

# STATE OF NEW YORK

5153

2021-2022 Regular Sessions

## IN SENATE

February 25, 2021

Introduced by Sen. MAY -- 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 45 to read  
2 as follows:

3 § 45. 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 subdivi-  
9 sion, a person is "controlled by" another person if the controlling  
10 person holds, directly or indirectly, the majority voting or ownership  
11 interest in the controlled person or has control over the day-to-day  
12 operations 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (B) Documents and other evidence sufficient to prove that the appli-  
52 cant meets all of the following criteria: (i) The applicant or an affil-  
53 iate of the applicant is licensed as a rural business investment company  
54 under 7 U.S.C. 2009cc, or as a small business investment company under  
55 15 U.S.C. 681.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of the applicant. The notice shall include the reasons that the applica-  
2 tion was denied. If the application was denied for any reason other than  
3 the reason specified in subparagraph (F) of paragraph three of this  
4 subdivision, the applicant may provide additional information to the  
5 department to complete, clarify, or cure defects in the application.  
6 The additional information must be submitted within thirty days after  
7 the date the notice of denial was sent by the department. If the person  
8 or entity submits additional information within thirty days, the depart-  
9 ment shall reconsider the application within thirty days after receiving  
10 such additional information. If after submission of additional informa-  
11 tion, the application is approved, then the submission date shall be the  
12 date of the original submission of the application. If the person or  
13 entity does not submit additional information within thirty days after  
14 the notice of denial was sent, the applicant may submit a new applica-  
15 tion with a new submission date at any time.

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

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

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

39 (A) Collect the credit-eligible capital contributions from each inves-  
40 tor whose credit-eligible capital contributions are described in affida-  
41 vits submitted pursuant to subparagraph (E) of paragraph one of this  
42 subdivision.

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

52 (C) Send to the department documentation sufficient to prove that the  
53 amounts described in subparagraphs (A) and (B) of this paragraph have  
54 been collected. If the rural business growth fund fails to fully comply  
55 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

(ee) 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-five 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-five 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 55 to read as follows:

55. 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

1 under subparagraph (B) of paragraph six of subdivision (b) of section  
2 forty-five of this chapter. The credit may be claimed against the tax  
3 imposed by this article. The credit may not be sold, transferred, or  
4 allocated to any entity other than an affiliate of the taxpayer.

5 (2) Amount of credit claimed. The taxpayer may claim credits author-  
6 ized by the tax credit certificate in the taxable year in which the  
7 third, fourth, and fifth anniversaries of the closing date in connection  
8 with which the certificate issued occurs, provided that the maximum  
9 amount of credit for a tax year that may be claimed is up to one-third  
10 of the amount stated on the tax credit certificate, exclusive of amounts  
11 carried forward pursuant to paragraph three of this subdivision.

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

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

26 § 99-ii. New York agriculture and rural jobs fund. 1. There is hereby  
27 established in the joint custody of the state comptroller and the  
28 commissioner of taxation and finance a special fund to be known as the  
29 "New York agriculture and rural jobs fund".

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

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

42 § 6. This act shall take effect July 1, 2021.