

# STATE OF NEW YORK

4340--A

2011-2012 Regular Sessions

## IN SENATE

March 30, 2011

Introduced by Sens. RITCHIE, GALLIVAN, GRISANTI, LAVALLE, LIBOUS, BONACIC, LARKIN, SEWARD, GRIFFO, DeFRANCISCO, YOUNG, BALL, O'MARA, VALESKY, McDONALD, LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture -- recommitted to the Committee on Agriculture in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the agriculture and markets law, the tax law, the vehicle and traffic law and the environmental conservation law, in relation to reducing farm-based taxes, fees and regulatory burdens to help grow the agricultural economy and benefit family farms

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

1 Section 1. This act shall be known and may be cited as the "let New  
2 York farm act."

3 § 2. Legislative intent. The legislature finds that viable farms and  
4 the protection of working farmland are of paramount importance to the  
5 economic and environmental wellbeing of New York state. The locally-fo-  
6 cused, diverse food supply New York farms provide is of critical impor-  
7 tance to the health and welfare of all New York citizens. With agricul-  
8 ture facing ever increasing global competition, New York state is  
9 committed to helping grow and expand our farms. In aid of this goal,  
10 reducing farm-based taxes, fees and regulatory burdens that do not  
11 recognize the unique nature and benefits of agriculture is an important  
12 step in achieving successful, sustainable family farms.

13 § 3. Subdivision 3 of section 303-b of the agriculture and markets law  
14 is amended by adding a new paragraph c to read as follows:

15 **c. The notice shall also be provided to all landowners with land being**  
16 **proposed for inclusion in an agricultural district. Landowners shall**  
17 **have the option to receive this notice either through written communi-**  
18 **cation or through electronic communication.**

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

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1 § 4. Subdivision 12 of section 210 of the tax law is amended by adding  
2 a new paragraph (e-1) to read as follows:

3 **(e-1) Notwithstanding any other provision of this subdivision, for**  
4 **taxable years beginning on or after January first, two thousand thir-**  
5 **teen, if the credit allowed under this subdivision is greater than the**  
6 **tax due in any taxable year for a taxpayer whose primary source of**  
7 **income is derived from operating a farm operation or commercial horse**  
8 **boarding operation, such taxpayer may elect to treat the amount by which**

9 such credit exceeds such tax due as an over-payment of tax to be  
10 refunded in accordance with the provisions of section one thousand  
11 eighty-six of this chapter. For purposes of this paragraph, the terms  
12 "farm operation" and "commercial horse boarding operation" shall have  
13 the same meanings as such terms are defined in section three hundred one  
14 of the agriculture and markets law.

15 § 5. Subsection (a) of section 606 of the tax law is amended by adding  
16 a new paragraph 5-a to read as follows:

17 (5-a) Notwithstanding any other provision of this subsection, for  
18 taxable years beginning on or after January first, two thousand thir-  
19 teen, if the credit allowed under this subsection is greater than the  
20 tax due in any taxable year for a taxpayer whose primary source of  
21 income is derived from operating a farm operation or commercial horse  
22 boarding operation, such taxpayer may elect to treat the amount by which  
23 such credit exceeds such tax due as an over-payment of tax to be  
24 refunded in accordance with the provisions of section six hundred eight-  
25 y-six of this article. For purposes of this paragraph, the terms "farm  
26 operation" and "commercial horse boarding operation" shall have the same  
27 meanings as such terms are defined in section three hundred one of the  
28 agriculture and markets law.

29 § 6. Subparagraph (C) of paragraph 1 of subdivision (i) of section  
30 1136 of the tax law, as added by section 1 of subpart G of part V-1 of  
31 chapter 57 of the laws of 2009, is amended to read as follows:

32 (C) Every wholesaler, as defined by section three of the alcoholic  
33 beverage control law, if it has made a sale of an alcoholic beverage, as  
34 defined by section four hundred twenty of this chapter, without collect-  
35 ing sales or use tax during the period covered by the return, except (i)  
36 a sale to a person that has furnished an exempt organization certificate  
37 to the wholesaler for that sale; or (ii) a sale to another wholesaler  
38 whose license under the alcoholic beverage control law does not allow it  
39 to make retail sales of the alcoholic beverage. For each vendor, opera-  
40 tor, or recipient to whom the wholesaler has made a sale without  
41 collecting sales or compensating use tax, the return must include the  
42 total value of those sales made during the period covered by the return  
43 (excepting the sales described in clauses (i) and (ii) of this subpara-  
44 graph) and the vendor's, operator's or recipient's state liquor authori-  
45 ty license number, along with the information required by paragraph two  
46 of this subdivision. The provisions of this subparagraph shall not  
47 apply to a farm winery as defined in section three of the alcoholic  
48 beverage control law.

49 § 7. Subparagraphs (A) and (B) of paragraph 3 of subsection (c) of  
50 section 658 of the tax law, subparagraph (A) as amended by section 18 of  
51 part U of chapter 61 of the laws of 2011 and subparagraph (B) as amended  
52 by section 1 of part H-1 of chapter 57 of the laws of 2009, are amended  
53 to read as follows:

54 (A) Every subchapter K limited liability company, every limited  
55 liability company that is a disregarded entity for federal income tax  
56 purposes, and every partnership which has any income derived from New  
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1 York sources, determined in accordance with the applicable rules of  
2 section six hundred thirty-one of this article as in the case of a  
3 nonresident individual, shall, within sixty days after the last day of  
4 the taxable year, make a payment of a filing fee. Such deadline shall  
5 not apply to farms, commercial horse boarding operations or agricultural  
6 service providers subject to the fee, which shall, within one hundred  
7 twenty days after the last day of the taxable year, make payment of any  
8 required filing fee. The amount of the filing fee is the amount set  
9 forth in subparagraph (B) of this paragraph. The minimum filing fee is  
10 twenty-five dollars for taxable years beginning in two thousand eight  
11 and thereafter. Limited liability companies that are disregarded enti-  
12 ties for federal income tax purposes must pay a filing fee of twenty-  
13 five dollars for taxable years beginning on or after January first, two

14 thousand eight.

15 (B) The filing fee will be based on the New York source gross income  
16 of the limited liability company or partnership for the taxable year  
17 immediately preceding the taxable year for which the fee is due. If the  
18 limited liability company or partnership does not have any New York  
19 source gross income for the taxable year immediately preceding the tax-  
20 able year for which the fee is due, the limited liability company or  
21 partnership shall pay the minimum filing fee. Partnerships, other than  
22 limited liability partnerships under article eight-B of the partnership  
23 law and foreign limited liability partnerships, with less than one  
24 million dollars in New York source gross income are exempt from the  
25 filing fee. New York source gross income is the sum of the partners' or  
26 members' shares of federal gross income from the partnership or limited  
27 liability company derived from or connected with New York sources,  
28 determined in accordance with the provisions of section six hundred  
29 thirty-one of this article as if those provisions and any related  
30 provisions expressly referred to a computation of federal gross income  
31 from New York sources. For this purpose, federal gross income is  
32 computed without any allowance or deduction for cost of goods sold,  
33 **except that for companies engaged primarily in farming, commercial horse**  
34 **boarding or agricultural service providers, the term federal gross**  
35 **income shall mean net income as reported for federal tax purposes.**

36 The amount of the filing fee for taxable years beginning on or after  
37 January first, two thousand eight will be determined in accordance with  
38 the following table:

39 If the New York source gross income is:	The fee is:
40 not more than \$100,000	\$25
41 more than \$100,000 but not over \$250,000	\$50
42 more than \$250,000 but not over \$500,000	\$175
43 more than \$500,000 but not over \$1,000,000	\$500
44 more than \$1,000,000 but not over \$5,000,000	\$1,500
45 more than \$5,000,000 but not over \$25,000,000	\$3,000
46 Over \$25,000,000	\$4,500

47 § 8. Subparagraph 4 of paragraph (d) of subdivision 1 of section 210  
48 of the tax law, as added by section 2 of part AA-1 of chapter 57 of the  
49 laws of 2008, is amended to read as follows:

50 (4) Notwithstanding subparagraphs one and two of this paragraph, for  
51 taxable years beginning on or after January first, two thousand eight,  
52 the amount prescribed by this paragraph for New York S corporations will  
53 be determined in accordance with the following table:

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1 If New York receipts are:	The fixed dollar minimum tax is:
2 not more than \$100,000	\$ 25
3 more than \$100,000 but not over \$250,000	\$ 50
4 more than \$250,000 but not over \$500,000	\$ 175
5 more than \$500,000 but not over \$1,000,000	\$ 300
6 more than \$1,000,000 but not over \$5,000,000	\$1,000
7 more than \$5,000,000 but not over \$25,000,000	\$3,000
8 Over \$25,000,000	\$4,500

9 Otherwise the amount prescribed by this paragraph will be determined in  
10 accordance with the following table:

11 If New York receipts are:	The fixed dollar minimum tax is:
12 not more than \$100,000	\$ 25
13 more than \$100,000 but not over \$250,000	\$ 75
14 more than \$250,000 but not over \$500,000	\$ 175
15 more than \$500,000 but not over \$1,000,000	\$ 500
16 more than \$1,000,000 but not over \$5,000,000	\$1,500
17 more than \$5,000,000 but not over \$25,000,000	\$3,500

18 Over \$25,000,000

\$5,000

19 For purposes of this paragraph, New York receipts are the receipts  
20 computed in accordance with subparagraph two of paragraph (a) of subdivi-  
21 sion three of this section for the taxable year, except that for  
22 corporations engaged primarily in farming, commercial horse boarding or  
23 providing agricultural services, the term New York receipts shall refer  
24 to net farm income as reported for federal tax purposes.

25 § 9. Section 499-b of the vehicle and traffic law, as added by section  
26 1 of part B of chapter 25 of the laws of 2009, is amended to read as  
27 follows:

28 § 499-b. Collection of supplemental fee. All registrants of motor  
29 vehicles who reside in the metropolitan commuter transportation district  
30 shall pay to the commissioner or his or her agent the supplemental  
31 registration fee provided for in this article upon registration or  
32 renewal of motor vehicles subject to registration fees pursuant to the  
33 following sections of this chapter: paragraph a of subdivision six of  
34 section four hundred one; schedules A, B, C, [~~E~~] F (except agricultural  
35 sprayers), G, I and K of subdivision seven of section four hundred one;  
36 paragraph a of subdivision eight of section four hundred one, except  
37 livestock trailers; paragraph a of subdivision five of section four  
38 hundred ten; and section four hundred eleven-b.

39 § 10. Paragraph 1 of schedule E of subdivision 7 of section 401 of the  
40 vehicle and traffic law, as amended by section 9 of part G of chapter 59  
41 of the laws of 2009, is amended to read as follows:

42 1. For each agricultural truck, the annual fee of two dollars and  
43 [~~fifty-one cents~~] one cent for each five hundred pounds maximum gross  
44 weight, or fraction thereof.

45 § 11. Section 72-0602 of the environmental conservation law is amended  
46 by adding a new subdivision q-1 to read as follows:

47 q-1. \$25.00 per acre disturbed plus \$25.00 per future impervious acre  
48 for any facility that is part of a farm operation as defined in section  
49 three hundred one of the agriculture and markets law, discharging or  
50 authorized to discharge pursuant to a SPDES permit for stormwater  
51 discharges from construction activity. For the purposes of this subdivi-  
52 sion, acres disturbed are acres subject to clearing, grading, or exca-  
53 vating in the construction area subject to SPDES permitting and future

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1 impervious acres are acres that will be newly paved with an impervious  
2 substance or roofed during construction;

3 § 12. Subdivision t of section 72-0602 of the environmental conserva-  
4 tion law, as amended by section 1 of part JJ of chapter 59 of the laws  
5 of 2009, is relettered subdivision u and amended and a new subdivision t  
6 is added to read as follows:

7 t. \$50.00 for a winery or distillery discharging or authorized to  
8 discharge pursuant to a general permit;

9 u. \$100.00 for any facility, other than a municipal separate storm  
10 sewer as defined by 40 CFR §122.26 (b) (8), discharging or authorized to  
11 discharge pursuant to a general permit unless a specific fee is imposed  
12 pursuant to subdivisions a through [~~s~~] t of this section for such  
13 discharge or authorization to discharge.

14 § 13. This act shall take effect immediately, provided however, that  
15 section three of this act shall take effect on the ninetieth day after  
16 it shall have become a law, provided further that sections four and five  
17 of this act shall apply to any tax year commencing on or after January  
18 1, 2013.

**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S4340A

**SPONSOR:** RITCHIE

**TITLE OF BILL:**

An act to amend the agriculture and markets law, the tax law, the vehicle and traffic law and the environmental conservation law, in relation to reducing farm-based taxes, fees and regulatory burdens to help grow the agricultural economy and benefit family farms

**PURPOSE OR GENERAL IDEA OF BILL:**

To reduce farm-based taxes, fees, and regulatory burdens imposed on our state's farms to allow the state's vital agricultural economy to grow and to benefit family farms in New York State.

**SUMMARY OF SPECIFIC PROVISIONS:**

Section 303-b of Ag & Markets Law is amended to allow Agricultural District hearing notices to be provided to all landowners with land being proposed for inclusion in an agricultural district.

Subdivision 12 of section 210 of the tax law is amended by adding a new paragraph (e-1) to provide agricultural operations with a refundable investment tax credit.

Subparagraph (C) of paragraph 1 of subdivision (i) of section 1136 of the tax law, as added by section 1 of subpart G of part V-1 of chapter 57 of the laws of 2009, is amended to exempt farm wineries from sales tax reporting requirements.

Section 658 (c) and Section 210(1)(d)(4) of tax law is amended to ease farm filing burdens with regard to corporation filing fees.

Section of 499-b of vehicle and traffic law is amended to make necessary clarifications to exempt rented trucks used for agricultural purposes from the highway use tax.

Section 401(7)(E) of vehicle & traffic law is amended to reduce agricultural plated truck registration fees.

Section 72-0602 of environmental conservation law is amended to reduce State Pollutant Discharge Elimination System permit fees to agricultural projects.

**JUSTIFICATION:**

New York's farms provide substantial economic and environmental benefits to local communities and consumers in New York State. The agricultural industry can drive the revitalization of the economy of upstate New York

and Long Island, but only if given a chance to succeed.

Crushing taxes, ever increasing fees and endless paperwork are stifling needed business investment and are forcing farmers to spend more time pushing pencils and cutting red tape than actually farming. With agriculture facing ever increasing global competition, New York must provide farmers with the tools to succeed in their business. Not continue to construct obstacles to doing business that farmers must hurdle on a daily basis.

This bill is a first step in keeping and growing New York State's viable farm operations, developing new agricultural businesses, and producing high quality, affordable, local food for our state's residents.

**HISTORY:**

S.6947A of 2010 - Referred to Finance

S.4340 of 2011 - Referred to Finance

**FISCAL IMPLICATIONS:**

Minimal.

**EFFECTIVE DATE:**

Immediately, provided however, that section three shall take effect on the ninetieth day after it becomes law, and that sections four and five shall apply to any tax year commencing on or after January 1, 2013.