by the assessing unit or special assessing unit to contain a one, two or three family residential structure; **or (iii) the property has been denied an agricultural value assessment and/or a farm buildings tax exemption by the assessor under section three hundred five or three hundred six of the agriculture and markets law and/or under section four hundred eighty-three of this chapter;**

An owner of real property who qualifies under paragraphs (a) through (d) of this subdivision shall also include:

(i) a person or persons whose real property is held in trust solely for the benefit of such person or persons if the property serves as the primary residence of such person or persons and the trust which holds title to the property was lawfully created to hold title solely for estate planning and asset protection purposes; [~~and~~]

(ii) a person or persons who reside in real property which is owned by a limited partnership if the property serves as the primary residence of such person or persons and said limited partnership does not engage in any commercial activity, was lawfully created to hold title solely for estate planning and asset protection purposes and the partner or partners who primarily reside thereon personally pay all of the real property taxes and other costs associated with the property's ownership**; and**

(iii) a person or persons, partnership, corporation, limited partnership or limited liability corporation which owns real property that has been denied an agricultural value assessment and/or a farm buildings tax exemption by the assessor under section three hundred five or three hundred six of the agriculture and markets law and/or under section four hundred eighty-three of this chapter, where such real property is held

in trust solely for the benefit of such person or persons, partnership, corporation, limited partnership or limited liability corporation and the trust which holds title to the property was lawfully created to hold title solely for estate planning and asset protection purposes.

2. Upon determining any such complaint every real property tax board of assessment review shall inform **in writing** every owner of one, two or three family owner-occupied residential real property [~~**in writing**~~]**, and every owner of property that has been denied an agricultural value assessment and/or a farm buildings tax exemption by the assessor under section three hundred five or three hundred six of the agriculture and markets law and/or under section four hundred eighty-three of this chapter,** of the right to small claims assessment review in the manner provided by subdivision four of section five hundred twenty-five of this chapter. Such notice shall specify the last date on which petitions must be filed and the location where small claims assessment review forms may be obtained. The petition form for small claims assessment review shall be provided to such property owner, upon request, at no cost in accordance with the rules promulgated pursuant to section seven hundred thirty-seven of this title.

§ 7. This act shall take effect immediately and shall apply to taxable status dates occurring on or after such date; provided, however, that section six of this act shall apply to petitions filed against assessment rolls prepared on or after the first of January next succeeding the date on which it shall have become a law.