STATE OF NEW YORK

5919

2023-2024 Regular Sessions

IN ASSEMBLY

March 24, 2023

Introduced by M. of A. BARRETT, LUPARDO, THIELE, FAHY -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, the tax law and the environmental conservation law, in relation to enacting the carbon farming act

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

Section 1. This act shall be known and may be cited as the "carbon farming act".

§ 2. Legislative intent. The legislature hereby finds and declares that soil and vegetation management can significantly enhance soil and carbon sequestration, resulting in a wide range of environmental and agricultural benefits to New York farmers and residents, including: increased yields; soil health; improved water quality; and reductions in greenhouse gases. The legislature further declares that enhancing carbon sequestration, the long term storage of carbon in plants, soils, geologic formations and the ocean, through farming is in the best interest of New Yorkers. It is therefore the intent of the legislature and the purpose of this act to encourage farmers to further sequester and mitigate carbon in this state by establishing a carbon farming tax credit to reward and incentivize farmers to maintain or adopt practices that help maximize New York's carbon sequestration potential.

§ 3. Section 150 of the agriculture and markets law is amended by adding a new subdivision 5 to read as follows:

5. "Carbon farming" means the implementation of a land management strategy for the purposes of reducing, sequestering, and mitigating greenhouse gas emissions on land used in support of a farm operation and quantifying those greenhouse gas benefits using the United States Department of Agriculture's COMET-Planner, COMET-Farm, and other quantification tools.

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

LBD01378-02-3

§ 4. Section 210-B of the tax law is amended by adding a new subdivision 59 to read as follows:

59. Carbon farming credit. (a) Allowance of credit. A taxpayer that is an agricultural business that produces farm products shall be allowed a credit against the tax imposed by this article for the practice of carbon farming.

(b) Definitions. For purposes of this section the following terms shall have the following meanings:

(i) "carbon farming" shall have the same meaning as set forth in subdivision five of section one hundred fifty of the agriculture and markets law;

(ii) "farm products" shall have the same meaning as set forth in subdivision five of section two of the agriculture and markets law; and

(iii) "carbon sequestration" shall mean the long term storage of carbon in plants and soils.

(c) Such credit shall be calculated based on the economic value of carbon farming as determined by the commissioner of environmental conservation, in consultation with the commissioner of agriculture and markets and the commissioner pursuant to paragraph ccc of subdivision two of section 3-0301 of the environmental conservation law.

(d) The taxpayer shall attach to its tax return its final certificate of eligibility issued by the commissioner of environmental conservation pursuant to section 19-0309 of the environmental conservation law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the final certificate verifying the emissions reductions to be credited to the taxpayer.

(e) If the amount of the credit allowable under this subdivision shall exceed the taxpayer's tax for such year and the taxpayer's New York adjusted gross income for such year does not exceed sixty thousand dollars, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this chapter, provided, however, that no interest shall be paid thereon. If the taxpayer's New York adjusted gross income for such year exceeds sixty thousand dollars, the excess credit may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

§ 5. Section 606 of the tax law is amended by adding a new subsection (ooo) to read as follows:

(ooo) Carbon farming credit. (1) Allowance of credit. A taxpayer who provides farm products and who practices carbon farming shall be allowed a credit against the tax imposed by this article.

(2) Definitions. For the purposes of this subsection, the following definitions shall apply:

(A) "Farm products" shall have the same meaning as set forth in subdivision five of section two of the agriculture and markets law.

(B) "Carbon farming" shall have the same meaning as set forth in subdivision five of section one hundred fifty of the agriculture and markets law.

(3) Application of credit. Such credit shall be calculated based on the economic value of carbon farming as determined by the commissioner of environmental conservation, in consultation with the commissioner of agriculture and markets pursuant to paragraph ccc of subdivision two of section 3-0301 of the environmental conservation law.

(4) Certification required. The taxpayer shall attach to its tax return its final certificate of eligibility issued by the commissioner of environmental conservation pursuant to section 19-0309 of the envi-

ronmental conservation law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the final certificate verifying the emissions reductions to be credited to the taxpayer.

(5) Carryover of credit. If the amount of the credit allowable under this subsection shall exceed the taxpayer's tax for such year and the taxpayer's New York adjusted gross income for such year does not exceed sixty thousand dollars, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon. If the taxpayer's New York adjusted gross income for such year exceeds sixty thousand dollars, the excess credit may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

§ 6. Subdivision 2 of section 3-0301 of the environmental conservation law is amended by adding a new paragraph ccc to read as follows:

ccc. Cooperate with the department of agriculture and markets to develop educational materials to promote and encourage carbon farming. Such materials shall promote farming practices which reduce, sequester and mitigate greenhouse gas emissions through the implementation of carbon farming strategies and on land used in support of a farm operation; and develop and codify a metric to quantify the storage of carbon using the United States Department of Agriculture's COMET-Planner, COMET-Farm, and other quantification tools. The department shall develop and distribute an application and certification procedure which verifies the carbon stored to be credited to each farm. The department may promulgate rules and regulations necessary to implement this section.

§ 7. Subdivision 1 of section 19-0309 of the environmental conservation law, as amended by chapter 817 of the laws of 1987, is amended to read as follows:

1. For the purposes of sections 208, 210, 606 and 612 of the Tax Law, the commissioner or his designated representative is hereby authorized to issue certificates of compliance concerning air pollution control facilities [~~and~~], air pollution controlled process facilities and carbon farming as defined in such law. No such certificate shall be issued unless the facility to which it is applicable is in compliance with applicable provisions of titles 1 to 11, inclusive, and title 19 of article 17, article 19, and title 1 of article 27 of this chapter; of the Public Health Law; of the state sanitary code and of codes, rules, regulations, permits or orders issued pursuant thereto.

§ 8. Section 16 of the agriculture and markets law is amended by adding a new subdivision 53 to read as follows:

53. Cooperate with the department of environmental conservation to develop educational materials to encourage carbon farming and how to use the United States Department of Agriculture's COMET-Planner, COMET-Farm, and other carbon quantification tools. The program shall promote farming practices which reduce, sequester and mitigate greenhouse gas emissions on land used in support of a farm operation. The department shall promote the carbon farming tax credit provided in sections two hundred ten-B and six hundred six of the tax law.

§ 9. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.